

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

WESTSIDE UNION ELEMENTARY  
SCHOOL DISTRICT.

OAH CASE NO. 2009030989

ORDER GRANTING MOTION TO  
DISMISS

On March 18, 2009, the Office of Administrative Hearings (OAH) received a due process hearing request (complaint) on behalf of Parents and Student, naming Westside Union School District (District) as the responding party.

On March 24, 2009, OAH received on behalf of the District a motion to dismiss this case.

On April 1, 2009, OAH received Student's opposition to the District's motion to dismiss. Also on April 1, OAH received the District's reply to Student's opposition. On that same date, OAH received Student's response to the District's reply.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Improvement 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), (C); see also Ed. Code, § 56000.) Parents have the right to file a special education due process complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) 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 "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].)

The process for assessment begins with a written referral for assessment by the parent, teacher, school personnel, or other appropriate agency or person. (Ed. Code §§ 56302, 56321, subd. (a); Cal. Code Regs., tit. 5, § 3021.) Within 15 calendar days of referral, not counting school vacations and days between school sessions, the parent or guardian must be given a written assessment plan which explains, in language easily understood by the general public, the types of assessments to be conducted. (Ed. Code, §§ 56043, subd. (a), 56321, subd. (b).) The parent or guardian then has at least 15 days to consent in writing to the proposed assessment. (Ed. Code, §§ 56043, subd. (b), 56321, subd. (c).) The local educational agency has 60 days from the date it receives the parent’s written consent for assessment, not counting days between school sessions or school vacations in excess of five days, to complete the assessments and develop an initial individualized education program (IEP), unless the parent agrees in writing to an extension. (Ed. Code, §§ 56043, subds. (c), (f), 56302.1, 56344, subd. (a).)

## BRIEF BACKGROUND FACTS

Student’s complaint alleges that, beginning with the IEP of March 9, 2009, the District failed to determine Student’s eligibility for special education and failed to offer Student a free appropriate public education (FAPE). Student has not yet been determined eligible for special education, and the complaint does not specify what his eligibility category should be.

The documents filed in this matter, including the sworn declaration of the District’s special education director, establish that, on March 2, 2009, Parents signed an assessment plan for the District to conduct a special education assessment of Student. On March 9, 2009, Student’s IEP team convened to review the assessment results. At the IEP meeting, Parents reported that the local regional center was in the process of assessing Student. The District members of the IEP team stated that it would be helpful to see the regional center’s assessment data prior to making a final determination regarding Student’s special education eligibility and program. The IEP team meeting was continued to a later date to allow time for the team’s receipt of the regional center data.

The sworn declaration of the District’s special education director further established that school was not in session at the District from March 24 until April 6, 2009, due to a spring break.

## DISCUSSION

The deadline for the IEP team to complete its review of the assessments and determine whether Student is eligible for special education is 60 days from March 2, 2009,

except that the 60-day timeline stopped on March 23 and recommenced on April 6, 2009. Therefore, the deadline for completing the IEP team's review and determination is on or about May 14, 2009.

Because the District has not yet determined whether Student is eligible for special education, and is not required to make that determination for over one month from today, there is no dispute ripe for resolution within OAH's jurisdiction pursuant to California Education Code section 56501, subdivision (a). Whether the District and Parents may have a disagreement in the future regarding Student's eligibility for special education is a contingent, future event which may or may not occur, but in any event is not currently ripe for resolution.

#### ORDER

1. The motion to dismiss is granted.
2. All dates in this matter are vacated.

Dated: April 10, 2009

/s/

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SUZANNE B. BROWN  
Administrative Law Judge  
Office of Administrative Hearings