

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL DISTRICT, EAST SAN GABRIEL VALLEY SELPA, LOS ANGELES COUNTY OFFICE OF EDUCATION, & CALIFORNIA DEPARTMENT OF EDUCATION.

OAH CASE NO. 2013080394

ORDER GRANTING EAST SAN GABRIEL VALLEY SELPA'S AND CALIFORNIA DEPARTMENT OF EDUCATION'S MOTIONS TO DISMISS

On August 8, 2013, Student filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming West Covina Unified School District (District), East San Gabriel Valley Special Education Local Plan Area (SELPA), Los Angeles County Office of Education (LACOE), and California Department of Education (CDE). On August 19, 2013, CDE filed a Motion to Dismiss, alleging that it is not a responsible public education agency since it did not provide special education services to Student. On August 20, 2013, the SELPA file a motion to dismiss on the same grounds. On August 26, 2013, Student filed an opposition to both motions to dismiss on the grounds of the SELPA and CDE duty to supervise the District and LACOE.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to the parent or guardian, to the student 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.)

Under California law, each school district must operate under a “local plan.” If of sufficient size, a district may create its own local plan. (Ed. Code, § 56195.1, subd. (a).) Otherwise, districts generally join with other districts to create a “local plan.” (Ed. Code, § 56195.1, subd. (b).) The service area covered by the local plan is known as the special education local plan area. (Ed. Code, § 56195.1, subd. (d).) The SELPA administers the local plan. (Ed. Code, § 56195.)

Local plans must provide policies and procedures governing the provision of a FAPE. (Ed. Code, § 56205.) They must contain provisions for staff development programs for special education teachers. (Ed. Code, § 56240-45.) They must also provide a governance structure and any necessary administrative support to implement the plan; establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the special education local plan area; designation of a responsible local agency with respect to distribution of funds, provision of administrative support, and coordination of the implementation of the plan (Ed. Code, 56195.1, subd. (b).)

Parents have the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) This limited jurisdiction does not include OAH jurisdiction over claims alleging a failure by a SELPA to enforce a local plan. Nor does it include jurisdiction over claims alleging a school district’s failure to comply with a local plan.

Under the IDEA (20 U.S.C. § 1400 et. seq.), the state educational agency (SEA) has the responsibility for the general supervision and implementation of the IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a) (2006).) This responsibility includes ensuring that a FAPE is available to all children with disabilities in the mandated age ranges within the state. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a).) In the rare instance when state law does not provide for a responsible LEA or public agency, then the duty to provide a FAPE falls upon the SEA. (*Gadsby v. Grasmick* (4th Cir. 1997) 109 F.3d 940, 952-953; *Orange County Dept. of Educ. v. A.S.* (C.D.Cal. 2008) 567 F.Supp.2d 1165, 1169-1170, *affd.* in part and *rev. in part* *Orange County Dept. of Ed. v. California Dept. of Educ.* (9th Cir. 2011) 668 F. 3d 1052.)

DISCUSSION

In the present matter, Student contends in the complaint that the SELPA and CDE denied him a FAPE because it failed to adequately supervise the District and LACOE in their provision of special education services by failing to ensure that the District and LACOE followed the applicable local plan and applicable Federal and State special education laws to ensure that Student received a FAPE. OAH's limited jurisdiction does not give OAH jurisdiction over claims alleging a failure by a SELPA to enforce a local plan and CDE's supervisory duties. Additionally, Student's complaint does not contain any allegations that the SELPA or CDE was a responsible public agency or provided special education services to Student or were legally responsible to provide Student with a FAPE. Therefore, the SELPA and CDE are dismissed parties to this action.

ORDER

The SELPA's and CDE's Motions to Dismiss this entities as a party is granted. The matter will proceed as scheduled against the District and LACOE.

Dated: August 27, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings