

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAS VIRGENES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012070506

ORDER DENYING MOTION TO
DISMISS

On July 18, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) naming Las Virgenes Unified School District (District) as respondent.

On August 2, 2012, the District filed a Motion for Dismissal of Student's complaint (motion) on the grounds the complaint was not ripe for hearing.

Student has not filed an opposition or response to the motion.

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 SchoolDist.* (9th Cir. 2002) 306 F.3d 646, 662.)

DISCUSSION

The District's motion indicates that the District held Student's annual IEP meeting on May 30, 2012. At that time Parents requested a shortened (two hour) kindergarten school day based upon their concerns regarding Student's limited stamina and readiness for a full day program. The District's motion further indicates that the IEP team discussed Parents' request but determined that their concerns could be addressed in a standard five hour school day. In its motion, the District refers to the five hour school day as its offer and decision of the IEP team.

The District further alleges that Parents were informed that if they obtained a written recommendation from Student's physician requesting the shortened school day, the IEP team would reconvene to consider the doctor's recommendation, along with all relevant factors. The IEP team, however, could not reconvene until the beginning of the 2012-13 school year, which commences August 22, 2012. The District argues that since it is willing to reconvene an IEP meeting sometime between August 22, 2012, and September 22, 2012, to consider Student's medical information, Student's complaint is not ripe for adjudication.

The District's arguments are not persuasive. First, according to the alleged facts presented in its motion, the IEP team made a decision and the District offered Student placement in the five hour school day kindergarten in its May 30, 2012 IEP. As such, the five hour day represents the District's current offer of FAPE, to which Student disagreed and filed her complaint. Additionally, while the doctor's written recommendation represents new documentation of Student's unique needs, it is yet to be seen if it constitutes new information for the IEP team, as Parent's requested the shorter school day during the May IEP. Further, as correctly indicated by the District, the doctor's note will be considered by the IEP team, along with all other relevant information, hence there is no guarantee that the IEP team will change its existing offer of placement.

While the District has acted in a cooperative and accommodating manner with Parents to reconvene the IEP meeting, it does not automatically follow that Student does not have a viable claim for adjudication. Further, dismissal of Student's claim at this time, places Student at an extreme time frame disadvantage if the IEP team does not amend its offer of placement. On the other hand, Student can easily withdraw her complaint if the IEP team meets and changes placement or the matter is resolved in mediation, all of which can occur prior to the scheduled hearing date.

ORDER

The District's Motion to Dismiss is denied.

Dated: August 09, 2012

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings