

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DESERT MOUNTAIN SELPA, DESERT  
MOUNTAIN CHILDREN’S CENTER, and  
SAN BERNARDINO COUNTY  
SUPERINTENDENT OF SCHOOLS.

OAH CASE NO. 2012110588

ORDER GRANTING MOTION TO  
DISMISS

On November 16, 2012, Mother on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Desert Mountain Special Education Local Planning Area (SELPA), the Desert Mountain Children’s Center (DMCC), and the San Bernardino County Superintendent of Schools (County) as respondents.

On December 7, 2012, the respondents filed a Motion to Dismiss Student’s complaint on grounds that the Office of Administrative Hearings (OAH) lacks jurisdiction since none of the respondents have a duty to provide Student with a free appropriate public education (FAPE).<sup>1</sup>

On December 11, 2012, Student filed an opposition to the motion entitled “Objection to defendants [sic] motion to dismiss.”

Per the complaint, Student is enrolled at Victor Valley High School but has been placed by his parent at the Sunland Christian private school as well as in independent study programs. The Administrative Law Judge (ALJ) takes official notice that Victor Valley High School is operated by the Victor Valley Union High School District which has not been named as a respondent in this matter.

In his complaint, Student basically alleges that the respondents have denied him a FAPE by failing to implement his IEP in not providing services and failing to provide his parent with timely progress reports.

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<sup>1</sup> The respondents simultaneously filed a motion for sanctions. This order only deals with the motion to dismiss.

## APPLICABLE LAW

Although special education law does not provide a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction and easily provable. Here, the sole issue is whether SELPA, DMCC and the County are proper parties, a matter easily proven without a formal summary judgment procedure.

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 or other agency may fit the definition of “public agency” set forth in the IDEA, to be a proper party for a due process hearing the SELPA or other agency must also be involved in making decisions regarding a particular student.

### *As to the SELPA*

Determination of whether the party is a “public agency involved in any decisions regarding” Student requires a review of California statutes. A SELPA’s role is defined in 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, respondents contend 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. Respondents’ motion is supported by the sworn declaration under penalty of perjury of Denise Edge, a Program Manager at the SELPA, which credibly attests that the SELPA never provided educational services to Student nor participated in decisions concerning his educational program. Ms. Edge acknowledged that she did attend IEP meetings for Student but only in her role regarding monitoring due process matters.

The SELPA also cites as authority to support its position an OAH decision in a former matter between the parties which was decided on March 26, 2012, (*Parent v. Victor Valley Union High School District, et al (Victor Valley)*), OAH Case Nos. 2011080031/2011080382.). OAH, by ALJ June Lehrman, ruled that the SELPA did not provide direct services to Student as its role was to provide resources, training and

information to its member districts. Member districts within the SELPA did not access non-public agency (NPA) services directly, but rather through the auspices of the SELPA. (*Victor Valley, supra*, at pp. 54-55.)

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 SELPA is a proper party to this action.

Because Education Code sections 56195 and 56195.1 do not establish that the SELPA had an independent duty to provide a FAPE to Student, and the SELPA was not the entity making educational decisions about Student, the SELPA is entitled to dismissal because it is not a proper party under Education Code section 56501 subdivision (a).

*As to DMCC*

In support of the motion, DMCC Director Jenae Holtz declared under penalty of perjury that DCMC is a separate legal entity from the SELPA which contracts with school districts to provide counseling and mental health services to students pursuant to their Individualized Education Programs (IEP's). DMCC has provided mental health services to Student since 2009 pursuant to contracts with the school districts where Student was educated. In *Victor Valley*, OAH determined that DMCC was merely a provider of services and not responsible to provide Student a FAPE thusly:

“Desert Mountain SELPA Children’s Center (DMSCC) was a provider of mental health services pursuant to IEP’s. It provided Student with individual counseling, and was referenced in Student’s IEP’s as “SELPA,” “SELPA counselor,” “SELPA counseling,” and the like. DMSCC was not in fact, part of SELPA. It was a separate legal entity organized under the umbrella of the County. It served as a contractor. Districts contracted directly with DMSCC to comply with their obligation to provide educationally necessary mental health services pursuant to IEP’s. DMSCC used SELPA as an administrative agency. Numerous references in Student’s IEP’s to “SELPA” all relate to counseling provided by DMSCC. Student’s provider of counseling services, Jessica Martinez, was employed by DMSCC.” (At p. 55.)

Student has failed to demonstrate that DMCC was involved in any decisions regarding a pupil, and is not a proper party. (Ed. Code, § 56501, subd. (a).)

*As to the County*

Respondents correctly point out that a county schools superintendent duties are governed by Education Code section 1240, which does not provide for involvement in IEP decisions.

Attached to the respondents' motion is a sworn declaration by Stephen Vaughn, Director of Desert Mountain Operations for the County. Mr. Vaughn declares that the County "did not control, direct, or participate in any decisions regarding Student." Mr. Vaughn also referred to *Victor Valley* where the County was dismissed per its motion on grounds that it was not a proper party. On December 2, 2011, OAH, per ALJ Lehrman, ruled following an evidentiary hearing, that the County had no involvement in any manner in Student's education program.

Thus, the County is also not a proper party.

#### ORDER

- (1) Respondents' Motion to Dismiss the complaint is granted.
- (2) Respondents' Notice of Insufficiency is denied as it is moot.
- (3) This matter is dismissed.

IT IS SO ORDERED.

Dated: December 13, 2012

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings