

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

AZUSA UNIFIED SCHOOL DISTRICT
AND EAST SAN GABRIEL VALLEY
SPECIAL EDUCATION LOCAL PLAN
AREA

OAH CASE NO. 2010020167

ORDER GRANTING MOTION TO
DISMISS EAST SAN GABRIEL
VALLEY SPECIAL EDUCATION
LOCAL PLAN AREA.

On February 4, 2010, Student filed a due process hearing request naming Azusa Unified School District and East San Gabriel Valley Special Education Local Plan Area (SELPA) as respondents.

On February 24, 2010, SELPA filed a motion to be dismissed from this matter (Motion) on the grounds that: 1) SELPA is not the public educational agency responsible for providing Student with a free appropriate public education (FAPE), and has not provided Student with any educational services; and 2) SELPA is not a necessary party to Student's complaint.

OAH received no response to the Motion to Dismiss from Student.

As discussed below, SELPA has demonstrated that dismissal is warranted, as SELPA is not responsible to provide a FAPE to Student as a matter of law.

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.)

In California, the determination of which agency is responsible to provide education to a particular child is controlled by residency as set forth in sections 48200 and 48204. (*Katz*

v. Los Gatos-Saratoga Joint Union High School Dist. (2004) 117 Cal.App.4th 47, 57 (interpreting Ed. Code, §§ 48200 and 48204 as allowing enrollment of children in school district where only part of a residence was located.) Under Education Code section 48200, children between the ages of 6 and 18 must attend school in the district “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.)

DISCUSSION

SELPA is not the public educational agency responsible for providing Student with a FAPE

In the present matter, SELPA contends that it is not the public educational agency responsible for providing Student with a FAPE and it never provided Student with any educational services. Further, and based on the sworn statement submitted with its motion, SELPA denies operating any special education program; employing a teacher or service staff; providing any educational service to Student; or, offering or assuming any responsibility for providing educational services to Student. Student, other than listing SELPA as a party to her complaint, did not allege or substantiate that SELPA, other than the District, is responsible for providing Student with a FAPE.

Here, there is no disagreement between parties that Student is a resident of District during the relevant times alleged in the due process hearing request. Student attends a high school run by the District. Student has not alleged that she receives any service or participates in a program run by SELPA, which, if any, may render SELPA directly responsible for providing Student a FAPE based on residency. Because Education Code section 56501 does not establish that SELPA has an independent duty to provide a FAPE to Student and at all times Student was a resident of District, SELPA had no independent duty to provide Student with a FAPE as a matter of law. SELPA is not the public educational agency responsible for providing Student with a FAPE, as contemplated under IDEA and Education Code sections 56501 and 56028.5. Therefore, SELPA is entitled to dismissal on this basis and its motion for dismissal is granted.

ORDER

1. GOOD CAUSE APPEARING, East San Gabriel Valley Special Education Local Plan Area is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining respondent.

2. All dates remain on calendar as to Azusa Unified School District.

It is so ordered.

Dated: March 04, 2010

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings