

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALMDALE SCHOOL DISTRICT AND
ANTELOPE VALLEY SELPA.

OAH CASE NO. 2012100860

ORDER GRANTING SELPA'S
MOTION TO BE DISMISSED AS A
PARTY

On October 22, 2012, Student filed a Due Process Hearing Request¹ (complaint) naming Palmdale School District (District) and Antelope Valley Special Education Local Plan Area (SELPA) as respondents. The complaint alleges that since the 2008-2009 school year, Student's educational placement has been Yellen Learning Center (Yellen), a nonpublic school. Student alleges that this placement denied him a free appropriate public education (FAPE) because Yellen was not capable of handling his unique needs. Specifically, Student has behavioral issues that he alleges have not been appropriately addressed at Yellen.

The complaint also alleges that Student resided within District's boundaries until September 2012 but that he "currently resides with the [SELPA]."

On October 29, 2012, SELPA filed a Motion to be Dismissed as a Party, attaching a declaration from SELPA Director Sheri Mudd attesting that SELPA was not involved in the identification, assessment or placement of Student or the provision of a FAPE to him. Specifically, SELPA did not provide special education or related services to Student, and did not operate or control the program at Yellen which is entirely run by District. Ms. Mudd also attested to her understanding that Student had formerly resided within District, but as of September 2012, had moved into the Lancaster School District.

Student filed no opposition to SELPA's Motion.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(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.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Under California law, each school district must operate under a “local plan.” If of sufficient size, a district may create its own local plan. (Ed. Code, § 56195.1, subd. (a).) Otherwise, districts generally join with other districts to create a “local plan.” (Ed. Code, § 56195.1, subd. (b).) The service area covered by the local plan is known as the special education local plan area. (Ed. Code, § 56195.1, subd. (d).) The SELPA administers the local plan. (Ed. Code, § 56195.)

DISCUSSION

All the factual allegations of the complaint concern District and Yellen. The sole allegation concerning SELPA is that Student “resided with his Mother in the [District] until September 2012 but currently resides with the [SELPA].” As clarified by Ms. Mudd’s declaration, the sole fact raised in the complaint that concerns SELPA is that Student once resided within District and now resides within another school district, Lancaster, both of which are within SELPA’s service area.

However, Student makes no allegations that SELPA provided special education or related services to Student, and SELPA’s declaration confirms it did not do so. Thus, while SELPA is a “public agency,” it was not “involved in” decisions regarding Student. As such, this special education due process hearing procedure does not extend to SELPA under the facts and circumstances as currently alleged, and SELPA is not a proper party to the complaint.

ORDER

1. Antelope Valley SELPA's Motion to be Dismissed as a Party is granted.
2. The matter will proceed as scheduled against the remaining parties.

Dated: November 07, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings