

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SILICON VALLEY FLEX ACADEMY
AND EL DORADO COUNTY CHARTER
SPECIAL EDUCATION LOCAL PLAN
AREA.

OAH Case No. 2015060443

ORDER DENYING MOTION TO
DISMISS PARTY

On May 26, 2015, Parents on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming the Silicon Valley Flex Academy and El Dorado County Charter Special Education Local Plan Area. On June 10, 2015, SELPA filed a motion to dismiss, alleging that it was not a responsible public agency. Student timely submitted an opposition to SELPA's motion to dismiss. On June 17, 2015, SELPA submitted a reply to Student's 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.) Children with disabilities who attend public charter schools retain all rights under federal and State special education law. (34 C.F.R. § 300.209(a) (2006)1; Ed. Code, § 56145.)] A charter school that is a public school of a local educational agency must serve children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools. (34 C.F.R. § 300.209(b)(1)(i).)

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", 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 ... 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.)

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.

DISCUSSION

Student’s complaint alleges numerous violations of the IDEA by SELPA and Flex Academy.¹ Student primarily complains that both Flex Academy and SELPA denied him a free appropriate public education by failing to provide any program for the past seven months and, beginning in May 2013, by failing to provide a program designed to meet his individual needs. Student contends that Flex Academy and SELPA were each responsible for the development of his educational program. In his opposition, Student points out that SELPA’s website states that it is responsible for providing special education and related services and that SELPA, along with Flex Academy, actively participated in the development of Student’s individualized education program’s and was listed on related school documents.

SELPA asserts that it is not a local educational agency and therefore it was not responsible for providing Student a free appropriate public education. However, Student’s claims are not facially outside of OAH’s jurisdiction, and the nature and extent of SELPA’s obligation to Student requires an evidentiary hearing. Therefore, SELPA’s motion to dismiss is denied.

ORDER

1. SELPA’s motion to dismiss is denied.
2. All dates currently set in this matter are confirmed.

¹ Flex Academy is a charter school that is chartered by SELPA.

DATE: June 18, 2015

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings