

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGO COUNTY OFFICE OF EDUCATION AND SAN DIEGUITO
UNION HIGH SCHOOL DISTRICT.
OAH CASE NUMBER 2021050037

ORDER DENYING MOTION FOR JOINDER AND DENYING
MOTION TO DISMISS

OCTOBER 13, 2021

On April 29, 2021, Student filed a Request for Due Process Hearing, referred to as a complaint, which named San Dieguito Union High School District, North Coastal Consortium for Special Education, referred to as North Coastal Consortium, and San Diego County Office of Education, called SDCOE. On May 17, 2021, OAH determined the complaint was insufficient. Student filed an amended complaint on June 1, 2021, naming the same parties. On June 9, 2021, OAH determined Student's amended complaint was insufficiently pled as to North Coastal Consortium, and dismissed Issues

One and Two as to North Coastal Consortium without further leave to amend as to that respondent.

On June 14, 2021, OAH determined Student's amended complaint was insufficiently pled as to San Diego County Office of Education and allowed Student 14 days to amend the complaint. On June 18, 2021, Student filed a second amended complaint and named North Coastal Consortium, notwithstanding OAH's June 9, 2021 Order Dismissing Issues One and Two as to North Coastal Consortium.

On June 23, 2021, North Coastal Consortium filed an opposition to Student's second amended complaint and a Motion to Dismiss itself as a party. On June 28, 2021, Student filed a response to North Coastal Consortium's opposition and motion to dismiss. On July 2, 2021, OAH issued an Order Dismissing North Coastal Consortium as a Party.

On October 12, 2021, SDCOE filed a "Motion for Joinder of Indispensable Party Pursuant to Code of Civil Procedure § 389(a)." SDCOE's motion sought an order joining the North Coastal Consortium as a necessary party. SDCOE claims any relief sought by Student would be unduly disproportionate to any obligation that SDCOE owes to Student. SDCOE claims in the alternative that OAH should dismiss SDCOE if it declines to join North Coastal Consortium.

Student filed a Motion for Reconsideration of the Order dismissing Northern Coastal Consortium on October 12, 2021. Student's motion is considered in a separate order.

No express binding authority exists that mandates the application of Code of Civil Procedure section 389 to due process hearings held under the Individuals with

Disabilities Education Act, called IDEA, in California. 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 the person’s absence complete relief cannot be accorded among those already parties or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may (i) as a practical matter impair or impede the person’s 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 the person’s claimed interest. If the person has not been so joined, the court shall order that the person be made a party.

On its face, Code of Civil Procedure section 389 applies to a “court” hearing, and an “action,” not an administrative proceeding before a hearing officer. Code of Civil Procedure section 22 defines an “action” as “an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense [emphasis added].” Thus, on its face, Code of Civil Procedure section 389 does not apply to administrative hearings before OAH.

The Advisory Committee notes to Code of Civil Procedure section 389, stress that the rule was intended to further the interest of the party bringing a lawsuit in getting all relief to which it was entitled, and the interest of the public in avoiding repeat procedures about the same subject matter. (See 1973 Main Volume Advisory Committee Notes, West’s Ann. Code Civ. Proc., § 389, *People ex rel. Lundgren v. Community Redevelopment Agency* (1997) 56 Cal.App.4th 868, 875 [citing 1973 Main

Volume Advisory Committee Notes]; see also *Bank of California Nat. Assn. v. Superior Court* (1940) 16 Cal.2d 516, 520-524 [recounting history of common law joinder, either as a jurisdictional principle for “indispensable” parties, or to ensure fairness and avoid multiple actions as to “necessary” parties].)

In contrast to the intent of Code of Civil Procedure section 389, the IDEA specifically exempts parents from any requirement that the parents file all possible issues at one time in the same due process complaint. Instead, the IDEA permits a parent to file separate due process complaints on separate issues, even if a due process complaint is already on file. (20 U.S.C. § 1415(o); Ed. Code, § 56509.) Thus, if IDEA permits the filing of multiple, separate due process hearing requests, it is inconsistent to require a petitioning party to file all possible issues against all possible respondents to meet the public policy rationales underlying Code of Civil Procedure section 389’s compulsory joinder rule.

Here, three days before the prehearing conference in this case, SDCOE has requested that OAH join North Coastal Consortium as a party, effectively untimely seeking reconsideration of OAH’s June 2021 order of dismissal. SDCOE contends North Coastal Consortium is necessary as a party to avoid an unduly disproportionate obligation to SDCOE. The argument is not persuasive or supported by applicable law.

SDCOE’s motion to join North Coastal Consortium is denied. SDCOE’s alternate request to dismiss SDCOE from this action is also denied.

The matter shall proceed as scheduled as to SDCOE and San Dieguito Union High School District.

IT IS SO ORDERED

Adrienne L. Krikorian

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Administrative Law Judge

Office of Administrative Hearings