

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION, LOS ANGELES UNIFIED
SCHOOL DISTRICT, CALIFORNIA
DEPARTMENT OF EDUCATION,
CALIFORNIA HEALTH AND HUMAN
SERVICES AGENCY, CALIFORNIA
DEPARTMENT OF MENTAL HEALTH,
AND LOS ANGELES COUNTY
DEPARTMENT OF MENTAL HEALTH

OAH CASE NO. 2010110301

ORDER GRANTING LOS ANGELES
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

On November 8, 2010, Student filed a Due Process Hearing Request (complaint) against the Los Angeles County Office of Education (LACOE), the Los Angeles Unified School District (LAUSD), California Department of Education (CDE), California Health and Human Services Agency (CHHS), California Department of Mental Health (CDMH), and Los Angeles County Department of Mental Health (LACDMH). On December 1, 2010, LAUSD filed a Motion to Dismiss, alleging that it is not a responsible local educational agency and any contention it might become the LEA is speculation not subject to adjudication.¹ On December 6, 2010, Student filed an opposition.

APPLICABLE LAW

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

¹ LAUSD also seeks dismissal of the complaint’s Issue Two, which alleges violations of federal and state, civil and constitutional, rights. OAH dismissed Issue Two by Order of November 30, 2010. Only Issue One remains.

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 (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 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

The complaint generally seeks an OAH determination as to what agency is responsible for implementing the recommendations made in Student’s October 2010 AB3632 assessment report. Student alleges that LACDMH has refused to provide students with mental health services 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, et seq.

Student makes no claim that LAUSD is the LEA responsible for providing Student with a FAPE. Student makes no allegations that LAUSD participated in the IEP or denied Student placement or services. The complaint contains no assertions that LAUSD is a public agency involved in the provision of special education services or decisions regarding Student. The complaint merely alleges that LAUSD may become the responsible LEA when the Student is released from juvenile hall and placed in a residential treatment center (RTC). Student readily admits this in opposition, but argues LAUSD’s motion to dismiss must be denied since it is likely LAUSD will be the LEA upon Student’s release and RTC placement.²

² LAUSD contends that the complaint errs in asserting Student formerly attended a LAUSD school, providing a declaration in factual support. Student counters that there was a pleading error and that the actual school was within LAUSD. A motion to dismiss is not the proper venue for resolving disputed facts. Student’s former school of attendance is not considered, nor relevant, in ruling upon the motion to dismiss.

In California, a county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) The complaint alleges that Student receives education from LACOE as a resident of juvenile hall. Therefore, as pled, the LEA presently responsible for providing Student with a FAPE is LACOE.

LAUSD's status as the responsible LEA is contingent upon the occurrence of future events. Due process proceedings address existing disputes between the parties. Accordingly, LAUSD is not a necessary or proper party to the complaint.

ORDER

LAUSD'S Motion to Dismiss itself as a party is granted. The matter will proceed against the other remaining parties as presently scheduled.

Dated: December 07, 2010

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings