

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEA COMMUNITY LEARNING CENTER  
& EL DORADO COUNTY CHARTER  
SELPA.

OAH CASE NO. 2012120225

ORDER DENYING SELPA'S MOTION  
TO DISMISS WITHOUT PREJUDICE

On December 6, 2012, Parent on behalf of Student (Student) filed a Request for Due Process hearing (complaint) naming the NEA Community Learning Center (NEA) and the El Dorado County Charter Special Education Local Planning Area (SELPA) as respondents. In the complaint, Student alleges five pages of detailed factual background which fails to specify any specific actions taken by the SELPA regarding Student's education program.

On December 6, 2012, the SELPA filed a motion to be dismissed from the matter. On December 19, 2012, Student filed an opposition to the motion.

DISCUSSION

Special education law does not provide a summary judgment procedure. The Office of Administrative Hearings (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, 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, respondents contend that 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. Respondents' motion is supported by a sworn declaration under penalty of perjury from Amy Anderson, the director of the SELPA, in which she credibly attests that NEA is a local education agency and the SELPA did not provide any educational services to Student nor was in any way involved in decisions about Student.

In her opposition, Student contends that the SELPA was involved in making decisions regarding Student. In support, Student submits a sworn declaration from Student's mother (Mother). Mother states that she filed a complaint with the California Department of Education (CDE) at the beginning of the 2012 fall semester against NEA. Following that filing, Steve Pedego of the SELPA contacted her to discuss the matter. Prior to the commencement of an IEP meeting in October 2012, Mr. Pedego participated in a conference call with NEA IEP team members behind closed doors. At an IEP meeting in November 2012, a representative of the SELPA attended the meeting and actively participated in the meeting including specifically discussing speech and language services provided to Student.

Here, Student has raised an issue of fact as to the role of the SELPA in the IEP decision-making process. Here, SELPA's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits based on factual information. Because special education law does not provide for a summary judgment procedure, this motion must be denied, without prejudice to SELPA presenting its evidence at hearing.

#### ORDER

SELPA's motion to dismiss SELPA as a respondent is denied without prejudice.

Dated: December 21, 2012

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings