

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARVEY SCHOOL DISTRICT AND
WEST SAN GABRIEL VALLEY SELPA.

OAH CASE NO. 2015090066

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

On August 28, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming the Garvey School District and the West San Gabriel Valley Special Education Planning Area (SELPA). The complaint contains a single issue that solely names Garvey.

On August 31, 2015, SELPA filed a motion to dismiss it as a party. Student did not file an opposition to SELPA's motion.

Special education law does not provide a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction and easily provable. Here, the sole issue is whether SELPA is a proper party, a matter easily proven without a formal summary judgment procedure.

In general, Individuals with Disabilities Education Act due process hearing procedures extends 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's complaint contains no facts that allege 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. The SELPA's motion is supported by the sworn declaration under penalty of Jacqueline Williams, the director of the SELPA, that the SELPA has never been involved in any decisions as to Student's education nor providing any services to him.

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. Student has not alleged any facts in the complaint, nor cited to any authority, that support a finding that SELPA is a proper party to this action.

Because Education Code sections 56195 and 56195.1 do not establish that the SELPA had an independent duty to provide a FAPE to Student, and the SELPA was not the entity making educational decisions about Student, the SELPA is entitled to dismissal because it is not a proper party under Education Code section 56501, subdivision (a).

ORDER

1. SELPA's motion to dismiss SELPA as a respondent is granted. SELPA is dismissed.
2. The case will proceed as to Garvey only.

DATE: September 9, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings