

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010090755

ORDER DENYING MOTION TO ADD
PARTY

On September 20, 2010, Student filed a request for a due process hearing (complaint) naming San Ramon Valley Unified School District (District) as the respondent.¹ On November 16, 2010, District filed a motion to add Contra Costa County Mental Health (CCMH) as a party. On November 19, 2010, Student filed an opposition. As discussed below, the Motion is denied.

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.

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).

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).)

Government Code section 7586, subdivision (c), provides that all hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

The Individuals with Disabilities Education Act specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from relitigating issues already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not. Thus, special education law expressly permits the filing of multiple, serial due process hearing requests on different issues.

DISCUSSION

Student’s complaint alleged that District denied him a free appropriate public education by: (1) predetermining its offer of placement for the 2008-2009 school year; (2) failing to develop appropriate annual goals at the October 2008 IEP meeting; (3) offering inappropriate placement and services during the 2008-2009 school year based upon the inappropriately low annual goals; (4) predetermining its offer of placement for the 2009-2010 school year; (5) failing to develop appropriate annual goals at the December 2009 IEP meeting; (6) offering inappropriate placement and services during the 2009-2010 school year based upon the inappropriately low annual goals; and (7) failing to develop an appropriate transition plan. The complaint contains no contentions that Student’s mental health services were inappropriate.

District’s motion is based on events allegedly occurring in November 2010, after the complaint was filed. District contends that at an IEP team meeting on November 9, 2010, Student’s parents sought a recommendation from CCMH for residential placement, which CCMH declined. District’s contention that CCMH is a necessary party is based on these events.

District seeks to expand the issues alleged in Student’s complaint to include later events in which CCMH was arguably involved. Student has not moved to amend the complaint to add these events. Student may raise contentions arising after the filing of its original complaint by filing a new due process complaint. Insofar as the complaint is concerned, CCMH is not a public agency “providing special education or related services”

that are at issue, and is thus outside the requirements for including an entity in a special education due process hearing. Nor does the hearing request “involve multiple services that are the responsibility of more than one state department” necessitating one hearing with all responsible state or local agencies joined as parties. District’s Motion is therefore denied.

ORDER

1. The motion to add Contra Costa County Mental Health (CCMH) as a party is denied.
2. All previously scheduled dates are confirmed.

Dated: November 23, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings