

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2011050219

ORDER DENYING MOTION TO ADD
PARTY

On May 2, 2011, Student filed a request for a due process hearing (complaint) naming Los Angeles County Office of Education (LACOE) as the sole respondent. The complaint alleged: Student was denied a free appropriate public education (FAPE) for the 2008-2009, 2009-2010, and 2010-2011 school years; from Student's initial 2003 individualized educational program (IEP) onward, she was in a LACOE-operated educational placement, and all her subsequent IEPs were convened by LACOE personnel; starting in 2003, Student's placement and the frequency and duration of services offered to her were determined solely by LACOE; on June 18, 2010, Student was placed on home hospital instruction by parent, pursuant to a directive from Student's physician, as a result of LACOE's failure to offer or provide FAPE.

On May 13, 2011, LACOE filed a motion to join Student's district of residence, Charter Oaks Unified School District (District), as a party.¹ LACOE's motion argued that: (1) although Student had attended a LACOE program at all times relevant to her complaint, District should nevertheless be joined because, as Student's district of residence, it was ultimately responsible for the provision of FAPE; (2) it was District that offered Student the LACOE program; (3) Student stopped attending the LACOE program when she went on home instruction on June 18, 2010. LACOE argued that Office of Administrative Hearings (OAH) considers the provisions of Code of Civil Procedure section 389, subdivision (a) which 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 LACOE also moved to dismiss issues arising prior to the two year statute of limitations. The Motion to Dismiss is dealt with by separate Order.

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 May 19, 2011, Student and District filed oppositions to LACOE's Motion.

APPLICABLE LAW and DISCUSSION

LACOE'S Motion to join District is denied. Code of Civil Procedure section 389 is inapplicable to an IDEA due process hearing. That section is located within Part 2 of the Code, entitled "Of Civil Actions," and by its own terms refers to parties to the "action" in question. "Action" is defined in Code of Civil Procedure section 22 as follows: "An action is 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."

Special education due process hearings, by contrast, are not actions in courts of justice governed by the Code of Civil Procedure. Instead, they are governed by Education Code, Title 2 ("Elementary and Secondary Education"), Division 4 ("Instruction and Services"), Part 30 ("Special Education Programs"), Chapter 5 ("Procedural Safeguards"), as supplemented by the California Code of Regulations, Title 5 ("Education"), Division 1 ("California Department of Education"), Chapter 3 ("Handicapped Children"), Subchapter 1 ("Special Education"), Article 7 ("Procedural Safeguards.") These govern, among other procedural matters, the content of the notice, the time for response, rules regarding amending the complaint, rights to exchange of information prior to the hearing, and the time frame for decisions (Ed. Code, § 56505), all of which are not governed by the Code of Civil Procedure. The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding. (Government Code section 111415.10.)

LACOE cites no statutory authority for the proposition that state rules of civil court procedure apply to IDEA due process hearings. To the extent LACOE relies on prior OAH decisions or orders, such decisions or orders are not binding authority, and as discussed herein, are unpersuasive. (Cal. Code Regs., tit. 5, § 3085.)

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. (see 20 U.S.C. § 1415(o); Ed. Code, 56509.) Thus, both the IDEA and the state laws implementing it, expressly reject the principle that a party must obtain all possible relief in one proceeding. In sum, Code of Civil Procedure section 389 has no application to IDEA due process hearings.

Moreover, District here would not in any event meet the statutory definition of a necessary party. Student’s and District’s opposition papers contend that Student and District have entered into a separate settlement agreement. This fact may be pertinent to LACOE’s defense at hearing, or may impact Student’s ability to seek potential remedies against LACOE, but does not render LACOE nor Student “subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of [any] claimed interest [of District].” Under the circumstances, complete relief can be accorded among those already parties, i.e. Student and LACOE, particularly when District has not filed its own due process action nor otherwise “claimed an interest relating to the subject of the action.” Nor, in light of the settlement, is District “so situated that the disposition of the action in his absence may as a practical matter impair or impede his ability to protect that interest.”

Accordingly, LACOE’s motion is denied.

ORDER

1. LACOE's motion to add Charter Oaks Unified School District as a party is denied.
2. All previously scheduled dates remain on calendar.

Dated: May 19, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings