

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, WEST COVINA UNIFIED
SCHOOL DISTRICT AND EAST SAN
GABRIEL VALLEY SELPA.

OAH CASE NO. 2012060585

ORDER GRANTING EAST SAN
GABRIEL VALLEY SELPA'S
MOTION TO BE DISMISSED AS A
PARTY

PROCEDURAL BACKGROUND

On June 14, 2012, Student, through his mother, filed a request for due process (complaint), naming the Los Unified School District, the West Covina Unified School District, and the East San Gabriel Valley Special Education Local Plan Area (SELPA) as respondents. On June 20, 2012, the SELPA filed a motion to be dismissed as a party to Student's complaint. Neither Student nor the two named school districts have filed an opposition or other response to the SELPA's motion. .

DISCUSSION

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

In general, the due process hearing procedures of the Individuals with Disabilities Education Act (IDEA) 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 in this case 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, the East San Gabriel Valley SELPA contends that Student’s complaint contains no facts that allege that 1) the SELPA is a public agency within the meaning of Education Code section 56501, subd. (a), and/or 2) the SELPA has been or will be involved in providing special education services to Student. The SELPA’s motion is supported by a sworn declaration under penalty of perjury from the director of special education for the SELPA. She credibly swears that the SELPA: 1) does not provide special education or related services to students with disabilities; 2) does not employ teachers or staff that provide services to special education students; 3) never assessed Student; 4) never attended any of Student’s individualized education program meetings; and 5) never offered assessments or services to Student and never assumed the responsibility for providing assessments or services to him.

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 to support his naming of the SELPA as a responsible party. He has not stated any facts to indicate that the SELPA was providing education or services to him, or that the SELPA had assumed the responsibility for doing so. Student has not cited any facts or authority to support a finding that the SELPA in this case has been acting as, or should have been acting as, the local educational agency for Student. Nor has Student cited any authority in his complaint that supports a finding that the SELPA is a proper party to this action.

Education Code sections 56195 and 56195.1 do not establish that the SELPA had an independent duty to provide a FAPE to Student. Student has made no allegations that the SELPA was the entity making educational decisions for him, and the SELPA director’s declaration establishes to the contrary. Therefore, the SELPA is entitled to dismissal because it is not a proper party under Education Code section 56501 subdivision (a).

ORDER

The East San Gabriel Valley SELPA's motion to dismiss it as a respondent is granted. The SELPA is dismissed.

Dated: June 26, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings