

BEFORE 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. 2009110427

ORDER GRANTING MOTION TO
ADD PARTY

On November 6, 2009, attorney Pamela K. Daves, on behalf of Student, filed a request for a due process hearing (complaint) against the Los Angeles Unified School District (District).¹ On November 13, 2009, attorney Mampre R. Pomakian, on behalf of the District, filed a motion to add the Birmingham Community Charter High School (Charter School) as a party. On November 24, 2009, Student filed a response that did not oppose the District's request. The Charter School did not submit a response.

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

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).

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)(2006); Ed. Code, § 56145.)]

A public education agency involved in any decisions regarding a student is a proper party to 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.)

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).)

According to the complaint, Student attends the Charter School. The memorandum of understanding (MOU) between the District and Charter School provides that the Charter School is responsible for providing special education services to pupils that attend the Charter School. The MOU further states that if a Charter School student files a due process action against the District that the Charter School will also be named as a party to the due process action. Therefore, the Charter School is a necessary party, and is added as a party.

ORDER

The motion to add Birmingham Community Charter High School as a party is granted. Henceforth, this matter shall be known as *Student v. Los Angeles Unified School District and Birmingham Community Charter High School*.

Dated: December 7, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings