

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT and EDUCATIONAL RIGHTS  
HOLDER ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL  
DISTRICT, LIVE OAK SCHOOL  
DISTRICT, AND CYPRESS CHARTER  
SCHOOL.

OAH CASE NO. 2010120551

ORDER DENYING STUDENT'S  
MOTION FOR EXPEDITED  
DETERMINATION OF RESIDENCY

BACKGROUND INFORMATION

Parent and Educational Rights Holder on behalf of Student (herein collectively referred to as Student) filed a request for due process (complaint) on December 15, 2010, against the Fairfield Suisun Unified School District (FSUSD), Live Oak School District (Live Oak), and the Cypress Charter School. On January 13, 2011, the Office of Administrative Hearings (OAH) granted Student's motion to amend her complaint. On February 11, 2011, Student filed a motion for an expedited determination of residency. None of three named respondents has filed an opposition or otherwise replied to Student's motion.

Hearing in this matter is scheduled for March 9, 2011. In her motion, Student states that a determination of her proper residency for purposes of her due process complaint is necessary before the start of the hearing. Student's motion asserts that counsel for respondents has indicated to Student's attorney that the respondents will raise as one of their affirmative defense at hearing that the Pajaro School District is responsible for providing a free appropriate public education to Student since Student's mother lives in that District. Other than a page from an individualized education program (IEP) from 2010, and a copy of a letter from Student's mother addressed to "whom it may concern," Student has presented no evidence in support of her motion. Student does not state for which time period of her complaint residency is potentially at issue.

At present, the facts of this case are only those alleged in Student's complaint and motion. Student states that she attended school at the Cypress Charter School in the Live Oak School District for the 2008-2009 school year. She indicates that she then attended school at Armijo High School in the FSUSD. Student's complaint and her instant motion state that Student's mother informally ceded Student's educational rights to two people who reside within the boundaries of FSUSD. Student indicates that she attended school under an

IEP in FSUSD without any challenge to her residency there. Student contends that her residency should be based upon where her informal educational rights holder lives based upon Education Code, section 48204, subdivision (a)(4). That section provides that a child's residency may be based upon where a caregiver lives if the caregiver has executed an affidavit pursuant to Part 1.5 (commencing with section 6550) of Division 11 of the Family Code. Student acknowledges that no one executed such an affidavit in her case but submits that her mother's letter ceding her educational rights informally is an adequate substitute.

#### DISCUSSION

Although Student's motion asserts that respondents' counsel has raised the issue of residency in discussion, none of the respondents has moved to dismiss this case based on Student's lack of residency in the respective district. There is thus no issue in controversy with regard to Student's residency as it is presently speculation whether any of the named respondents will raise this as an issue at hearing. 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].) Student's motion is therefore not ripe for adjudication and, on that basis, is denied without prejudice.

#### ORDER

Student's expedited motion for a determination of residency is denied without prejudice.

Dated: February 22, 2011

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings