

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL DISTRICT, ONTARIO MONTCLAIR SCHOOL DISTRICT, AND WEST END SELPA.

OAH CASE NO. 2012010517

ORDER GRANTING MOTION TO DISMISS ALLEGATIONS OUTSIDE OF OAH JURISDICTION AND WEST END SELPA AS A RESPONDENT

On January 26, 2012, Chino Valley Unified School District (CVUSD), Ontario Montclair School District (OMSD), and the West End SELPA (SELPA) (collectively Respondents) filed a motion to dismiss certain allegations, and to dismiss SELPA as a respondent from Student's complaint filed on January 19, 2012. Student did not file an opposition to Respondents' motion.

*Motion to Dismiss Allegations Outside of OAH Jurisdiction*

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure.

Student's complaint alleges in each of its stated issues that Respondents violated Student's rights under 42 U.S.C. §1983, No Child Left Behind, and section 504 of the Rehabilitation Act of 1973, and "all related state laws and regulations." The complaint acknowledges that OAH has no jurisdiction to hear matters involving violations of the aforementioned statutory schemes, but that Student intends to introduce evidence as to those violations to insure that administrative remedies are exhausted. As noted above, these issues are outside of OAH jurisdiction. Accordingly, Respondents are entitled to dismissal of all claims in Student's complaint arising out of 42 U.S.C. §1983, No Child Left Behind, and section 504 of the Rehabilitation Act of 1973, and related state laws and regulations. Only those claims arising out of the IDEA shall go to hearing. The ALJ at hearing has discretion to exclude evidence that is not relevant to IDEA claims.

*Motion to Dismiss SELPA*

As noted above, although special education law does not provide a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction and easily provable. Here, the sole issue is whether SELPA is a proper party, a matter easily proven without a formal summary judgment procedure.

In general, IDEA due process hearing procedures extend 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.) Thus, although a SELPA may fit the definition of “public agency” set forth in the IDEA, to be a proper party for a due process hearing the SELPA must also be involved in making decisions regarding a particular student.

Determination of whether the SELPA is a “public agency involved in any decisions regarding” Student requires a review of California statutes that define the role of SELPA’s. Education Code sections 56195, 56195.1, and title 2, California Code of Regulations, section 60010 set forth the role of SELPA’s. Specifically, a SELPA, meaning the service area covered by a special education local plan, shall administer the allocation of funds, and local plans submitted under Education Code section 56205.

Nothing in Education Code sections 56195 and 56195.1 renders a SELPA individually responsible to provide a free appropriate public education (FAPE) to, or make education decisions about, a particular student. The duty to administer the allocation of funds and local plans is not a duty to provide FAPE to individual students or a duty to make educational decisions for individual students.

In the present matter, Respondents contend that Student’s complaint contains no facts that allege that 1) SELPA is a public agency within the meaning of Education Code section 56501, subd. (a), and 2) SELPA has been or will be involved in providing special education services to Student. Respondents’ motion is supported by two sworn declarations under penalty of perjury from the directors of special education for CVUSD and OMSD, in which they credibly attest that SELPA only provides funding to the other Respondents, who are directly responsible for providing Student a FAPE.

Under the authority cited above, the IDEA places responsibility on a public agency, including a SELPA, if that public agency was involved in making decisions about that particular student. Student has not alleged any facts in the complaint, nor cited to any authority, that support a finding that SELPA is a proper party to this action.

Because Education Code sections 56195 and 56195.1 do not establish that the SELPA had an independent duty to provide a FAPE to Student, and the SELPA was not the entity

making educational decisions about Student, the SELPA is entitled to dismissal because it is not a proper party under Education Code section 56501 subdivision (a).

ORDER

1. Respondent's motion to dismiss claims in Student's complaint arising under 42 U.S.C. §1983, No Child Left Behind, and section 504 of the Rehabilitation Act of 1973, and "all related state laws and regulations" is granted. All such allegations shall be stricken from the complaint. The due process hearing shall proceed only on claims arising under the IDEA.

2. Respondent's motion to dismiss SELPA as a respondent is granted. SELPA is dismissed.

Dated: February 1, 2012

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings