

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PACIFIC TECHNOLOGY SCHOOL AND
EL DORADO COUNTY CHARTER
SPECIAL EDUCATION LOCAL PLAN
AREA.

OAH CASE NO. 2014060464

ORDER GRANTING IN PART
MOTION TO DISMISS

On June 6, 2014, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming both Pacific Technology School and El Dorado County Charter Special Education Special Education Local Plan Area.

On June 17, 2014, the SELPA filed a Motion to Dismiss, alleging that it is not a public agency involved in special education decisions involving Student. On June 20, 2014, Student filed an opposition, which contends that the SELPA was involved in decisions regarding Student's special education, services and placement. OAH received no response to the Motion to Dismiss from Pacific Technology.

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.)

Children with disabilities who attend public charter schools retain all rights under federal and State special education law. (34 C.F.R. § 300.209(a) (2006)¹; Ed. Code, § 56145.)] A. charter school that is a public school of a local educational agency must serve

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools. (34 C.F.R. § 300.209(b)(1)(i).)

Determination of whether 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.

DISCUSSION

SELPA contends that it is not a responsible public agency and should be dismissed as a party to this action because it has never been involved in decisions regarding Student’s special education, services and placement. Student asserts that SELPA has been involved in the decision making process involving Student’s special education, services and placement, and is therefore a responsible public agency.

The only evidence Student submits by declaration is that SELPA may be a responsible public agency involves the development of Student’s May 15, 2014 individualized education program as an employee of SELPA attended and participated in the IEP team meeting and the IEP development. SELPA contends, by declaration, that the SELPA employee who attended the May 15, 2014 IEP team meeting was purely participating as a meeting facilitator.

If the SELPA employee attended the IEP team meeting as a meeting facilitator, SELPA would not be a responsible party regarding Student’s special education, services and placement. However, Student has submitted sufficient evidence by way of declaration that the SELPA’s role in the May 15, 2014 IEP was more than a meeting facilitator to create a triable issue for hearing in Issue 3. As to Issues 1 and 2, and other parts of the 2013-2014 school year in Issue 3, Student did not show that a triable issue for hearing exists regarding SELPA and whether it was involved in decisions regarding Student’s special education, services and placement

ORDER

1. SELPA’s Motion to Dismiss is granted as to Issues 1 and 2, and portions of Issues 3 that do not involve the May 15, 2014 IEP team meeting. The matter will proceed as scheduled as to these issues as to Pacific Technology only.

2. SELPA's motion to dismiss claims involving the May 15, 2014 IEP team meeting is denied.

DATE: June 24, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings