

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA VIRTUAL ACADEMY,
EAST SAN GABRIEL VALLEY SELPA,
WEST COVINA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013030131

ORDER GRANTING MOTION TO
DISMISS PARTY

On April 4, 2013, Student filed with the Office of Administrative Hearings (OAH) a Motion to Amend and a Proposed Amended Due Process Complaint naming California Virtual Academy (CVA), East San Gabriel Valley Special Education Local Plan Area (SELPA), and West Covina Unified School District (District) as respondents. On April 8, 2013, SELPA filed an Opposition to Student's Motion to Amend. On April 9, 2013, OAH issued an order affirming Student's right to file the amended complaint. On April 11, 2013, SELPA filed a Motion to be Dismissed as a Party on the grounds that it is not a proper or necessary party. On April 17, 2013, Student filed an Opposition.

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.)

Determination of whether the SELPA is a "public agency involved in any decisions regarding" Student, in this case, 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.

DISCUSSION

Although the SELPA fits the definition of a “public agency” set forth in the Individuals with Disabilities Education Act (IDEA), to be a proper party for a due process hearing, the SELPA must also be involved in making decisions about or providing services to Student. Student’s complaint contains no allegations that SELPA was involved in any decisions regarding Student or was responsible for the provision of any special education or related services. SELPA’s motion is supported by the sworn declaration of its Director, Kathleen Calbert, under penalty of perjury, which attests that SELPA, in fact, had no such involvement.

Student provides no authority for her contention that the SELPA need not be directly involved in order to be a named party. Student is not persuasive in her argument that SELPA’s indirect involvement in Student’s education as a result of its mandated duties makes it a proper party. Student’s opposition relies on SELPA’s role to oversee procedures and policies that ensure the provision of a FAPE to students attending local educational agencies within the SELPA’s local plan area. However, SELPA’s administration and oversight duties do not establish any actual involvement in any decision regarding 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. Accordingly, Student has not established that the SELPA is proper party under Education Code section 56501, subdivision (a), and SELPA is entitled to dismissal.

ORDER

SELPA’s Motion to be Dismissed as a Party is granted. The matter will proceed as scheduled against the remaining parties.

IT IS SO ORDERED.

Dated: April 18, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings