

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009060450

ORDER PARTIALLY GRANTING
AMENDED MOTION FOR LEAVE TO
FILE AN AMENDED REQUEST FOR
A DUE PROCESS HEARING

On June 11, 2009, Parents, on behalf of Student, filed a Request for Due Process Hearing (complaint), naming Capistrano Unified School District (Student) as the sole respondent.

On June 12, 2009, the Office of Administrative Hearings (OAH) issued a Scheduling Order, setting the following dates: July 16, 2009 for mediation; 1:30 p.m., July 31, 2009, for prehearing conference; and August 5, 2009, for due process hearing.

On June 17, 2009, District filed a Notice of Representation, stating that attorney Caroline A. Zuk would be representing the interests of the District in this matter.

On July 1, 2009, Student filed a Motion for Leave to Amend Request for a Due Process Hearing (motion to amend).

On July 2, 2009, Student served an Amended Motion for Leave to Amend Request for Due Process Hearing (amended motion to amend). Though Student's counsel, Michael E. Jewell, states the amended motion to amend was filed via fax with OAH, OAH has no record of receipt. Accordingly, Student faxed OAH the amended motion to amend on July 7, 2009.

The District's attorney, Caroline A. Zuk, acknowledged receipt of the amended motion to amend on July 2, 2009. Accordingly, the amended motion to amend is deemed to have been filed on July 2, 2009, and therefore subject to ruling at this time.

Ms. Zuk indicated that the District does not oppose the amended motion.

APPLICABLE LAW

A party may amend a complaint only if the hearing officer grants permission, or as otherwise specified.¹ (20 U.S.C. § 1415(c)(2)(E)(i).) The applicable timeline for a due process hearing shall recommence at the time a party files an amended complaint. (20 U.S.C. § 1415(c)(2)(E)(ii).)

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 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.

Education Code sections 56500 and 56501, subdivision (a), and the references therein, 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 and 56028.5; 34 CFR 300.33.) Second, it must be “involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).)

DISCUSSION

Student seeks to amend the complaint as follows:

1. Clarify any ambiguities and add additional issues relevant to alleged failure to implement goals, a June 2009 IEP (dated after the initial complaint’s filing), and the inclusion of the 2009/2010 ESY and summer.
2. Add two parties -- Orange County Department of Education and California Children’s Services – as respondents.

¹ The applicable timeline for a due process hearing shall recommence at the time a party files an amended Complaint. (20 U.S.C. § 1415(c)(2)(E)(ii).)

Ambiguities and Issues

The proposed amended complaint, filed with the amended motion, identifies the proposed changes. The desired modifications clarify the Student's assertions as to the alleged failure to implement goals to which the parents agreed and the inclusion of the 2009/2010 ESY and Summer within the relevant time period. Also, the amended pleading addresses a June 16, 2009 IEP, allegedly convened by the District since the June 11, 2009 filing.

These proposed changes and additions rectify any ambiguities and, further, appropriately includes the most recent IEP as part of these due process proceedings. Given that the District does not object, the motion to amend is granted in this regard.

Additional Parties

Student seeks to add Orange County Department of Education (OCDE) and California Children's Services (CCS) as respondents.

Student asserts in the proposed amended complaint that OCDE and District jointly provided IEP services to Student. The amended complaint states that OCDE provided Student with services and programs on District campuses. Throughout the amended complaint, Student identifies both the District and OCDE as the public entities which were responsible for the IEP programs and services.

The allegations of the amended complaint indicate that OCDE was responsible for providing educational and related services to Student and participated in making decisions regarding Student. On the face of the amended pleading, OCDE meets the criteria for being a party in a special education due process proceeding. Accordingly, the motion to amend and add the Orange County Department of Education as a respondent is granted.

In contrast, neither the amended motion nor the proposed amended complaint state facts which entitle Student to add California Children's Services as a party. The amended pleading asserts that Student qualified and received services from CCS. However, the amended pleading does not state that CCS was involved in making decisions related to Student's special education or related services, was part of formulating the IEP services, or otherwise was responsible for providing IEP services.

Student expresses dissatisfaction with the services CCS provided, and asserts that CCS failed to provide services to which Student should have been provided. However, the allegations herein do not meet the standards established by the California Education Code and the Code of Federal Regulations for an entity to be a party to a due process proceeding under IDEA. Accordingly, the amended motion to add California Children's Services as a party is denied.

ORDER

1. The motion to add California Children's Services as a party is denied.
2. The motion to add Orange County Department of Education is granted.
3. The motion to amend as set forth in the proposed amended complaint is granted.
4. The proposed amended complaint is deemed filed on the date of this order.
5. Any references to California Children's Services as a party is hereby stricken from the amended complaint.
6. Pursuant to Section 1415, subsection (c)(2)(E), all applicable timelines shall recommence as of the date of this order.
7. All dates are vacated. A new scheduling order shall issue.

Dated: July 08, 2009

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings