

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WALNUT VALLEY UNIFIED SCHOOL  
DISTRICT AND EAST SAN GABRIEL  
VALLEY SPECIAL EDUCATION LOCAL  
PLANNING AREA.

OAH CASE NO. 2015010575

ORDER GRANTING EAST SAN  
GABRIEL VALLEY SELPA'S  
MOTION TO DISMISS

On January 14, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request (complaint) naming the Walnut Valley Unified School District and the East San Gabriel Valley Special Education Local Plan Area (SELPA) as respondents.

On February 18, 2015, the SELPA filed a motion to dismiss itself as a party. Student filed an opposition to the SELPA's motion on February 20, 2015.

APPLICABLE LAW AND DISCUSSION

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 SELPA is a proper party, 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 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, Student has failed to demonstrate 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.

## DISCUSSION

The complaint contains four issues. Student had been placed in the Autism Spectrum and Related Disorders program operated by Walnut Valley. The first issue is alleged against Walnut Valley and the SELPA, while the other three issues are alleged solely against Walnut Valley. In the first issue, Student alleges that his ASRD teacher "consistently bullied" Student on account of his disabilities causing Student such anxiety that he shut down and was unable to speak. Student alleges that "[t]he SELPA failed to require the District to forbid its ASRD teacher to bully [Student] and punish him for his disabilities, ultimately driving him out of school." Student also contends that Walnut Valley employed the teacher and that the SELPA failed to supervise Walnut Valley to put a stop to the teacher's alleged misconduct.

In the second through fourth issues, Student alleges that Student's IEP has not been fully implemented by failing to provide Student with appropriate transportation services, failing to provide psychological counseling, failing to place Student in the designated English class, failing to provide a note-taker, failing to provide guidance counseling, and failing to implement the "teaching plan."

The SELPA's motion is supported by a declaration by Kathleen Calbert, the SELPA director. Ms. Calbert declares that the SELPA coordinates resources and funding distribution to its member school districts and charter schools. The SELPA does not operate any autism programs within any of its member school districts or charter schools, nor was it involved in any decisions regarding Student's educational program. Ms. Calbert also declared that the teacher was not employed by it. Additionally, a copy of the Local Plan was attached to the motion which did not indicate that the SELPA operated the ASRD program.

In his opposition, Student fails to demonstrate that the SELPA had any role in supervising or running the ASRD program.

ORDER

1. The SELPA's motion to dismiss is granted. The SELPA is dismissed as a party.
2. The case will continue as to Walnut Valley as scheduled.

DATE: February 23, 2015

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings