BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GUARDIAN ON BEHALF OF STUDENT, v. LOS ANGELES COUNTY OFFICE OF EDUCATION, LOS ANGELES UNIFIED SCHOOL DISTRICT, CALIFORNIA DEPARTMENT OF EDUCATION, CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, AND LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH.	OAH CASE NO. 2010110301 ORDER GRANTING CALIFORNIA DEPARTMENT OF EDUCATION'S MOTION TO DISMISS

On November 8, 2010, Student filed a Due Process Hearing Request (complaint) against the Los Angeles County Office of Education (LACOE), the Los Angeles Unified School District (LAUSD), California Department of Education (CDE), California Health and Human Services Agency (CHHS), California Department of Mental Health (CDMH), and Los Angeles County Department of Mental Health (LACDMH). On December 1, 2010, CDE filed a Motion to Dismiss, alleging that it is not a responsible educational agency. On December 1, 2010, Student filed an opposition. On December 6, 2010, CDE filed its reply. On December 7, 2010, LACOE filed an opposition.

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 the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

DISCUSSION

In the complaint, Student alleges that CDE is an appropriate party because of its supervisorial oversight of special education programs as the Statewide Educational Agency (SEA) under the Individuals with Disabilities Education Act (IDEA), as the SEA has the responsibility for the general supervision and implementation of IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) The complaint contends that CDE is an appropriate party due to LACDMH's refusal to provide students with mental health services because of the Governor's October 8, 2010 veto of state funding to county mental health agencies to provide mental health services for special education students pursuant to Government Code sections 7570, et seq.

The complaint raises no claims against CDE that it denied Student a FAPE and seeks no remedies from CDE, other than for CDE to exercise its supervisorial authority to ensure that Student receives a FAPE. Further the complaint makes no claims that CDE is a public agency involved in the provision of special education services or decisions regarding Student. The United States District Court decisions that Student cite for the proposition that CDE is an appropriate party are not applicable. For example, in *Orange County Dept of Educ. V. A.S.* (2008) 567 F.Supp.2d 1165, the issue was which educational agency was responsible for providing special education services to a parentless child's when the Orange County Juvenile Court had not appointed a legal guardian or responsible adult. The court found that CDE had responsibility by default under IDEA for providing free appropriate public education (FAPE) to the parentless child in absence of any California law designating local entity responsible for that education. (*Id.* at p. 1170.)

In this case, Student has an appointed Educational Rights Holder. Further, in California, a county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) The complaint alleges that Student receives education from LACOE as a resident of juvenile hall. Therefore, California law clearly designates the local entity responsible for FAPE.

Also, IDEA defines and limits the hearing officer's jurisdiction in due process proceedings. The issue of CDE's oversight of local education agencies to ensure their compliance with relevant special education law and regulations is outside the scope of OAH's jurisdiction.

Finally, Student seeks an order determining the responsible public agency after January 2011. LACOE contends CDE should remain a party because LACOE will no longer be the LEA when Student transfers from juvenile hall to a residential treatment center. These alleged future controversies are not ripe for resolution, both of which are dependent upon the occurrence of contingent circumstances. Due process proceedings address existing disputes between the parties.

Accordingly, CDE is not a necessary or proper party to the complaint.

ORDER

CDE's Motion to Dismiss itself as a party is granted. The matter will proceed against the other remaining parties as presently scheduled.

Dated: December 07, 2010

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings