

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT AND RIVERSIDE
COUNTY MENTAL DEPARTMENT OF
HEALTH.

OAH CASE NO. 2011060230

ORDER GRANTING MOTION FOR
JOINDER

On June 3, 2011, Student filed a due process hearing request (complaint) naming Temecula Valley Unified School District (District) and Riverside County Department of Mental Health (Mental Health) as respondents. On August 4, 2011, Student withdrew his complaint as to Mental Health.

On August 22, 2011, District filed a Motion for Joinder as to Mental Health. District contends that Student did not withdraw the issues relating to Mental Health and for this reason Mental Health is a necessary party to the proceeding. District requests that the hearing dates remain if its Motion for Joinder is granted. On August 25, 2011, Mental Health opposed District's Motion for Joinder. Mental Health maintains that joinder is not mandatory because Student is entitled to withdraw and waive issues, and is also entitled under the IDEA, if not state law, to file separate due process complaints on separate issues. On August 25, 2011, Student opposed District's Motion for Joinder, and confirmed that he has not waived any issues by dismissing Mental Health.

APPLICABLE LAW

No express binding authority mandates the application of Code of Civil Procedure section 389 to IDEA due process hearings in California. 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.

On its face, Code of Civil Procedure section 389 applies to a “court” hearing an “action,” not an administrative proceeding before a hearing officer. Code of Civil Procedure section 22 defines an “action” as “... 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 [emphasis added].” Thus, on its face, Code of Civil Procedure section 389 does not apply to administrative hearings before OAH.

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. (20 U.S.C. § 1415(o); Ed. Code, § 56509.) The Administrative Procedure Act requires that OAH apply the above principle by expressly stating that, “The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding.” (Gov. Code, § 11415.10, subd. (a).) Thus, if IDEA permits the filing of multiple, separate due process hearing requests, it is inconsistent to require a petitioning party to file all possible issues against all possible respondents to meet the public policy rationales underlying Code of Civil Procedure section 389’s compulsory joinder rule.

California law implementing the IDEA expressly allows joinder in matters involving related services providers, such as county mental health agencies or state agencies that are related service providers identified in an IEP. 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. Until recently, California’s system mandated that mental health services that are required for a FAPE be provided by county mental health agencies. For this reason, Government Code section 7586 can be read to authorize joinder in cases where the provision of related services by a state agency other than the LEA is at issue. (See Gov. Code, § 7576.)

Mental Health's mandate to provide mental health services was suspended as of October 8, 2010, for the 2010-2011 fiscal year. As a consequence of the reduction of funding for the provision of mental health services by local mental health agencies in the State Budget Act, as of October 8, 2010, county mental health agencies were discharged of their independent statutory responsibility to provide mental health services required under the IDEA for at least the 2010-2011 fiscal year. (*California School Boards Ass'n v. Edmund G. Brown, Jr. Governor* (2011) 192 Cal. App. 4th 1507 (*School Boards*).) The Court relied upon the California Constitution, article XIII B, section 6, subdivision (b)(1), which provided that, for a mandate, the Legislature must either appropriate, in the annual State Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable. (*Id.* at pp. 1524-1525.) As required by the California Constitution, the mandate was suspended when the Governor reduced the full amount allocated by his line-item veto. (*Id.* at p. 1526.)

As such, as of October 8, 2010, the local mental health agencies' Chapter 26.5 mandate reverted back to District, the local educational agency responsible for providing Student a FAPE. Accordingly, local mental health agencies are not obligated as an independent agency for the provision of mental health services arising after October 8, 2010, for at least the 2010-2011 fiscal year. However, local mental health agencies remain responsible as independent agencies for the provision of IDEA-related mental health services prior to October 8, 2010.

California's statutory scheme for providing mental health services to special education pupils has not been modified to reflect changes in the State Budget Act. Accordingly, a respondent agency may still seek to add another state or local agency as a respondent when the pupil has requested a due process hearing over the provision of a related service (a.k.a. a designated instruction or service) in a particular individualized education program (IEP), that by law remains the responsibility of a state or local agency, such as those administering the California Children's Services, or mental health services under the State Department of Mental Health. (Gov. Code, §§ 7575, 7576, & 7586). For example, joinder would be appropriate where a complaint contains issues pertaining to a fiscal year for which the local mental health agencies were funded under the State Budget Act to continue their responsibilities to provide IDEA-related mental health services.

The addition of a party constitutes an amendment to the due process hearing request. 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)(I); Ed. Code, § 56502, subd. (e).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii); Ed. Code, § 56502, subd. (e).)

ANALYSIS

In Student's response to District's Motion for Joinder, he states that he has not "relinquished any claims" by dismissing Mental Health. He states that federal law makes the District responsible for the provision of FAPE despite California's statutory scheme for dividing responsibilities for special education services. In short, he concedes that the "same failure to assess and failure to offer appropriate services" alleged against Mental Health were alleged against the District. As such, his complaint, states the same claims against District and Mental Health.

According to Student's complaint, he was made eligible for special education as a pupil with an emotional disturbance in 2007. Student alleges that District and Mental Health failed to provide Student a FAPE during the 2009-2010 and 2010-2011 school years. Student contends that District failed to: appropriately assess in a timely manner, make a timely referral to Mental Health; failed to offer appropriate placement and services (as provider of "last resort"); failed to properly implement his individualized education program (IEP) of February 12, 2010, by failing to timely refer to Mental Health; failed to complete the assessment process in a timely manner (as provider of "last resort"); failed to complete the IEP process in a timely manner (as provider of "last resort"); and failed to have a representative at the IEP team meeting who was authorized to offer services (as provider of "last resort").

Significantly, many of Student's allegations against District as provider of "last resort" establish that Student is holding District responsible for duties traditionally assigned to Mental Health. According to the factual chronology in Student's complaint, District's responsibility to reassess Student was triggered at the beginning of the 2009-2010 school year when Student refused to attend school. District's responsibilities to Student continued after it referred Student to Mental Health due to its failure to inform Mental Health of Student's correct address resulting in further delays in Student's assessment and IEP. According to Student's complaint, Mental Health's responsibilities began in or around March 2010 when District first referred Student to Mental Health, or in or around May 3, 2010, when District notified Mental Health of Student's correct mailing address. Prior to dismissing Mental Health, Student alleged in his complaint that Mental Health, failed to: appropriately assess in a timely manner; offer appropriate placement and services; have a representative at the IEP team meeting who was authorized to offer services.

Mental health services and related placement are at the core of Student's complaint. Student alleges that Mental Health failed to recommend residential placement at the May 17, 2010, IEP, and as a result, parents placed Student in a residential treatment facility where he continues to reside. As remedies, Student requests reimbursement for private placement, and continued private placement in a residential treatment facility.

From the face of the complaint, most, if not all, Student's claims encompass events that occurred prior to October 8, 2010, the effective date of the amendments to the State Budget Act described in *School Boards*. Mental Health was not discharged of its

independent responsibilities to provide IDEA-related mental health services prior to that date. Further, based upon Student's pleadings, even though District had independent obligations prior to referring Student to Mental Health, which it allegedly failed to meet, joinder of Mental Health is mandated under Government Code section 7586, subdivision (c), so that the Administrative Law Judge can make a determination at one hearing of all of the respondents' respective responsibilities. This is particularly true where, in opposition to District's joinder motion, Student has reiterated that although Mental Health was dismissed as a party, Student's claims about the provision of mental health services under the IDEA have not been withdrawn.

In sum, joinder is mandated by Government Code section 7586, subdivision (c) given Student's decision to pursue all IDEA mental-health related claims for all times both before and after October 8, 2010. As discussed above, under these facts, where Student has dismissed Mental Health, but has not waived mental-health related claims, Government Code section 7586, subdivision (c), requires one hearing with all responsible state or local agencies joined as parties. Joining Mental Health is required under the Government Code because Student intends to press his mental-health related assessments, services and placement which arose prior to October 8, 2010. Under the current law, joinder would not be required if the complaint focused solely on mental health-related assessments, services, and placements after October 8, 2011, when Mental Health's IDEA-related responsibilities, at least for the 2010-2011 school year, reverted back to District under the authority of *School Boards*. Similarly, joinder would not be required if Student withdrew all issues related to the provision of mental health services under the IDEA.

As with any amended complaint, the timelines for the matter shall be restarted as of the date of this Order amending the complaint to add Mental Health as a party.

ORDER

1. District's Motion for Joinder is granted.
2. District's request to retain the current timelines for hearing is denied.
4. As of the date of this Order, Student's complaint is amended to add Mental Health as a respondent and all timelines are reset.
5. OAH will issue a new scheduling order.

Dated: August 29, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings