

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SADDLEBACK VALLEY UNIFIED
SCHOOL DISTRICT, ORANGE COUNTY
HEALTH CARE AGENCY AND
CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH CASE NO. 2010110863

ORDER DENYING SADDLEBACK
VALLEY UNIFIED SCHOOL
DISTRICT'S MOTION TO DISMISS

On December 14, 2010, Epiphany Owen, attorney for the Saddleback Valley Unified School District (District), filed a Motion to Dismiss this matter on the grounds that the claims raised in the complaint are not ripe for adjudication. The Office of Administrative Hearings (OAH) did not receive a response from the Student and Orange County Health Care Agency (Health Care).¹

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, 56028.5.)

A student who has been determined to be an individual with exceptional needs or is suspected of needing mental health services may, after the student’s parent has consented, be referred to a community mental health service in accordance with Government Code section 7576 when the student meets criteria for referral specified in California Code of Regulations, title 2, section 60040. As part of the referral, the school district shall, in accordance with specific requirements, prepare a referral package and provide it to the community mental

¹ The California Department of Education has been dismissed as a party to this action under a separate order dated December 22, 2010.

health service agency. (Ed. Code, § 56331, subd. (a); Cal. Code Regs., tit. 14, § 60040, subd. (a).)

If required by a student's individualized education program (IEP), a community mental health service agency designated by the California Department of Mental Health (Mental Health), is responsible for the provision of mental health services after the completion of mental health assessment. (Govt. Code, § 7576, subd. (a) and (b).) Mental Health has designated by regulation that the community mental health service agency of student's county of origin is responsible for conducting the mental health assessment and provision of mental health services. (Cal. Code Regs., tit. 2, § 60200, subd. (c).)

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), (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 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

Student's current educational placement is a residential placement in Texas, which is funded by District and Health Care, pursuant to the September 9, 2010 individualized education program (IEP).² Student's complaint asserts that on November 17, 2010, Health

² The complaint references several IEPs and addendum IEPs with different dates as the source of Student's current placement. While District's motion points out the

Care provided Student with a written notice that it would cease funding Student's placement on December 31, 2010, 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. The complaint further contends that District has not agreed to assume funding Health Care's portion of the placement on January 1, 2011. Accordingly, Student complaint challenges the prospective change in placement effective January 1, 2011.

District contends that because Student is currently in the agreed-upon placement pursuant to his IEP, there is no dispute or live controversy appropriate for adjudication. However, a student has the right to file a due process hearing request on any matter involving a proposal to change the educational placement of the child, including the question of financial responsibility. Here, Health Care's November 17, 2010 written notice to Student effectively informed Student of a proposed change in placement effective January 1, 2011, because Health Care's decision to cease funding the residential portion of Student's placement could foreseeably result in Student losing the placement. Furthermore, the November 17, 2010 written notice raised the issue of financial responsibility for Student's residential placement effective January 1, 2011. Student's complaint raises claims that form the basis of a live controversy and Student is not required to wait until Health Care follows through with its written notice to terminate funding. Accordingly, District's motion to dismiss is denied.

ORDER

District's motion to dismiss is denied. The matter shall proceed as currently scheduled.

Dated: December 22, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings

inconsistency in the dates, no party has disputed that Student is placed in Texas pursuant to an IEP.