

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROWLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015010348

ORDER GRANTING MOTION TO
DISMISS STUDENT’S ISSUE 1

On January 12, 2015 Student filed a due process hearing request¹ (complaint) naming Rowland Unified School District.

On January 15, 2015, District filed a motion to dismiss the first claim of Student’s complaint. On January 16, 2015, 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 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.)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

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

DISCUSSION

Student's complaint alleges claims that (1) that Parents were deprived of an opportunity to participate in an upcoming IEP because the District failed to provide Parents with educational records requested, and (2) District failed to implement Student's individualized education program and denied Student a FAPE because: (a) Student's auto mechanics teacher bullied Student and repeatedly sent Student out of the room so that Student missed educational time, (b) no note-taker was provided, (c) no Bookshare application was provided and (d) neither speech and language nor behavior intervention services were provided.

Student's Issue 1 alleges that Parents were unable to prepare for future IEP's due to District's failure to respond to requests for education records made on October 28 and December 4, 2014. However, the complaint does not allege that any IEP team meetings took place between the records requests and the filing of the complaint. Therefore, Issue 1 of the complaint fails to allege any manner in which Student was denied a FAPE on the ground that Parents were deprived of an opportunity to participate in developing Student's IEP, and fails to allege a claim within OAH jurisdiction. Further, whether or not Parents are given a meaningful opportunity to participate in the development of their child's IEP, if and when IEP team meetings occur, is contingent upon future events, and Student's Issue 1 is not ripe for adjudication. Accordingly, District's motion to dismiss Student's Issue 1 is granted.

ORDER

1. District's motion to dismiss Issue 1 is granted.
2. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).²
3. The amended complaint shall comply with the requirements of title 20 United States Code section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

² The filing of an amended complaint will restart the applicable timelines for a due process hearing.

4. If Student fails to file a timely amended complaint, the hearing shall proceed only on Issue 2 of Student's complaint.

5. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: January 21, 2015

/s/

ALEXA J. HOHENSEE

Administrative Law Judge

Office of Administrative Hearings