

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

JEFFERSON UNION HIGH SCHOOL
DISTRICT AND SAN MATEO COUNTY
SPECIAL EDUCATION LOCAL PLAN
AREA.

OAH CASE NO. 2013010581

ORDER GRANTING MOTION TO
DISMISS SAN MATEO COUNTY
SPECIAL EDUCATION LOCAL PLAN
AREA

On January 17, 2013, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Jefferson Union High School District (District) and San Mateo County Special Education Local Plan Area (SELPA).

On January 31, 2013, the SELPA filed a Motion to Dismiss, alleging that it was not a proper party to this action as it is not responsible for nor provided special education services to Student. Neither Student nor the District filed a response.

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.)

Under California law, each school district must operate under a “local plan.” If of sufficient size, a district may create its own local plan. (Ed. Code, § 56195.1, subd. (a).) Otherwise, districts generally join with other districts to create a “local plan.” (Ed. Code, § 56195.1, subd. (b).) The service area covered by the local plan is known as the special education local plan area. (Ed. Code, § 56195.1, subd. (d).) The SELPA administers the local plan. (Ed. Code, § 56195.)

Local plans must provide policies and procedures governing the provision of free appropriate public education (FAPE). (Ed. Code, § 56205.) They must contain provisions

for staff development programs for special education teachers. (Ed. Code, § 56240-45.) They must also provide a governance structure and any necessary administrative support to implement the plan; establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the special education local plan area; designation of a responsible local agency with respect to distribution of funds, provision of administrative support, and coordination of the implementation of the plan (Ed. Code, 56195.1, subd. (b).)

Parents have 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).) This limited jurisdiction does not include OAH jurisdiction over claims alleging a failure by a SELPA to enforce a local plan. Nor does it include jurisdiction over claims alleging a school district’s failure to comply with a local plan.

DISCUSSION

In the present matter, Student contends in Issue 13 that the SELPA denied her a FAPE because it failed to adequately supervise the District in its provision of special education services by failing to ensure that the District followed the applicable plan because it did not assess and find Student eligible for special education services. OAH’s limited jurisdiction does not give OAH jurisdiction over claims alleging a failure by a SELPA to enforce a local plan. Additionally, Student’s complaint does not contain any allegations that the SELPA was a responsible public agency or provided special education services to Student. Therefore, the SELPA is dismissed a party to this action.

ORDER

The SELPA’s Motion to Dismiss it as to party is granted. The matter will proceed as scheduled against the District as to Issues 1 through 12.

Dated: February 7, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings