

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020755

ORDER GRANTING/DENYING
MOTION TO ADD PARTY

On February 17, 2012, Student filed a request for a due process hearing (complaint) with the Office of Administrative Hearings (OAH) naming the Torrance Unified School District (District).¹ On March 9, 2012, the District filed a motion to join South Bay High School (South Bay) as a party to this case.² Student filed a corrected opposition to the District's motion on March 12, 2012.

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 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

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 The proof of service for this motion does not indicate that the District served South Bay even though it seeks to add it as a party to this action.

obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

However, the law on joinder must be considered together with applicable federal and state law regarding who is an appropriate party for purposes of the Individuals with Disabilities Education Act. Special education due process hearing procedures only 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 and 56028.5.)

The purpose of the Individuals with Disabilities Education Improvement Act (IDEA 2004) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) The primary responsibility for providing a FAPE to a pupil with a disability rests on a local education agency (LEA). (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.)

DISCUSSION

In this case, Student alleges in her complaint that she was placed by the District at a residential treatment center in 2008 called the Star View Adolescent Center (Star View), which is a Level 14 residential facility for young people with emotional disturbances. Student states that South Bay is located on the premises of Star View and that it is the school she attends. Student states that the District placed her at South Bay as well.

In its motion to join South Bay as a party, the District acknowledges that South Bay is a certified non-public school and not a public high school. However, the District contends that South Bay is appropriately joined because it fulfills the same role as do the public schools in educating Student. The District also points out that every allegation of action or failure to act in Student’s complaint references South Bay, over which the District contends it has no oversight or control. As support for its position, the District cites two cases for the proposition that private entities may be joined in special education due process hearings. In

the first case, *San Francisco Unified School Dist.* (SEA Cal. 1999) 31 IDELR 230, 31 LRP 5982, the Special Education Hearing Office (SEHO), the predecessor to the Office of Administrative Hearings, found that a non-public school may also fall within the jurisdiction of SEHO in the context of a stay put issue. In the second case, *Somerville Borough Bd. of Educ.* (SEA N.J. 2006) 107 LRP 10466, an Administrative Law Judge with the New Jersey Office of Administrative Law found that private schools were appropriate parties in special education cases, based on his reading of New Jersey law and precedent.

In response, Student points to several OAH orders, including orders in *Student v. Heartspring* (2010) Cal.Offc.Admin.Hrngs. Case No. 2010100936, and *Student v. Manteca Unified School District, et al.* (2011) Cal.Offc.Admin.Hrngs. 2011060184, et al., which found that non-public schools and other private schools are not public agencies for purposes of determining who is an appropriate party in a special education due process hearing. The District in its motion did not address these later cases and therefore made no attempt to reconcile them with its position that OAH has jurisdiction over private entities such as a non-public school.

California law is specific in its adoption of the federal criteria for determining who is an appropriate party to a special education due process hearing. 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).) While it is possible that South Bay has been involved in decisions regarding Student and therefore may meet the second criteria, there is no evidence that South Bay is a public agency, nor does the District contend that it is one. The District’s contention that South Bay is a proper party is unpersuasive and therefore is denied.

ORDER

1. The District’s motion to add South Bay as a party is denied.
2. All previously scheduled dates are confirmed.

Dated: March 21, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings