BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018030412 ORDER DENYING DISTRICT'S MOTION TO DISMISS AND REQUEST FOR SANCTIONS

On March 9, 2018, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Los Angeles Unified School District. On March 19, 2018, District filed a Motion to Dismiss Student's complaint on the grounds that the issue presented was not ripe and OAH does not have jurisdiction. District's motion also requested monetary sanctions be imposed on Student and Student's attorney for filing the complaint in bad faith to obstruct and delay the individualized education program process. On March 21, 2018, Student filed an opposition to District's motion. On March 21, 2018, District filed a reply to Student's opposition.

APPLICABLE LAW

Motion to Dismiss

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 parent or public agency may file a due process 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)(A); 34 C.F.R. § 300.507(a)(1); Ed. Code, § 56501, subd. (a) [a parent or public agency may initiate a due process hearing when there is a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child or the provision of a free appropriate public education to a child; a parent refuses to consent to an assessment of a child; or there is a disagreement between a parent and the public 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 School District* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

A due process claim is not ripe for adjudication if it rests upon a contingent future event that may not occur as anticipated, or may not occur at all. (See *Scott v. Pasadena Unified School District* (9th Cir. 2002) 306 F.3d. 646, 662.) The 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.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.), special education law does not provide for a summary judgment procedure.

Request for Sanctions

An administrative law judge may order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of a bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. (Gov. Code, § 11255.30, subd. (a); Cal. Code Regs., tit. 1, § 1040, subd. (a).) "Actions or tactics" include, but are not limited to the making or opposing of motions or the failure to comply with a lawful order of the ALJ. (Cal. Code Regs., tit. 1, § 1040, subd. (a)(1).) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Cal. Code Regs., tit. 1, § 1040, subd. (a)(2).)

DISCUSSION

Motion to Dismiss

Student's complaint alleges District denied Student a free appropriate public education when it predetermined Student's primary eligibility was autism/autistic-like behaviors over the course of four individualized education program team meetings occurring on January 30, 2018, February 5, 2018, February 8, 2018, and February 28, 2018. The complaint indicates Parent declined to participate in a fifth individualized education program team meeting scheduled on March 8, 2018, and instead initiated the complaint.

District's motion argues Student's complaint is not ripe for adjudication because Parent refused to participate in the March 8, 2018 individualized education program team meeting. District argues Student's individualized education program was not yet complete and that District intended to make an offer of eligibility, placement, and services at the March 8, 2018 meeting. Thus, District argues the complaint was premature because there was no offer for Parent to accept or reject.

The IDEA does not require parents or public agencies to wait until the completion of an individualized education program to file a due process complaint. Instead, parties may

file a complaint with respect to any matter relating to the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education to such child. Student's complaint alleges District denied Student a free appropriate public education as a result of discussions that occurred during several individualized education program team meetings regarding Student's eligibility. OAH has jurisdiction to adjudicate matters related to predetermination and eligibility.

District's argument that OAH does not have jurisdiction over Student's complaint due to ripeness is not persuasive. District argues the individualized education program process was not completed, and therefore, there is no dispute for OAH to adjudicate. However, the resolution sought in the complaint is not contingent on completion of the individualized education program process or the occurrence of another future event.

Finally, District seeks a ruling on the merits of this case although the facts are in dispute. Special education law does not allow for a summary judgement procedure. Thus, OAH cannot rule on the merits of this case without an evidentiary hearing.

Accordingly, District's Motion to Dismiss is denied.

Request for Sanctions

District argues that Parent's decision to unilaterally halt the individualized education program process in favor of filing a due process complaint was the result of bad faith, frivolous, harassing, and delaying tactics. District argues it is therefore entitled to monetary sanctions for the cost of its Motion to Dismiss and defense of Student's complaint. There is no evidence to support a finding that Student's complaint was totally and completely without merit or for the sole purpose of harassing District.

Accordingly, District's request for sanctions is denied.

ORDER

1. District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

2. District's Request for Sanctions is denied.

DATE: March 23, 2018

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Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings