

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL  
DISTRICT and CALIFORNIA  
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2013051149

ORDER GRANTING MOTION TO  
AMEND COMPLAINT TO ADD  
CALIFORNIA DEPARTMENT OF  
EDUCATION

On July 25, 2013, Student filed a motion to join the California Department of Education (CDE) as a party in this matter. On July 30, 2013, CDE filed an opposition to the motion. Inglewood Unified School District (District) did not respond to either filing. As discussed below, OAH construes Student's motion as a motion to amend the complaint, which is granted.

APPLICABLE LAW

A party may amend a complaint only if the hearing officer grants permission, or as otherwise specified.<sup>1</sup> (20 U.S.C. § 1415(c)(2)(E)(i).) The applicable timeline for a due process hearing shall recommence at the time a party files an amended complaint. (20 U.S.C. § 1415(c)(2)(E)(ii).) A hearing officer may allow an amended complaint to be filed if it is more than five business days before the due process hearing is to begin. (Ed. Code § 56502, subd. (e).)

A public education agency involved in any decisions regarding a student may be involved in a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.)

Title 2, Division 2 of the Education Code delineates the entities that administer education at the state level. They consist of the State Board of Education (Ed. Code, § 33000 et seq.), the CDE (Ed. Code, § 33300 et seq.), the Superintendent of Public Instruction (SPI) (Ed. Code, § 33100 et seq.), and state educational commissions and committees (Ed. Code, §

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<sup>1</sup> 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).

33500 et seq.). The SPI is an elected official, voted on at each gubernatorial election. (Cal. Const. art. IX, § 2.) CDE is administered through a Director of Education in whom all executive and administrative functions of the department are vested. (Ed. Code, §33302.) The SPI is the “ex officio” Director of Education. (Ed. Code, §33303.)

Under California law, the public agency responsible for providing education to a child between the ages of six and 18 generally is the school district in which the child’s parent or legal guardian resides. (Ed. Code, § 48200). School districts (and some other entities) are referred to as local education agencies (LEA’s). CDE is referred to as a state education agency (SEA).

Under the Individuals with Disabilities Education Act (IDEA), an SEA such as CDE is responsible for “general supervision” of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1412(a)(11)(A).) CDE generally is not a party in a due process proceeding because an LEA – a school district or county office of education – not the CDE, is in most instances the public agency that is responsible for providing special education services, and “involved in any decisions regarding [the] pupil.” (Ed. Code, § 56501, subd. (a).)

As an exception to this general rule, CDE may be responsible for providing special education, by default, if under the applicable circumstances it is otherwise impossible to identify a responsible LEA. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063 [holding CDE responsible for providing special education services to a parentless child where the Orange County Juvenile Court had not appointed a legal guardian or responsible adult, and then-existing California law under the facts presented did not allow identification of a “parent” for purposes of determining residency and a responsible LEA].)

Education Code, sections 41320 et seq., provide for state emergency financial assistance to financially distressed school districts. Under certain conditions, and depending on the amount and type of assistance, the SPI “shall assume all the legal rights, duties, and powers of the governing board of a qualifying school district. The SPI, in consultation with the county superintendent of schools, shall appoint an administrator to act on his or her behalf in exercising the authority described in this subdivision . . . .” (Ed. Code, § 41326, subd. (b).)

An 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); Ed. Code § 56501.5.) 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).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the

conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. §300.510(b)(4).)

## DISCUSSION

On September 14, 2012, IUSD was granted state emergency financial assistance. In accordance with Education Code, section 41326, subdivision (b), the Legislature directed the SPI to “assume all legal rights, duties, and powers of the governing board of the Inglewood Unified School District, and [to] appoint a state administrator, in consultation with the county superintendent of schools, to act on his or her behalf . . . .” (Stats. 2012, c. 325, § 3.)

Also on September 14, 2012, Governor Jerry Brown signed into law an act that created an emergency apportionment to the District. (SB 533, subsequently Stats. 2012, c. 325.) As a result of this law, the District’s governing board serves only as an advisory board, but has no rights, powers or duties. (Ed. Code § 41326, subd. (b).) Therefore, Student now seeks to amend the complaint to add CDE as a respondent in addition to District, since the District is now under the direct control of CDE, and has no power to make any decisions on its own behalf.

CDE claims that it is not a proper respondent. According to CDE, it is an SEA, and has no direct responsibility towards Student. It claims that the District, as the LEA, is responsible for providing Student with a FAPE. CDE argues that its duties pursuant to SB 533 were to make a loan to the District and appoint an administrator to take over the rights, duties, and powers of the District’s Board of Education. CDE claims that it bears no financial responsibility to Student, and that the District “continues to bear 100% of its costs associated with meeting its obligations.” CDE is correct in respect to its general argument that, with the exception of students in the State Schools for the Deaf, and the State School for the Blind, it has no direct obligation in regards to the provision of a FAPE to public school students, with very narrow exceptions.

However, Pursuant to SB 533, the administrator appointed by the SPI to manage the District, “may enter into agreements on behalf of the qualifying school district,” as necessary to implement a recovery plan for the District, but this may happen only “With the approval of the [SPI].” (Ed. Code § 41326, subd. (b)(10)(F).) Special education cases may expose a school district to potentially high monetary costs if a student is awarded reimbursement for parent paid educational expenses, extensive compensatory education, and/or placement in a specialized school. Further, the District is then responsible for the legal expenses of Student, as well as its own, and all of these costs may affect a recovery plan. Therefore, a settlement agreement could potentially require the SPI’s approval. Further, CDE may ultimately be responsible for providing special education, by default, if it is impossible for the District to provide a FAPE if Student prevails at hearing. Accordingly, CDE, is a proper respondent to this action, such that there is no reason to deny Student’s request to amend the complaint to add CDE.

Amending the complaint to add CDE will reset all timelines and afford CDE an opportunity to attend a resolution session. Student must also provide CDE with copies of all pleadings and correspondence with OAH in this matter to date, and Student shall serve all further pleadings on both District and CDE.

#### ORDERS

1. Student's motion to amend the complaint to join CDE as a party is granted. This matter shall be captioned as *Student v. Inglewood Unified School District and California Department of Education*.
2. Student shall serve copies of all pleadings, moving papers and orders in this matter to date on CDE no later than August 7, 2013, if he has not already done so.
3. Pursuant to title 20 United States Code section 1415(c)(2)(E)(ii), the applicable timeline for this due process hearing, including the resolution session, recommences as of the date of this order, in order to allow District and CDE to participate in a resolution session with Student.
4. All previously scheduled hearing and mediation dates are vacated. A scheduling order with new mediation, prehearing conference and hearing dates shall be forwarded to all parties by OAH.
5. This matter shall now proceed against both the District and CDE.

IT IS SO ORDERED.

Dated: August 1, 2013

/s/  
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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings