

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SACRAMENTO COUNTY CALIFORNIA  
CHILDRE'S SERVICES.

OAH CASE NO. 2012090196

ORDER DENYING MOTION TO RE-  
JOIN SAN JUAN UNIFIED SCHOOL  
DISTRICT AS A PARTY

On September 5, 2012, attorney F. Richard Ruderman filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student naming California Children's Services (CCS) and San Juan Unified School District (District). OAH thereafter issued a scheduling order and the matter was continued several times. On March 27, 2013, OAH denied CCS's motion to be dismissed as a party to the action. On April 8, 2013, OAH issued an order dismissing the District as a party to the action as a result of a confidential settlement between Student and District. On April 10, 2013, OAH conducted a telephonic prehearing conference (PHC), granted Student's motion for a continuance, and set the due process hearing for May 13 through 15, 2013, with a PHC on May 6, 2013.

On April 30, 2013, CCS filed a motion to again join the District as a party to this action on the ground that District, as Student's local educational agency (LEA) is responsible to provide him with a FAPE under special education law, rather than CCS. On May 2, 2013, District filed an opposition to the motion. On May 3, 2013, Student also filed an opposition to the motion.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the pupil in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 & 56028.5.)

Title 34, Code of Federal Regulations, parts 300.33 states that a "[p]ublic agency includes the SEA [state educational agency], LEAs [local educational agencies], ESAs

[educational service agencies], nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.” (Accord, Ed. Code, § 56500.)

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 [Individuals with Disabilities Education Act (IDEA)].” Government Code section 7585, subdivision (d) provides that a public agency cannot file a request for a due process hearing against another public agency pursuant to Education Code section 56501.

In evaluating a joinder motion, OAH considers the requirements of the California 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 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.

The IDEA and California special education law provide myriad procedural safeguards including opportunities for all parties to participate in a resolution session and in voluntary mediation to negotiate settlement of claims regarding the denial of a free appropriate public education (FAPE) prior to proceeding to a due process hearing. (20 U.S.C. § 1400, et seq; Ed. Code, § 56500, et seq.) There is no provision prohibiting a settling party from being dismissed from the case. Thus, the fact that a party has been properly joined in a due process action does not prevent that party from resolving the claim against it prior to hearing.

## DISCUSSION

When Student filed his complaint in September 2012, claiming denials of FAPE by both District and CCS with respect to his receipt of physical therapy (PT) and occupational therapy (OT) in connection with his individualized education program (IEP), he properly named both District and CCS as parties to the action. Thus, District was initially joined in

the action. This is not a situation where Student named only CCS as the sole party to the action. Since District was duly joined in the action, CCS had full opportunity through the IDEA procedures and processes to engage in resolution discussions and settlement negotiations prior to hearing. In that regard, CCS's motion to re-join District in the action concedes that CCS chose not to participate in voluntary mediation with Student and District on February 1, 2013. During or after that mediation, Student and District entered into a confidential settlement agreement that ultimately led to District's dismissal from the action on April 8, 2013. The OAH record does not clarify a reason for the delay (whether OAH error or pursuant to the settlement agreement). In any event, CCS's motion to re-join District does not set forth any legal authority for the proposition that a necessary party to an action cannot settle its portion of the case.

CCS's motion argues at length that it has no legal responsibility to provide Student a FAPE because it is only responsible to provide medically necessary therapies under Chapter 26.5 of the Government Code. As pointed out in the March 2013 order denying CCS's motion to be dismissed as a party, CCS's legal reasoning was rejected in *Student v. California Children's Services* (April 19, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2011060589, pp. 12 – 15. Indeed, Chapter 26.5 provides that disputes concerning CCS's provision of related services in a pupil's IEP shall be governed by the procedural safeguards in the IDEA. (Govt. Code § 7586, subd. (a).) The fact that District is no longer a party does not prevent CCS from subpoenaing District personnel as material witnesses at hearing, or District documents, including IEP documents, relevant to its defenses and to avoid any risks of "double, multiple, or otherwise inconsistent obligations." Finally, CCS has no standing to join another public agency to Student's action. (Govt. Code § 7585, subd. (d).) Based on the foregoing, CCS's motion is denied.

#### ORDER

CCS's motion to re-join the District in this action is denied.

Dated: May 3, 2013

/s/

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings