

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA CHILDREN’S SERVICES.

OAH CASE NO. 2012080386

ORDER DENYING MOTION TO ADD
PARTY AND MOTION TO DISMISS

On August 13, 2012, Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) naming the Cupertino Union School District (District), Santa Clara County Office of Education (SCCOE), and California Children’s Services (CCS).¹ On September 13, 2012, Student informed OAH that Student had reached a settlement with the District and SCCOE, which dismissed those parties with prejudice. On September 14, 2012, OAH dismissed the District and SCCOE as parties. On October 26, 2012, CCS filed a motion to add the District and SCCOE as parties. CCS also sought dismissal of Student’s action, asserting that OAH does not have jurisdiction to hear Student’s claims against CCS.² On October 31, 2012, the District and SCCOE filed an opposition as to the motion to add them as parties. On October 31, 2012, Student filed an opposition to the motion to add parties and motion to dismiss.

APPLICABLE LAW

Regarding 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:

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

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).

² CCS also requested that OAH limit the issues for hearing, and Student filed an opposition. The decision on that request is deferred until the November 14, 2012 prehearing conference to allow the parties to discuss the request on the record.

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.

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.)

Chapter 26.5 of the Government Code requires that disputes concerning CCS's provision of related services be resolved in special education due process hearings. Section 7586, subdivision (a), provides that "[a]ll state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code."

DISCUSSION

Add Party

CCS requests that OAH rejoin the District and SCCOE as parties, even though Student and the District and SCCOE have reached an agreement that dismisses the District and SCCOE as parties. However, CCS does not set forth any authority for OAH rejoin a party who has been dismissed pursuant to a settlement agreement. Additionally, any dispute between CCS and the District and SCCOE regarding responsibility for providing occupational therapy and physical therapy services can be resolved by requesting an administrative hearing pursuant to Government Code, section 7585. Finally, CCS, as a state agency, cannot file a request for a due process hearing against another public agency pursuant to Education Code, section 56501, which is in fact what CCS' motion to add the District and SCCOE constitutes. (Govt. Code, § 7585, subd. (d).) Therefore, CCS failed to provide legal authority for OAH to add the District and SCCOE as a party and therefore its motion to add parties is denied.

Motion to Dismiss

CCS contends that OAH does not have jurisdiction to hear Student's claims against CCS regarding its purported failure to provide Student with adequate occupational therapy and physical therapy services and failure to attend individualized education program team meetings. CCS' legal reasoning was rejected in *Student v. California Children's Services*

(April 19, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2011060589, pp. 12-15.³ CCS' present motion to dismiss does not bring forth any additional factual or legal argument to distinguish this case from the April 19, 2012 decision against it. Accordingly, CCS' motion to dismiss is denied.

ORDER

1. CCS' motion to add the District and SCCOE as parties is denied.
2. CCS's motion to dismiss is denied.

Dated: November 6, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

³ This case set forth the legal reasoning why *Nevada County Office of Educ. v. Riles* (1983) 149 Cal.App.3d 767, is no longer persuasive authority due to subsequent changes to Chapter 26.5 of the Government Code.