

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JACINTO UNIFIED SCHOOL
DISTRICT & SAN JACINTO VALLEY
ACADEMY.

OAH CASE NO. 2012120035

ORDER DENYING DISTRICT'S
MOTION TO ADD PARTY

On December 03, 2012, Student filed a request for a due process hearing (complaint).¹ Student named San Jacinto Unified School District (District) as a party. On December 5, 2012, District filed a motion to add San Jacinto Valley Academy (Academy), a charter school, as a party. District served its motion on Student and on the Academy.

Neither Student nor Academy submitted a response. Academy filed a Notice of Representation in the event the motion was granted.

APPLICABLE LAW

Previously, OAH has applied the compulsory joinder rule contained in Code of Civil Procedure section 389 by analogy. As a result, some motions to join that were filed by respondent local educational agencies were granted. However, upon further examination of the express provisions of the IDEA, the state regulations implementing the IDEA, and the policies behind the IDEA's procedural protections, OAH will now only grant motions by respondents to add other respondents under very limited circumstances.

As an initial matter, no express binding authority exists that mandates the application of Code of Civil Procedure section 389 to IDEA due process hearings in California. 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

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

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.

On its face, Code of Civil Procedure section 389 applies to a “court” hearing an “action,” not an administrative proceeding before a hearing officer. Code of Civil Procedure section 22 defines an “action” as “... an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense [emphasis added].” Thus, on its face, Code of Civil Procedure section 389 does not apply to administrative hearings before OAH.

The Advisory Committee notes to Code of Civil Procedure section 389, stress that the rule was intended to further the interest of the party bringing a lawsuit in getting all relief to which it was entitled, and the interest of the public in avoiding repeat procedures about the same subject matter. (See 1973 Main Volume Advisory Committee Notes, West’s Ann. Code Civ. Proc., § 389, *People ex rel. Lundgren v. Community Redevelopment Agency* (1997) 56 Cal.App.4th 868, 875 [citing 1973 Main Volume Advisory Committee Notes]; see also *Bank of California Nat. Assn. v. Superior Court* (1940) 16 Cal.2d 516, 520-524 [recounting history of common law joinder, either as a jurisdictional principle for “indispensable” parties, or to ensure fairness and avoid multiple actions as to “necessary” parties].)

In contrast to the intent of Code of Civil Procedure section 389, the IDEA specifically exempts parents from any requirement that they file all possible issues at one time in the same due process complaint. Instead, the IDEA permits a parent to file separate due process complaints on separate issues, even if a due process complaint is already on file. (20 U.S.C. § 1415(o); Ed. Code, § 56509.) The Administrative Procedure Act requires that OAH apply the above principle by expressly stating that, “The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding.” (Gov. Code, § 11415.10, subd. (a).) Thus, if IDEA permits the filing of multiple, separate due process hearing requests, it is inconsistent to require a petitioning party to file all possible issues against all possible respondents to meet the public policy rationales underlying Code of Civil Procedure section 389’s compulsory joinder rule.

As a further indication that joinder of multiple possible respondent agencies is not contemplated as part of an IDEA hearing, Government Code section 7586, subdivision (d) expressly prohibits local education agencies (LEA) from using IDEA due process procedures against each other, such that a school district can never be prejudiced by failure to join another school district because there is no right in an IDEA hearing to a cross-complaint between agencies. Instead, California law contains procedures for separate administrative proceedings to handle the issue of inter-agency disputes about funding. (Gov. Code, § 7585;

Cal. Code of Regs., tit. 2, § 60600.) Thus, it is clear that both the IDEA and the state laws implementing it, expressly reject the principle that a petitioning party must obtain all possible relief in one proceeding, and expressly reject the principle that a respondent agency can use an IDEA due process hearing to shift responsibility to another agency.

Further, permitting a respondent agency to join another educational agency for the purpose of vindicating the interests of the respondent agency is also inconsistent with the purpose of the IDEA's procedural protections. The Ninth Circuit Court of Appeals recently held that the IDEA, "establishes a private right of action for disabled children and their parents. It creates no private right of action for school boards or other local educational agencies apart from contesting issues raised in the complaint filed by the parents on behalf of their child." (*Lake Washington School District No. 414 v. Office of Superintendent of Public Instruction* (9th Cir. 2011) 634 F.3d 1065, 1068 (*Lake Washington*)). In *Lake Washington*, the Ninth Circuit found that a school district had no standing to challenge the way IDEA procedural protections were applied in a state administrative hearing. In reaching its holding, the Ninth Circuit recognized that Congress intended the procedural safeguards in the IDEA to ensure that parents could enforce their children's right to a FAPE. (*Id.* at pp. 1067-1068.) Thus, it is consistent with *Lake Washington*, and the purposes behind the IDEA procedural protections, to find that compulsory joinder rules do not apply to IDEA due process hearings for the benefit of respondent educational agencies.

Further, consistent with *Lake Washington*, granting joinder on the motion of a respondent agency is inconsistent with the IDEA's timelines and may act to disadvantage students' families, many of whom are unrepresented. The IDEA expressly requires that a responding LEA be entitled to a resolution session within 15 days of the date the due process hearing request was filed. (20 U.S.C. § 1415(f)(1)(B); Ed. Code, § 56501.5.) The grant of a joinder motion by a respondent will result in an automatic delay to the hearing in order to afford any newly joined LEA the opportunity to attend a resolution session. Thus, applying civil compulsory joinder is inconsistent with the speedy resolution and alternative dispute resolution session required by IDEA. Moreover, compulsory joinder appears to be inconsistent with the informal hearing process envisioned by the IDEA, particularly when granting joinder at the request of a respondent would impose a burden of proof on the petitioning parent and student, who are frequently self-represented, and have no interest in presenting evidence to resolve what is likely to be a funding disputes between agencies. (See *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] [establishing that the petitioning party has the burden of proof in an IDEA due process hearing].)

There is only one statute that expressly requires joinder of a party under the IDEA, and such joinder is limited to only one type of related service provider. Government Code section 7586, subdivision (c), provides that all hearing requests that involve multiple services that are the responsibility of more than one designated state department shall give rise to one hearing with all responsible state or local agencies joined as parties. Nothing in Government Code section 7586 can be read to authorize compulsory joinder of another LEA that may serve a student in the future, or had served a student in the past, based on the motion of a respondent LEA. Thus, joinder of a party under Government Code section 7586, subdivision

(c) is limited to state or local agencies that are required by law to provide medically necessary physical therapy and occupational therapy pursuant to Government Code section 7575.

DISCUSSION

Here, for whatever reason, Student did not name Academy as a respondent. District however, as part of its defense, seeks to add a party that District thinks should be responsible for any deficiencies in providing Student a FAPE. However, District's motion must be denied because the only statutory basis to permit joinder would be under Government Code section 7586, subdivision (c), which on its face does not apply. Other than the one exception listed above, District cannot decide for a student whom to name as a respondent, particularly when to do so requires amending the complaint, and resetting all timelines. Denying District's motion has no effect on District presenting evidence and arguing at hearing that it was not the responsible LEA during the time period at issue. If Student wishes to proceed against Academy in this matter, Student may file a motion to amend the complaint. The motion is denied.

ORDER

1. District's motion to add Academy as a party is denied.
2. If Student wishes to add Academy as a respondent, Student may file a motion to amend the complaint to do so.
3. All previously set dates are confirmed.

Dated: December 11, 2012

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings