

EFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND BIRMINGHAM
COMMUNITY CHARTER HIGH
SCHOOL.

OAH CASE NO. 2010110502

ORDER GRANTING MOTION TO
ADD PARTY

On November 12, 2010, Student filed a request for a due process hearing (complaint). On December 10, 2010, the Los Angeles Unified School District (District) filed a motion to add Birmingham Community Charter High School (Charter School) as a party. The Office of Administrative Hearings (OAH) did not receive a response from Student.

APPLICABLE LAW

Regarding joinder of a party, OAH considers the requirements of the Code of Civil Procedure. Under that Code, a “necessary” party may be joined upon motion of any party. Section 389, subdivision (a) of the Code of Civil Procedure defines a “necessary” party as follows:

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Children with disabilities who attend public charter schools retain all rights under federal and State special education law. (34 C.F.R. § 300.209(a); Ed. Code, § 56145.)]

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15

days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).)

DISCUSSION

Education Code sections 56500 and 56501, subdivision (a), establish two requirements for including an entity in a special education due process hearing. First, the entity must be a public agency "providing special education or related services." (Ed. Code, § 56500.) Second, it must be "involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) In this case, the Charter School is a public agency created under the provisions of Education Code section 47605 and consistent with the memorandum of understanding between the District and the Charter School, the Charter School provides special education or related services and is involved in decisions regarding Student. Furthermore, the memorandum of understanding states that both the District and the Charter School shall be named parties in any request for due process filed by a student of the Charter School. Accordingly, the District's motion to join the Charter School is granted.

The joinder of the Charter School results in amending the complaint in this matter. Additionally, as a new education agency to the case, the Charter School is entitled to a 30-day resolution session period. Therefore, the 45-day timeline to hold a due process hearing and render a decision will be set as of the date of this order.

ORDER

1. The motion to add Charter School as a party is granted. This matter shall be known as Parent on Behalf of Student v. Los Angeles Unified School District and Birmingham Community Charter High School.
2. A copy of this order shall be served on the Birmingham Community Charter High School.
3. The 45-day timeline to hold a due process hearing and render a written decision shall begin from the date of this order. OAH shall issue a new Scheduling Order and Notice of Due Process Hearing and Mediation.

Dated: December 16, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings