

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SANTA CRUZ COUNTY OFFICE OF
EDUCATION,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012010773

ORDER DENYING MOTION TO JOIN
AS PETITIONER

On January 27, 2012, the Santa Clara County Office of Education (County) filed a Request for Due Process Hearing (complaint) in OAH case number 2012010773, naming Student.¹ On February 6, 2012, Live Oak School District (District) filed a Motion to Join or Intervene as a petitioner in this case. County does not object to the motion. Student did not file a response to the motion.

According to County's complaint, Student resides within District boundaries. However, Student was placed in County's regional autism program through his individualized education program (IEP) where he received various special education services. County assessed Student according to an assessment plan developed by County with his parent's approval. Student's parents disagreed with County's assessments and requested independent educational evaluations (IEEs) at public expense.

District contends that County responded to Student's IEE request by disclaiming all responsibility for Student's IEEs, informing Student that District was responsible for providing IEEs. Based on County's response, Student subsequently sent an identical IEE request to District. District now seeks to join County's complaint as a petitioning party to defend its assessments. Although the record is unclear which agency prepared the assessments, District asserts that Student has requested IEEs with respect to the same assessment reports from both County and District.

APPLICABLE LAW

A parent has the right to obtain, at public expense, an IEE from qualified specialists, if the parent disagrees with an assessment obtained by the public education agency. (Ed.

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).

Code, § 56329, subd. (b).) The public education agency may initiate a due process hearing to show that its assessment is appropriate. If the final decision resulting from the due process hearing is that the assessment is appropriate; the parent maintains the right for an IEE, but not at public expense. (Ed. Code, § 56329, subd. (c).) If the parent or guardian obtains an IEE at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free appropriate public education to the child, and may be presented as evidence at a due process hearing. If a public education agency observed the pupil in conducting its assessment, or if its assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an IEE of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the IEE is initiated before or after the filing of a due process hearing proceeding. (Ed. Code, § 56329, subd. (c).)

A public education agency involved in any decisions regarding a student may be involved in a due process hearing. (Ed. Code, § 56501, subd. (a).) A public education agency is defined as any public agency, including a charter school, responsible for providing special education or related services. (Ed. Code, §§ 56500, 56028.5.)

DISCUSSION

The statute on IEEs provides for two options. When a parent requests an IEE, the local educational agency (LEA) must either give them one or file for a due process hearing.² The statute does not provide for an LEA to join in the filing of another LEA and use that LEA's complaint to meet the statute's requirements. To do so would potentially deprive the respondent of important procedural safeguards under the Individuals with Disabilities Education Act, such as the ability to file a Notice of Insufficiency to contest the legal sufficiency of the complaint.

The Office of Administrative Hearings has, in other matters, granted a petitioner's motion to join a respondent party and treated the motion as an amendment to the original complaint. Or, a respondent may move to add another party and will be generally required to file its own complaint, and then move to consolidate the two cases. District may file its own complaint, set out its own issues, and then move to consolidate the two cases if it chooses.³ In addition, not joining District will not lead to contradictory rulings because it is possible that either no party owes Student an IEE, or either County or District may owe Student an IEE. There are no circumstances that contemplate adding a petitioner. Therefore, there is

² Education Code section 56026.3 provides: "Local educational agency" means a school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area.

³ This order does not make a finding upon whether such a consolidation would be appropriate.

insufficient authority for District to join as a petitioner in this case and its motion to join or intervene must be denied.

ORDER

1. District's motion to join or intervene as a petitioner is denied.

Dated: February 23, 2012

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings