

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012070619

ORDER DENYING MOTION TO
DISMISS

On July 20, 2012, Deborah L. Pepaj, attorney for Student, filed a request for a due process hearing (complaint) naming the Orange Unified School District (District). On July 30, 2012, Adam J. Newman attorney for the District filed a motion to dismiss Student’s complaint on the basis that his issue is not ripe for adjudication.

APPLICABLE LAW

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 is limited to these matters. (*Wyner v. ManhattanBeach 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

Student's complaint, when viewed in its totality, raises the following issue: Does Student require the provision of a one-on-one aide in order to receive a FAPE? The District contends this claim is not ripe because the District offered, and Parent agreed, to the provision of additional class support as a diagnostic assessment through December 15, 2012, and Student has not suffered any harm.

The District's assertion is not correct. There is a current dispute as to whether Student requires a one-on-one aide in order to receive a FAPE. Student's complaint alleges that he requested the provision of a one-on-one aide at the May 2012 individual educational program (IEP) team meeting and that the District denied his request in writing on July 5, 2012. In its motion to dismiss, the District indicates that it stands by its May 2012 IEP offer as providing a FAPE in the least restrictive environment. This May 2012 IEP did not call for a one-on-one aide but rather the temporary provision of "additional class support" as a diagnostic assessment for a three month period.

The District incorrectly maintains that because Student agreed to the provision of additional class support through December 2012, he has suffered no harm and there will be no potential remedy until December when the additional support "may possibly terminate." The District's assertion overlooks the fact that "additional class support" is significantly different in type of related service from "a one-to-one aide." Additional class support may be in the form of generic support to all students, whereas a specific one-to-one aide is a service designated specifically for Student. Student can accept the related service of additional class support and at the same time seek a determination of whether he requires a one-to-one aide, a related service that the District denied in writing on July 5, 2012. Student is entitled to a full evidentiary hearing on what constitutes a FAPE. Accordingly, the motion to dismiss is denied.

ORDER

1. The District's motion to dismiss is denied.
2. All mediation, prehearing conference and hearing dates are confirmed.

Dated: August 1, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings