

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013050425

ORDER DENYING MOTION TO
AMEND COMPLAINT TO ADD
CHARTER SCHOOL AS A PARTY

On May 9, 2013, Student filed a due process hearing request (complaint), naming Los Angeles Unified School District (District). On September 13, 2013, Student timely filed a motion for leave to amend her complaint for the sole purpose of naming Santa Monica Boulevard Community Charter School (Charter) as a necessary party in whose absence complete relief cannot be granted. On September 18, 2013, Charter filed an opposition.

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).)

Code of Civil Procedure, section 389, subdivision (a), in pertinent part, defines a “necessary” party, as a person in whose “absence complete relief cannot be accorded among those already parties.”

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.) Children with disabilities who attend public charter schools retain all rights under federal and State special education law. (34 C.F.R. § 300.209(a); Ed. Code, § 56145.)]

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).)

DISCUSSION

Student's original complaint alleges Student has a cochlear implant in each ear and is eligible for special education due to her bilateral hearing loss. It also alleges that in December 2012, District failed to properly assess Student, refused to consider a less restrictive placement, failed to reimburse Student for transportation as provided in Student's individualized education program (IEP), and as a result of District's failures, Student's parents unilaterally enrolled Student in Charter. The original complaint seeks as compensatory remedies auditory verbal therapy (AVT), supported by a deaf and hard of hearing (DHH) teacher "in class," an AVT assessment, mileage reimbursement and compensatory education.

The proposed amended complaint adds no new claims or remedies, but seeks to include Charter as a party because "[t]he relief sought herein *against [District]* cannot be implemented without the consent and cooperation of [Charter]" and adds Charter as a party so that it "will be bound by any order or agreement that provides for compensatory education *during the school day.*" (Emphasis added). No claims are directed against Charter.

Although due process proceedings extend to all public agencies providing special education or related services, such proceedings may only be initiated by the parent or agency for prescribed purposes. Those purposes include, as applicable here, a challenge to the agency's "refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child" or a "disagreement between a parent or guardian and a local education agency regarding the availability of a program appropriate for the child, including the question of financial responsibility...." (Ed. Code, sec. 56501, subd. (a)(2) and (4).) Here, Student does not seek to add Charter as a party because complete relief cannot be accorded between Student and District. Rather, Student seeks to ensure that Charter will implement any remedy the ALJ might impose upon District as a result of District's alleged failure to provide Student a free and appropriate public education (FAPE). If, and to the extent, District should fail to comply with any order issued by OAH, Student may seek enforcement of that order through the California Department of Education (CDE). Student's post-hearing enforcement concerns are insufficient reason to impose upon Charter the burden of participating in a due process proceeding against District.

Student makes no claims against Charter. If, and to the extent, Student contends that Charter has failed to provide certain in-class services that she required to obtain a FAPE, Student must allege as part of her complaint facts sufficient to provide Charter notice of the lack of services that she contends constituted a denial of FAPE. Student's anticipation that Charter will not cooperate with her at some future point, so that she can access an award of compensatory services against District as the prevailing party of a due process hearing that has yet to be conducted or decided, is speculative. Absent a claim that Charter deprived Student of a FAPE within the statutory period, Student's concern about Charter's future conduct is not a sufficient basis for including Charter as a respondent.

At hearing Student may present evidence to assist the ALJ in fashioning appropriate compensatory relief should she prevail. Where a person brings an action alleging a violation of the IDEA, the court, or an administrative law judge, is empowered to “grant such relief as [it] determines is appropriate.” (See 20 U.S.C. § 1415(i)(2)(C)(iii).) To the extent Student wishes to argue that provision of compensatory services during the school day are preferable to the provision of compensatory services outside of the school day, she may request the ALJ hearing the matter award compensatory services that may be provided during the school day. At hearing District will also have the opportunity to provide evidence about appropriate relief.

For these reasons, Student has not alleged a valid basis for adding Charter as a party to this proceeding. Accordingly, Student’s motion for leave to amend for that purpose is denied.

ORDER

1. Student’s motion to amend the complaint to add Charter as a party is denied.
2. All previously scheduled dates are confirmed.

Dated: September 19, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings