

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VENTURA UNIFIED SCHOOL DISTRICT,  
OJAI UNIFIED SCHOOL DISTRICT AND  
VENTURA COUNTY SELPA

OAH CASE NO. 2014010294

ORDER GRANTING MOTION TO  
DISMISS

On January 9, 2014, Student filed a due process complaint (complaint) naming Ventura Unified School District (Ventura), Ojai Unified School District (Ojai) and Ventura County SELPA (SELPA) as Respondents (collectively, Respondents). On January 21, 2014, Respondents filed a Motion to Dismiss SELPA as an improper party, or in the alternative, a Notice of Insufficiency, requesting that SELPA be dismissed based upon Student’s failure to provide sufficient details of her claim that as a SELPA it was responsible under the IDEA for decision-making or otherwise providing direct services to Student to be considered a public agency independently obligated to provide Student a FAPE under the IDEA. On January 22, 2014, Student opposed Respondents’ Motion to Dismiss, or in the alternative, by her attorney setting forth unverified factual allegations, on information and belief, that SELPA provided direct services and was part of the IEP team. On January 24, 2014, Respondents’ replied to Student’s unverified allegations with a sworn declaration contradicting Student’s factual allegations based upon counsel’s information and belief.

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.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), 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 matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; 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

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 decision-making or directly responsible for providing Student a FAPE. Respondents’ motion and reply is supported by declarations of Mary Samples, SELPA’s Assistant Superintendent. Student’s opposition is supported by the “information and belief” that SELPA performed the residential placement assessment and was a team member at the December 19, 2013, IEP team meeting. In Student’s opposition, she concedes that she is unaware of SELPA’s legal obligations, but on information and belief, that SELPA is also responsible for providing Student’s mental health services. Due only to her information and belief about SELPA’s involvement she requests that SELPA remain as a party. Understandably, implied in her opposition is the concern that a necessary party to a resolution will be dismissed.

Student’s claim against SELPA is restricted to Issue five. In Issue five, Student alleges that SELPA denied Student a FAPE by failing to provide a residential

placement assessment prior to Parent's request, and by finding Student not eligible for residential placement as of December 19, 2013. Aside from this averment, Student provides no other factual basis tying SELPA into the assessment process or IEP process, either as a decision-maker, or provider of FAPE, separate and apart from Ojai or Ventura. Student does provide sufficient factual averments regarding Ventura and Ojai's involvement as decision-makers and resource providers. Student's reply papers are nothing more than unsupported statements "on information and belief" that the SELPA did conduct Student's residential placement assessment and did attend the IEP team meeting and, as such, provides no further support for connecting the SELPA to Student's pleadings as an educational agency and proper party under the IDEA. Notably, Student's own factual allegations show that Student's local education agency, Ojai, was at the IEP team meeting conducted in December of 2013, and that Student has alleged in Issue Four, that Ojai denied her a FAPE by failing to offer an appropriate placement for Student's mental health needs. In contrast, SELPA provided detailed information in pleadings and supporting declarations from a SELPA official, who demonstrated sufficient knowledge of SELPA's and Respondents' documentation to show that SELPA is an improper party because: it was not a member of the Student's IEP team; not a mental health service provide; and, although it assists SELPA members, like Ventura and Ojai, with funding and resources, SELPA did not conduct the residential placement assessment.

Because Education Code, sections 56195 and 56195.1, do not establish that the SELPA has an independent duty to provide a FAPE to Student, and the SELPA was not the entity making educational decisions about Student, or otherwise directly responsible for providing Student a FAPE, the SELPA is entitled to dismissal because it is not a proper party under Education Code section 56501 subdivision (a). Although Student's complaint is only required to meet liberal pleading standards, and Motions to Dismiss are discouraged, the IDEA mandates that Student only make claims against entities required to provide a FAPE. Here, Student has properly named Ventura and Ojai, the local educational agencies responsible for provision of a FAPE, including mental health services, during the time period at issue. Student's only claim against SELPA fails to meet the requirements of the IDEA and as a result, SELPA is dismissed as a party, and Issue Five is stricken from the complaint.

To the extent SELPA sought an NOI in the alternative, the sufficiency of the complaint as to SELPA is now moot and will not be addressed.

ORDER

1. Respondents' Motion to Dismiss SELPA as a party is granted.
2. Student's Issue Five is stricken from the complaint.
3. The matter shall proceed as scheduled without SELPA as a party, and SELPA shall be removed from the pleading caption.

Dated: January 23, 2014

/s/

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EILEEN COHN  
Administrative Law Judge  
Office of Administrative Hearings