

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CABRILLO UNIFIED SCHOOL
DISTRICT AND SAN MATEO COUNTY
SELPA.

OAH CASE NO. 2012100700

ORDER GRANTING SELPA'S
MOTION TO DISMISS

Student filed a request for due process (complaint) on October 17, 2012, naming the Cabrillo Unified School District (District) and the San Mateo County Special Education Local Plan Area (SELPA) as respondents. On November 13, 2012, the SELPA filed a motion to have it dismissed as a party to this case. Neither Student nor the District has filed an opposition or other response to the SELPA's motion.

APPLICABLE LAW AND DISCUSSION

Although special education law does not provide a summary judgment procedure, the Office of Administrative Hearings (OAH) will grant motions to dismiss allegations that are facially outside of OAH jurisdiction or where a complaint fails to raise a cause of action against a named party. Here, the sole issue is whether the SELPA is a proper party. As discussed below, Student's complaint fails to raise any cognizable issues against the SELPA.

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 here is a "public agency involved in any decisions regarding" Student requires a review of California statutes that define the role of SELPA's, as well as a review of the allegations in Student's complaint. 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.

Certainly, there may be situations where the facts of a given case indicate SELPA participation in the decisions regarding a child's education. For example, there may be occasions when a SELPA provides educational programming or related services to a child and/or participates in the process to develop the child's individualized education plan.

In this case, however, the only remaining allegation raised by Student against the SELPA is that it failed in its obligation to supervise and assist in the placement and appropriate services for Student when the District did not fulfill its legal obligations to do so. Basically, Student raises a type of respondeat superior argument that because the District did not adequately provide Student with an educational program the SELPA therefore was required to do so. Student's complaint does not contain any facts or contentions that 1) the SELPA is a public agency within the meaning of Education Code section 56501, subdivision (a), and 2) the SELPA has been or will be involved in providing special education services to 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 the SELPA is a proper party to this action. (See, e.g., *Student v. Chino Valley Unified Sch. Dist., et al.* (2012) Cal.Offc.Admin.Hrngs. Case No. 2012010517.) The SELPA is therefore entitled to dismissal because it is not a proper party under Education Code section 56501, subdivision (a).

ORDER

The SELPA's motion to be dismissed as a party is granted.

Dated: November 20, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings