

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SOUTHERN KERN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011050800

ORDER GRANTING MOTION TO
AMEND COMPLAINT AND
DENYING MOTION TO ADD PARTY.

On May 19, 2011, Parent on behalf of Student (Student) filed a Due Process Hearing Request (complaint), naming Southern Kern Unified School District (District). On June 1, 2011, Student filed a Notice to Amend the Due Process Hearing Request¹ (amended complaint), as well as a Notice to Add a Party to the amended complaint. The District did not file a response or opposition to Student's requests.

APPLICABLE LAW

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)² The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Regarding the addition or 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:

¹ It is noted that Counsel or his advocate filed a "Notice" to Add Party and Amend Due Process Complaint. While counsel should know better than to file a *Notice* indicating a *fait accompli* to OAH, the ALJ shall consider Student's notice as a *Motion* to consider and grant his requests.

² All statutory citations are to Title 20 United States Code unless otherwise indicated.

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.

DISCUSSION

Student filed his original complaint on May 19, 2011. Unfortunately, Student filed only the first page of his complaint, which did not contain a single issue or requested remedy. As it appears that Student has discovered his error, an amended complaint has been forwarded to OAH, in a timely fashion, and without objection from the District. Therefore, Student's request to file a first amended complaint is granted.

In this matter, Student has alleged that the Kern County Superintendent of Schools (Superintendent) denied Student a FAPE by failing to adhere to the 15-day timeline for the development of an assessment. 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).) Student's complaint contains no information to indicate that the Superintendent has any related responsibility pursuant to the above Education Code Sections. Further, Student's complaint contains no information to support a conclusion that the Superintendent is subject to OAH jurisdiction or that the Superintendent has any connection to Student's requested remedy. As a result, Student has not shown that his claims cannot be adjudicated without adding the Superintendent as a party. Student's request to add the Kern County Superintendent of Schools as a party is denied.

ORDER

1. Student's request to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

2. Student's request to add the Kern County Superintendent of Schools as a party to the amended complaint is denied.

IT IS SO ORDERED.

Dated: June 07, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings