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**[use if ripeness is an issue but D doesn’t raise:]**

Issues of justiciability can determine whether an adjudicative body has jurisdiction to hear a claim (*see Adarand Constructors, Inc. v. Mineta*, 515 U.S. 200 [2001]), and a tribunal may be “obliged to examine [such an issue] *sua sponte* . . . although the parties make no contention concerning it” (*id*. [quoting, in part, *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 95 (1998)]).[[1]](#footnote-1) Here, the justiciability issue raised by the timing of the DPC is ripeness.

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Petitioner is the Parent of the Student. Parent initially filed a Due Process Complaint on July 15, 2024 (DP”) against the New York City Department of Education (Department or DOE) pursuant to the Individuals with Disabilities Education Act (IDEA) and Education Law § 3602-c, alleging that the DOE has failed to provide the student with a free appropriate public education (FAPE) for the 2024-2025 school year by failing to implement an educational program. In the DPC, Petitioner is seeking implementation of services as mandated in an educational program, and for the DOE to fund the services at rates charged by the providers of the services (*see* IHO Ex. I).

The undersigned Hearing Officer was appointed to preside over this case on July 24, 2024. On August 19, 2024, DOE Representative filed a motion to dismiss the DPC on the ground that the claims for the 2024-2025 school year are not ripe for adjudication as the 10-month school year has not started. On August 27, 2024, Parent Representative reserved the right to respond to the motion. On September 9, 2024, the parties appeared for a Pre-Hearing Conference. At that conference, DOE Representative indicated that they would file an amended motion to dismiss to add claims for subject matter jurisdiction by the following day, and Parent Representative was given one week to respond. DOE Representative filed their amended motion to dismiss that same date on September 9, 2024 (IHO Ex. II), and Parent Representative filed their response on September 17, 2024. (IHO Ex. III).

Subject Matter Jurisdiction

DOE argues that the DPC should be dismissed based off the regulatory amendment to 8 NYCRR § 200.5, which was promulgated on July 15, 2024, and which states, in relevant part:

“A parent or school district may file a due process complaint with respect to any matter relating to the identification, evaluation, or educational placement of a student with a disability, a student suspected of having a disability, or the provision of free appropriate public education to such student. This does not include disputes over whether a rate charged by a licensed provider is consistent with the program in a student's IESP or aligned with the current market rate for such services; any due process complaint filed on or after July 16, 2024 concerning such issues shall be subject to dismissal on jurisdictional grounds.”

The DPC was filed on July 15, 2024. The amendment clearly states that the regulation is to apply to matters filed on July 16, 2024, and thereafter. There is nothing within the plain reading of the regulation which states that the amendment is to be applied retroactively to cases filed before July 15, 2024 (*see also Application of a Student with a Disability*, Appeal No. 24-386 (Oct. 28, 2024), pp. 7-10 [subject matter jurisdiction dismissal motion denied where the complaint was filed before July 16, 2024, and “at least one court” had “issu[ed a] temporary restraining order suspending application of the regulatory amendment[,]” and “the regulation [thus] may not be deemed to apply”]. Finally, prior to the enactment of the regulatory amendment, Impartial Hearing Officers had the authority to hear complaints brought under 3602-c (*see* Educ. Law §§ 3602-c(2)(b)(l), 4404(1); *Bd. of Educ. v. Munoz*, 772 N.Y.S.2d 147, 149 [App. Div. 4th Dept. 2004]). As such, DOE’s motion to dismiss on the ground of subject matter jurisdiction is denied.

Ripeness

It is well settled that a claim that is not “ripe for judicial resolution" should be dismissed (*Church of St. Paul & St. Andrew v Barwick*, 67 N.Y.2d 510, 518 [1986]; *see Matter of Rosado-Ciriello v Board of Educ. of the Yonkers City Sch. Dist.*, 219 A.D.3d 839, 840 [2d Dept 2023]). A claim is not “ripe for controversy” where it is based on an injury which might never occur or is “contingent upon events which may not come to pass” (*id.* at 518-520; *see also Bolt Assocs. v Diamonds-In-The-Roth*, 119 A.D.2d 524, 525 [1st Dept 1985] [the Court held that a justiciable controversy exists where there is an actual controversy affecting the parties' rights]). Matters are to be resolved pursuant to the “principle that, at all times, the dispute before the court must be real and live, not feigned, academic, or conjectural" (*Lillbask v. State of Conn. Dep't of Educ.*, 397 F.3d 77, 84 [2d Cir. 2005]).[[2]](#footnote-2)

In the instant matter, it is undisputed that the parents’ claims for the 2024-2025 school year are based upon the DOE’s alleged failure to implement an educational program for the 10-month school year starting in September 2024. The DPC was filed on July 15, 2024, almost two months *prior* to the start of the school year, and before Student would have been entitled to the services outlined in the educational program, and before the DOE would have been responsible for the provision of services for that school year. The claim for the 2024-2025 school year, therefore, was “conjectural” (*Lillbask*, *supra*.) at the time the DPC was filed. This is premature and requires the claim to be refiled, regardless of the effect of the recent change in the regulations noted above. Accordingly, the Parent’s claims for the 2024-2025 school year are not ripe for adjudication and that portion of the DPC requesting the implementation and funding of services for the 2024-2025 school year must be dismissed, without prejudice.

1. *Adarand* focused its analysis on the sibling justiciability doctrine of standing; however, I find it was intended to be equally appliable to all justiciability questions, including ripeness. This is supported in no small part by the Supreme Court’s reference in *Adarand* to the *Steel Co.* case, which found that the Court would “notice the defect” *whenever* a “lower court was without jurisdiction” (regardless of the aspect of jurisdiction), and even if the defect was not raised by the parties (*Adarand*, *supra*. [internal citation and quotation omitted]). [↑](#footnote-ref-1)
2. *Citing Russman v. Board of Educ.*, 260 F.3d 114, 118 (2d Cir. 2001). I note that although *Lillbask* was focused on mootness, its holding is equally applicable here, because ripeness and mootness regard the justiciability issue of *when* a case or controversy may be heard and decided, with both doctrines serving to ensure that disputes are resolved only when they are actually in controversy, *i.e.*, from filing to resolution. [↑](#footnote-ref-2)