

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
NO. 1:09-CV-692

O.M., by and through his parents, NICOLE	)	
MCWHIRTER and ARRAN MCWHIRTER,	)	
and NICOLE MCWHIRTER and ARRAN	)	
MCWHIRTER,	)	<b>ORDER DIRECTING PLAINTIFFS</b>
Plaintiffs,	)	<b>TO AMEND COMPLAINT TO JOIN</b>
	)	<b>STATE OF NORTH CAROLINA AND</b>
v.	)	<b>N.C. STATE BOARD OF EDUCATION</b>
	)	<b>AS PARTIES</b>
ORANGE COUNTY BOARD OF EDUCATION,	)	
Defendant.	)	

This matter is before the Court on Defendant’s Motion to Join the State of North Carolina and the North Carolina State Board of Education as Parties, pursuant to Rule 19(a) of the Federal Rules of Civil Procedure. Having considered the motion and Plaintiffs’ response, the Court finds that:

1. Plaintiffs’ Amended Complaint challenges North Carolina two-tier administrative process for contesting a student’s identification, evaluation, or educational placement, or the provision of a free appropriate public education to a student under the Individuals with Disabilities Education Act (IDEA).
2. Plaintiffs seek from this Court a declaration that North Carolina’s two-tier administrative process violates the IDEA.
3. The Defendant Orange County Board of Education has no authority over the administrative process, which is set forth in state statute.
4. The State of North Carolina (“State”) and the North Carolina State Board of Education (“State Board”) are responsible for the design and administration of the administrative process and therefore have an interest relating to Plaintiffs’ challenge to that process.

5. Disposing of Plaintiffs' challenge to the administrative process in the absence of the State and the State Board will impair or impede the ability of the State and the State Board to protect their interest.
6. Disposing of Plaintiffs' challenge to the administrative process in the absence of the State and the State Board will leave the Defendant Orange County Board of Education, as well as other boards of education in North Carolina, subject to inconsistent obligations.
7. Joinder of the State of North Carolina and the North Carolina Board of Education will not deprive this Court of subject matter jurisdiction.

WHEREFORE, the Court concludes that the State of North Carolina and the North Carolina Board of Education are required parties pursuant to Rule 19(a) of the Federal Rules of and ORDERS Plaintiffs to amend their Amended Complaint and name the State of North Carolina and the North Carolina State Board of Education as Defendants to Plaintiffs' claim for a declaration that the North Carolina administrative process violates the IDEA.

So ORDERED this the \_\_\_\_ of \_\_\_\_\_, 2010.

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William L. Osteen Jr.  
United States District Court Judge