

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT AND SACRAMENTO
COUNTY SPECIAL EDUCATION LOCAL
PLANNING AREA.

OAH CASE NO. 2012100035

ORDER GRANTING MOTION TO
DISMISS BY SACRAMENTO
COUNTY SELPA

On September 28, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings a due process hearing request (complaint) naming as respondents the Twin Rivers Unified School District (District) and the Sacramento County Special Education Local Planning Area (SELPA). The complaint fails to contain a single allegation or factual reference as to the SELPA except for the caption and the introductory listing of parties. On October 4, 2012, the SELPA filed a motion to be dismissed as a party on grounds that the SELPA is not the public agency responsible for providing Student with a free appropriate public agency (FAPE). Student did not file an opposition to Respondents' motion.

APPLICABLE LAW AND DISCUSSION

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.

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 the sworn declarations under penalty of perjury from Judy Holsinger, directors of the SELPA, in which she credibly attests that the SELPA did not provide any special education services or participate in any decision making process involving Student.

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

Respondent's motion to dismiss the Sacramento County SELPA as a respondent is granted. SELPA is dismissed.

Dated: October 12, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings