

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 LOS ANGELES
COUNTY DEPARTMENT OF MENTAL
HEALTH.

OAH CASE NO. 2011080612

ORDER DENYING MOTION TO ADD
PARTY

On August 15, 2011, Mother, on behalf of Student, filed a request for a due process hearing (complaint) against the Los Angeles Unified School District (District) and Los Angeles County Department of Mental Health (DMH).¹ On October 17, 2011, DMH filed a motion to add Student's Father as a party to this action because Mother and Father have joint legal custody of Student. The District, Mother nor Father filed a response.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Improvement Act (IDEA) (20 U.S.C. §§ 1400, et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (§ 1400(d)(1)(A), (B), and (C); see also, Ed. Code, § 56000.) Nothing in the IDEA is to be construed "to restrict or limit the rights, procedures, and remedies available . . ." (§ 1415(l).)

California Family Code section 3003, provides that parents who have joint custody of a child "share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child."

According to the California Education Code the term "parent" can be defined many ways. This is to ensure that children's rights are protected and not defeated because of an unusual parenting situation. When there is more than one biological parent, they are both presumed to be the "parent" unless the biological parent does not have legal authority to

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).

make educational decision for the child. (Ed Code §56028, subd. (b)(1)). A parent, among others, has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

DMH requests to add Father as a party because Father consented to the April 7, 2011 individualized education program (IEP) that placed Student in an out-of-state residential facility, which is the subject of the complaint Mother filed that requests Student attend a non-public school in California. DMH acknowledges that Parents have joint legal custody of Student and both have the legal authority to make educational decisions on behalf of Student. Because Mother has joint legal custody, she has the legal authority to file the underlying complaint, and the Office of Administrative Hearings (OAH) does not have the legal authority to join Father as a party to resolve the dispute between Mother and Father over the April 7, 2011 IEP placement. OAH cannot resolve a custody issue or determine the holder of educational rights, as that request is within the province of a Family Court.²

ORDER

DMH’s motion to add Father as a party is denied.

Dated: October 26, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

² DMH’s proof of service indicates that Student has a court appointed attorney. DMH does not indicate why Student has a court appointed attorney or whether the court that appointed this attorney for Student has jurisdiction over the dispute between Parents regarding Student’s educational rights and placement.