

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TURLOCK UNIFIED SCHOOL DISTRICT
AND STANISLAUS SELPA

OAH CASE NO. 2011120192

ORDER GRANTING STANISLAUS
SELPA'S MOTION TO BE DISMISSED
AS A PARTY

On December 06, 2011, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Turlock Unified School District and Stanislaus Special Education Local Plan Area (SELPA) as the respondents.

On December 12, 2011, Stanislaus SELPA filed a motion to dismiss on the grounds that it is not a party to the action, and the complaint failed to state a cause of action against the SELPA. OAH has received no response from Student.

APPLICABLE LAW

Special education due process hearing procedures extends 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.)

DISCUSSION

The Complaint alleges that District convened a manifestation determination hearing on October 28, 2011 and concluded that Student's conduct was not caused by or related to his disability. The complaint further alleges that the IEP in effect at the time of the incident triggering Student's referral for expulsion specified his primary disability as Emotional Disturbance (ED). The complaint also alleges that District later, in anticipation of the Manifestation Determination hearing, held a "truncated" triennial IEP meeting, eliminated the ED disability from the IEP, and made post-expulsion placement recommendations. Student asserts that the IEP team then based its manifestation determination on the new IEP which determined Student's primary disability was specific learning disability (SLD) and not ED. Student then asserts that District and the Stanislaus SELPA denied Student a free

appropriate public education (FAPE) by conducting the manifestation determination meeting after changing Student's qualifying disability which allowed the IEP team to conclude that Student's conduct was not a manifestation of his disability.

The complaint raises seven issues. None of the issues allege or contain claims against the Stanislaus SELPA or specify how or when the SELPA denied Student a FAPE; nor does any of the proposed resolutions request OAH issue an order for relief against the Stanislaus SELPA. In sum the complaint fails to allege violations of the IDEA or corresponding state law against Stanislaus SELPA and seeks no remedy from the SELPA. Therefore the Stanislaus SELPA is dismissed as a party to the complaint.

ORDER

Motion to Dismiss is granted. Stanislaus SELPA is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining party.

IT IS SO ORDERED.

Dated: January 09, 2012

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings