

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA VIRTUAL ACADEMY &
WEST COVINA UNIFIED SCHOOL
DISTRICT & EAST SAN GABRIEL
VALLEY SELPA.

OAH CASE NO. 2013100751

ORDER GRANTING MOTION TO
DISMISS THE EAST SAN GABRIEL
VALLEY SELPA

On October 21, 2013, Parents on behalf of Student (Student) filed a Request for Due Process Hearing naming the California Virtual Academy (CVA), the West Covina Unified School District (District), and the East San Gabriel Valley Special Education Local Plan Area (SELPA) as respondents. Student makes no claims or allegations specific to the SELPA. All claims are specifically alleged as CVA and the District only.

On October 28, 2013, the SELPA filed a motion to dismiss itself as a party. Student did not file an opposition to Respondent's motion.

APPLICABLE LAW AND DISCUSSION

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. 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, Student has failed to demonstrate 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.

ORDER

1. The SELPA's motion to dismiss is granted. The SELPA is dismissed as a party.
2. The matter will proceed as to the remaining two respondents as scheduled.

Dated: November 8, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings