

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT, ORANGE COUNTY
HEALTH CARE AGENCY AND
CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH CASE NO. 2010110885

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On November 21, 2010, Student filed a Due Process Hearing Request (complaint) against the Saddleback Valley Unified School District (District), Orange County Health Care Agency (OCHCA) and California Department of Education (CDE). On December 9, 2010, CDE filed a Motion to Dismiss itself as a party to the action, alleging that it is not a responsible educational agency. On December 14, 2010, 2010, Student filed an opposition. OCHCA did not file 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.)

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.)

If a dispute arises between the school district and the community mental health agency regarding the provision of related services or financial responsibility, either agency may submit a complaint to either the Secretary of Public Instruction or the Secretary of the California Health and Human Services Agency. If the dispute cannot be resolved informally, the parties will then proceed to a hearing before the OAH. (Gov. Code, § 7585.) Further, the school district and community mental health agency are to use the dispute resolution procedures in Government Code section 7585, if a dispute regarding the responsibility, including financial responsibility, of providing services ordered by OAH after a hearing or agreed upon by the parties in mediation, pursuant to Education Code sections 56503 and 56505. (Cal. Code Regs., tit. 2, § 60600, subd. (a) and (b).) Neither the school district nor the community mental health agency may request a due process hearing pursuant to Education Code section 56501 against another public agency. (Gov. Code, § 7586, subd. (d).)

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

CDE seeks to be dismissed as a party as it asserts that it is not a public agency responsible for providing Student with special education services. In the complaint, Student alleges that CDE is an appropriate party because of its supervisory oversight of special education programs as the Statewide Educational Agency (SEA) under the 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 because of the District’s and OCHCA’s refusal to provide Student with mental health services, especially continued funding for her placement in a residential treatment center, 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. Student contends that because the District and OCHCA refuse to comply with their legal duty to provide Student with a FAPE due to the Governor’s veto, the ultimate responsibility falls upon CDE to provide Student

with a FAPE.

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 supervisory 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. Student's reliance on *Orange County Dept. of Educ. v. A.S.* (C.D.Cal. 2008) 567 F.Supp.2d 1165, 1169-1170, and other unpublished federal district court decisions, for the proposition the CDE can be a student's responsible educational agency is misplaced as in those cases the students did not have a parent or responsible adult to determine residency after the student left juvenile hall. In this case, Student has a responsible adult who resides within the District boundaries, and the District has provided Student with special education services. Accordingly, CDE is not a necessary or proper party to the complaint, and its motion to dismiss as a party is granted.

ORDER

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

Dated: January 11, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings