

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

ANAHEIM UNION HIGH SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012030349

ORDER DENYING MOTION TO ADD  
PARTY

On March 09, 2012, Jeffrey J. Riel, Attorney at Law, filed with the Office of Administrative Hearings (OAH) a request for a due process hearing (complaint)<sup>1</sup> on behalf of Anaheim Union High School District (District) naming Parents on behalf of a Non-Conserved Adult Student (Student) as respondents. On March 20, 2012, District served Student with the complaint and filed an amended proof of service. On March 26, 2012, Parent filed a document entitled “Parent Documents for Educational Rights” which is Student’s December 16, 2011, individualized educational program (IEP) document signed by Parents. On April 16, 2012, Parent filed a letter request to include Fullerton Joint Union High School District (FJUHSD) in the pending matter.<sup>2</sup> This letter is considered a motion to join FJUHSD as a party to the proceedings. OAH did not receive a response from District.<sup>3</sup>

APPLICABLE LAW

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).)

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<sup>1</sup> 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).

<sup>2</sup> OAH received this same letter by facsimile transmission on April 18, 2012.

<sup>3</sup> Parent notes at the bottom of the letter that a carbon copy (cc) was sent to District’s counsel as well as to Gregory Endelman of FJUHSD.

Previously, OAH has applied the compulsory joinder rule contained in Code of Civil Procedure section 389 by analogy. Upon further examination of the express provisions of the Individuals with Disabilities Education Act (IDEA), the state regulations implementing the IDEA, and the policies behind the IDEA's procedural protections, OAH will now only grant motions by respondents to add other respondents under very limited circumstances.

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:

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

As an initial matter, no express binding authority exists that mandates the application of Code of Civil Procedure section 389 to IDEA due process hearings in California. On its face, Code of Civil Procedure section 389 applies to a "court" hearing or "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." 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 their request to join FJUHSD as a party, Parents are essentially seeking a remedy. Parents expressly state their desire that Student's program continue without interruption. The Parents write, "Our objective is to ensure [Student] continues to receive the program specified in his IEP and currently agreed to by Anaheim Union High School District." The only matter pending before OAH is the case filed by the District; this is not Parents' case and they have no right to affirmatively pursue a remedy.

The Parents have not filed their own action. For Parents to obtain the remedy they seek on behalf of Student, they retain their right to file their own complaint against District and/or FJUHSD. Should Parents decide to file their own action, they can request that both matters be consolidated and heard at the same time.

### ORDER

Respondent Student's motion to add Fullerton Joint Union High School District as a party is denied.

1. All previously scheduled dates are confirmed.

Dated: April 26, 2012

/s/

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THERESA RAVANDI  
Administrative Law Judge  
Office of Administrative Hearings