

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT
AND WESY ORANGE COUNTY
CONSORTIUM FOR SPECIAL
EDUCATION.

OAH Case No. 2015040196

ORDER GRANTING MOTION TO
DISMISS THE WEST ORANNGE
COUNTY CONSORTIUM FOR
SPECIAL EDUCATION

On April 2, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a Due Process Hearing Request naming the Westminster School District and the West Orange County Consortium for Special Education, a Special Education Local Plan Area as respondents. Student makes no allegations specific to WOCCSE.

On April 9, 2015, WOCCSE filed a motion to dismiss itself as a party. Student filed an opposition the motion on April 10, 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 her complaint, Student alleges that the respondents failed to provide Student a free appropriate public education because “the District found Student ineligible” for special education.” The complaint fails to allege any facts regarding to WOCCSE. Student, in her opposition, argues that WOCCSE is a proper party as it fits the definition of being a “public agency.”

In general, Individuals with Disabilities Education Act 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 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) WOCCE is a public agency within the meaning of Education Code section 56501, subd. (a), and 2) WOCCE has been or will be involved in providing special education services to Student.

ORDER

1. The WOCCE’s motion to dismiss is granted. WOCCE is dismissed as a party.
2. The matter shall proceed against Westminster School District.

DATE: April 13, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings