

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012040638

v.

CALIFORNIA VIRTUAL ACADEMY &
WEST COVINA USD, EAST SAN
GABRIEL VALLEY SELPA,
INGLEWOOD UNIFIED SCHOOL
DISTRICT, SOUTHWEST SPECIAL ED
SELPA, LOU DANTZLER
PREPARATORY HS, LOS ANGELES
USD, LOS ANGELES USD SPECIAL ED
SELPA.

ORDER GRANTING MOTION TO
DISMISS OF THE EAST SAN
GABRIEL VALLEY SELPA

On April 17, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming the California Virtual Academy (CAVA), West Covina Unified School District (WCUSD), East San Gabriel Special Education Local Planning Area (ESGV), Inglewood Unified School District (IUSD), Southwest Special Education Local Planning Area (SWSELPA), Lou Dantzler Preparatory High School, Los Angeles Unified School District (LAUSD) and the LAUSD Special Education Local Planning Area as respondents. The complaint contains four issues with multiple subissues which are supported by fourteen pages of detailed facts. The only reference to ESGV in the factual statement is that Student attended CAVA, which is chartered by WCUSD, which itself is part of the ESGV.

On April 25, 2012, ESGV filed a motion to dismiss the complaint as to itself. On April 30, 2012, Student filed an opposition.

APPLICABLE LAW

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. Here, the sole issue is whether ESGV is a proper party.

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 special education local planning area (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, ESGV contends 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. ESGV’s motion is supported by the sworn declaration under penalty of perjury from Kathleen Calbert, the director of the ESGV, in which she credibly attests that the ESGV does not operate special education programs or employ special education teachers. Ms. Calbert declares that at no time did ESGV assume responsibility for providing educational services to Student or act as the responsible local education agency to provide Student with a free appropriate public education. In her opposition, Student offers no facts to the contrary.

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 the ESGV is a proper party to this action.

Because Education Code sections 56195 and 56195.1 do not establish that the ESGV had an independent duty to provide a FAPE to Student, and the ESGV never made educational decisions about Student, the ESGV is entitled to dismissal because it is not a proper party under Education Code section 56501 subdivision (a). (*Parents v. Chino Valley Unified School District et al* (2012) Ca. OAH case number 2012010517.)

ORDER

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

IT IS SO ORDERED.

Dated: May 1, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings