

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL  
DISTRICT; EAST SAN GABRIEL  
VALLEY SELPA.

OAH Case No. 2016060539

ORDER GRANTING EAST SAN  
GABRIEL VALLEY SELPA'S  
MOTION TO DISMISS

On June 3, 2016, Student filed a Request for Due Process Hearing and Mediation (complaint) against Baldwin Park Unified School District, and East San Gabriel Valley Special Education Local Plan Area. On June 9, 2016, SELPA filed a Motion to Dismiss, alleging that it is not the public agency responsible for providing Student with a free appropriate public education, has not provided any educational services to Student and does not have any educational records of Student. OAH received no response to the Motion to Dismiss from Student.

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 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 (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” 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.)

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 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.

## DISCUSSION

Student’s complaint alleges that based upon an individualized education program team meeting on May 7, 2016, Student is eligible for special education services under the classification of autistic-like behaviors, and that he has been denied FAPE during the 2014-2015 and 2015-2016 school years by the failure to provide him with necessary services.

Apart from identifying SELPA as a named party in the complaint, the complaint states no allegations against SELPA. The complaint does not allege that SELPA is the Local Educational Agency responsible for providing special education services to Student. The complaint does not allege that SELPA, or anyone employed by, under contract with, affiliated with or acting for or on behalf of SELPA, provided any educational or programming services to Student, had any direct contact with Student, or was involved in any decisions or actions regarding Student. The complaint does not allege that any person acting for or on behalf of SELPA attended any IEP meetings or was involved in any assessments of Student. The complaint does not allege that SELPA ever received or is or was ever in possession of any educational documents regarding Student. The issue statements in the complaint do not name SELPA.

Student provides no factual allegations in his complaint to establish that the SELPA has had any involvement with the issues alleged in the complaint or had any contact with Student whatsoever. Given that Student states no allegations of IDEA violations against SELPA, it is not a proper party to the action.

### ORDER

SELPA's Motion to Dismiss is granted, and it is dismissed as a party. Matter shall proceed against Baldwin Park Unified School District.

DATE: June 20, 2016

DocuSigned by:  
*Vernon Bogy*  
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VERNON BOGY  
Administrative Law Judge  
Office of Administrative Hearings