

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

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. 2010110500

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

On November 12, 2010, Student filed a Due Process Hearing Request (complaint) against 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, on the grounds that Student did not allege that LAUSD denied Student a free appropriate public education (FAPE).<sup>1</sup> On December 6, 2010, Student filed an opposition.

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,” 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

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<sup>1</sup> 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 December 6, 2010. Only Issue One remains.

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

The facts in this matter are not in dispute between Student and LAUSD. The complaint alleges Student is a 9<sup>th</sup> grader at Magnolia Science Academy Charter School #3, a LAUSD affiliated charter school. In response to Student’s mother’s request, LAUSD provided in-school counseling. At the December 2009 IEP, which was completed on in March 2010, LAUSD suggested that Student request services under AB3632 from the LACDMH. Parent agreed. LAUSD made the AB3632 referral and LACDMH assessed Student, recommending that LACDMH provide therapy services to Student and family. However, LACDMH cancelled the October 14, 2010 IEP, which was scheduled to review the AB3532 assessment and recommendations. The complaint asserts that LACDMH said it was no longer attending IEPs regarding AB3632 services because of the Governor’s October 8, 2010 veto of state funding to county mental health agencies for mental health services to special education students under AB3632.

The thrust of Student’s complaint against LAUSD is that, at an informal October 14, 2010 meeting, the case carrier and the principal informed parent that they did not know whether the school could provide the mental health services the Student needed and, further, did not know when they would know the answer. However, the complaint does not allege that LAUSD failed to provide Student with any service or placement under the IDEA or that Student has suffered any educational harm as a result of any District acts or omissions.

Student’s complaint and opposition contends that an issue exists for hearing because of the possibility that LACDMH might not provide mental health services to Student due to the uncertainty of State funding for county provided mental health services to special education students. In the complaint, Student does not allege that LACDMH rejected LAUSD’s assessment request. (Cal. Code Regs., tit. 2, § 60045, subd. (a)(1) and (a)(2).) The complaint does not allege that LACDMH failed to timely assess Student, or that LAUSD failed to timely convene an IEP meeting to discuss LACDMH’s assessment findings within 50 days from the LACDMH’s receipt of the written consent to conduct the mental health assessment. (Cal. Code Regs., tit. 2, § 60045, subd. (d).) In fact, Student states that LACDMH conducted the assessment and that LAUSD attempted to convene the IEP meeting

on October 14, 2010, only to have it unilaterally cancelled by LACDMH. Quite simply, Student has not alleged that LAUSD violated special education law and, accordingly, LAUSD is not a proper party.

ORDER

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

Dated: December 08, 2010

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings