

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TEMECULA VALLEY UNIFIED  
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013070501

ORDER DENYING MOTION TO  
DISMISS

On July 10, 2013, Peter A. Sansom, attorney for the Temecula Valley Unified School District (District) filed a request for a due process hearing (complaint) naming Student.

On July 12, 2012, Seth A. Schwartz, attorney for Parents on behalf of Student, filed a motion to dismiss District's complaint (motion) on the grounds that District's issues are not ripe for adjudication, and because Student would soon be relocating outside the geographical boundaries of District.

On July 15, 2013, the Office of Administrative Hearings received District's opposition to Student's motion. On July 16, 2013, prior to issuing this order, OAH received Student's response to District's opposition.

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].

There is no right to file for a special education due process hearing absent an existing dispute between the parties. (*Guardians v. Los Angeles Unified School District et al.*, OAH Case No. 2010110312.) Further 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.” (See *Id.*, citing *Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662.)

California law sets forth specific requirements for assessment of pupils for suspected disabilities. Education Code section 56029 provides that a “referral for assessment” includes a written request for assessment made by a parent or guardian of the child. California regulations make it clear that: “[a]ll referrals for special education and related services shall initiate the assessment process and shall be documented.” (Cal. Code Regs., tit. 5, § 3021, subd. (a).) Once a district receives a referral for assessment the district must develop a proposed assessment plan within 15 calendar days, not counting days such as school vacations, unless the parent agrees to an extension. (Ed. Code, § 56043, subd. (a).) The parent or guardian then has “at least” 15 calendar days from receipt of the assessment plan to decide. (Ed. Code, § 56043, subd. (b).)

## DISCUSSION

District’s complaint raises two issues: 1) whether District has the right to reevaluate Student pursuant to its assessment plans dated June 10, 2013; and 2) whether District is obligated to continue to provide special education and related services to Student without parental consent to the reevaluation of Student? According to District’s complaint, Student’s first individualized education program (IEP) team meeting was held on January 30, 2012. At the meeting, District determined that Student was not eligible for special education and related services based on Student’s initial evaluation completed in November 2011. District contends that at the January 2012 IEP team meeting, it offered to conduct additional evaluations of Student in order to revisit the eligibility issue due to new information presented to the IEP team meeting about Student. However, the additional evaluations were not completed because Parents dis-enrolled Student from District and revoked consent for the evaluations shortly after the January 2012 IEP team meeting.

According to the compliant, at some undetermined time, Parents enrolled Student at Sycamore Academy, a charter school authorized by Lake Elsinore Unified School District. On February 6, 2013, Sycamore Academy found Student eligible for special education and related services. An IEP was developed for Student by Sycamore Academy. Then, Parents reenrolled Student in District on February 11, 2013 and District has been implementing the February 6, 2013 IEP developed by Sycamore Academy. District contends that it is not aware of any assessment of Student conducted by Sycamore Academy prior to it finding Student eligible, and is unsure whether Sycamore actually provided Student with special education and related services given the fact that Student dis-enrolled from Sycamore Academy and reenrolled in District on February 6, 2013 IEP, about five days after the IEP was developed. Thus, District argues that the proposed reevaluation of Student, pursuant to its June 10, 2013 assessment plans, is both necessary and justified.

As noted above, Student's motion to dismiss District's compliant was brought on two grounds. The first ground is that of ripeness. Student contends that both of District's issues are not ripe for adjudication because, District presented Parents with the assessment plans on June 10, 2013, that is, after District's summer break. Thus, Student argues that the 15-day response period set under Education Code section 56043, subdivision (b),<sup>1</sup> is tolled, and that Parents do not have to consent, or otherwise be required to respond to the assessment plan until 15 days after the beginning of the new school year. Student's contention is not correct, as section 56043, subdivision (b) references "**calendar days**" rather than school days. When the timeline in section 56043, subdivision (b), is compared to the timeline for completing the assessment and holding an IEP team meeting under section 56043, subdivision (c), it is clear that **the legislature intended to differentiate between calendar days and school days.** (See sections 56043, subdivision (c), and 56344, subdivision (a).) Therefore, time is not tolled due to summer break under section 56043, subdivision (b), and as such, Student's argument is not persuasive in this regard.

Secondly, Student contends that District's compliant should be dismissed because Student will soon no longer be a resident of District, once Parents relocated out of District boundaries. While Student may be correct that District may no longer be obligated to offer Student a FAPE once Student ceases to be a resident of District, Student is currently a resident of District, and while being so, District continues to be responsible for providing FAPE to Student. Therefore, without belaboring the issue, Student's contention fails to resolve the question of whether District has a current and continuing obligation to Student regarding FAPE. Thus, at present a dispute exists as to District continuing obligations to provide FAPE to Student.

Accordingly, Student's motion must be denied.<sup>2</sup>

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<sup>1</sup> All statutory references are to the Education Code, unless as otherwise noted.

<sup>2</sup> If the parties intend to relieve District of its prospective FAPE obligations to Student, both parties may consider entering into a stipulation to that effect. Such may be adequate to resolve the pending disputes identified in District's complaint regarding its prospective FAPE obligations. Student may also affirmatively dis-enroll Student from District in order to relieve District of its prospective FAPE obligations to Student.

ORDER

Student's Motion to Dismiss is denied.

IT IS SO ORDERED.

Dated: July 16, 2013

/s/

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ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings