

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

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

OAH CASE NO. 2010120211

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On December 6, 2010, Student filed a Due Process Hearing Request (complaint), naming the Irvine Unified School District (District), Orange County Health Care Agency (OCHCA), and the California Department of Education (CDE) as respondents. On December 21, 2010, CDE filed a Motion to Dismiss, contending it is not a responsible educational agency. On December 27, 2010, Student filed an opposition. On December 30, 2010, CDE filed its reply. District and OCHCA filed no response.

APPLICABLE LAW AND DISCUSSION

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.)

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 District* (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].)

Here, Student alleges in her complaint that CDE is an appropriate party because of its oversight of special education programs as the Statewide Educational Agency (SEA), and, as such, is ultimately responsible for the provision of FAPE within the state. Student further contends that 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, seq., CDE is an appropriate party due to OCHCA’s refusal to provide students with mental health services.

However, Student’s complaint raises no specific claims against CDE that it denied Student a FAPE. Specifically, it alleges no facts showing that CDE was a public agency involved in the provision of special education services for Student, or in any way involved with any educational decisions specifically related to Student. In addition, Student’s complaint seeks no remedies from CDE, other than for CDE to exercise its supervisory authority to ensure Student receives a FAPE. Accordingly, CDE is not a proper party to the complaint, and its motion to be dismissed as a party is granted.

IT IS SO ORDERED.

Dated: December 30, 2010

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings