

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CAPISTRANO UNIFIED SCHOOL  
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012020820

ORDER DENYING MOTION TO  
DISMISS

On February 23, 2012, the Capistrano Unified School District (District) filed with the Office of Administrative Hearings (OAH) an expedited due process hearing request (expedited complaint) against Student. The District seeks an order that it may change Student's placement because he is substantially likely to injure himself or others without a change in placement. On February 23, 2012, Student filed a motion to dismiss, alleging that the District's expedited complaint is not ripe because Parents have not been afforded adequate time to consider the District's February 13, 2012 individualized education program (IEP) offer. The District did not submit a response.

APPLICABLE LAW

A school district may request a due process hearing to authorize a change of placement if the District "believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others..." (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) The administrative law judge deciding such a case may:

order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the [administrative law judge] determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(20 U.S.C. 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii) (2006).)

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

Here, the motion to dismiss seeks a ruling on the merits that the District’s request to change Student’s placement is premature because the District has not considered a full continuum of placement options and has not given Parents adequate time to consider its IEP offer. Accordingly, the motion is denied as triable issues of fact exist for hearing. All dates currently set in this matter are confirmed.

#### ORDER

Student’s Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: March 5, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings