

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL
DISTRICT, POMONA UNIFIED SCHOOL
DISTRICT, and NORWALK-LA MIRADA
UNIFIED SCHOOL DISTRICT

OAH CASE NO. 2012060908

ORDER GRANTING DISTRICTS'
MOTION TO DISMISS

PROCEDURAL BACKGROUND

Student is eligible for special education and related services as a person with Autism. Student is over 18 years old. On May 22, 2012, Student's father (Father) was temporarily appointed his sole conservator.

Student filed an initial request for due process (complaint) on June 15, 2012. Student named as respondents the Glendale Unified School District (Glendale), the Pomona Unified School District (Pomona), the Norwalk-La Mirada Unified School District (Norwalk), and the Los Angeles County Office of Education (LACOE) (the respondents will be collectively referred to here as the Districts). The Office of Administrative Hearings (OAH) found Student's complaint insufficient as to LACOE, Glendale, and Pomona in separate orders issued on June 28 and June 29, 2012.

Student filed an amended complaint on July 11, 2012. Student's amended complaint alleged that he is a conserved adult eligible for special education. He contended that he had attended school in Glendale under an individualized education program (IEP) that placed him at a non-public school in Pasadena named Villa Esperanza. Student stated that Father had left the family home in Glendale, but had not established a new residence. Rather, Father had been staying with a succession of friends who live in different cities. Student contended that Glendale improperly dis-enrolled him on June 15, 2012, based upon its determination that Father, who is Student's conservator, was no longer a resident of Glendale. Student also stated that Father helped place Student in an adult group home in Pomona called Dare 2 Care on May 23, 2012. Student alleged that Pomona and Norwalk also have refused to enroll Student in their respective school districts, each alleging they are not responsible for Student because Father does not reside within either of their boundaries.

OAH found Student's amended complaint insufficient as to LACOE in an amended order issued on July 24, 2012. In subsequent orders, OAH denied motions to dismiss and/or notices of insufficiency brought by Norwalk and Pomona. Since Student did not file an amended complaint as to LACOE, the remaining respondents for hearing were Glendale, Pomona, and Norwalk.

On August 3, 2012, OAH granted Student's motion for stay put as to Glendale.

OAH convened a telephonic prehearing conference in this case on August 8, 2012. After discussion with the parties, the Administrative Law Judge (ALJ) determined that the issues for hearing were the following:

1. Did Glendale deny Student a free appropriate public education (FAPE) when it dis-enrolled him on or about June 15, 2012?
2. Was Glendale, Pomona, and/or Norwalk Student's school district of residency from approximately May 22, 2012, to the date of the hearing, and therefore responsible for providing Student with a FAPE?

Student's only proposed resolution was that one of the three named school districts be found responsible for Student's education and that OAH order that district to provide Student with a FAPE.

DISTRICTS' MOTION TO CONTINUE

The ALJ convened the due process hearing in this matter as scheduled on August 16, 2012. Pending was the Districts' joint motion to continue the hearing which OAH had received by facsimile after the close of business on August 15, 2012. The Districts based their motion on the fact that a hearing regarding the appointment of a permanent conservator for Student was scheduled for August 21, 2012. The Districts contended that if a different permanent conservator was appointed for Student, the issue of his residency would be resolved. Student, through Father, opposed the motion to continue because the issues for hearing did not hinge upon Student's future residency. The ALJ agreed with Student's position. The issues for hearing only concerned which of the three respondent districts was responsible for Student's education up to the day of the hearing. A student's residency could change at any time based upon a number of variables. Therefore, the fact that Student's residency might change in the future was not dispositive of the issues for this hearing. The ALJ therefore denied the Districts' motion for continuance.

DISTRICTS' MOTION TO DISMISS

After the ALJ denied the Districts' motion for continuance, Glendale and Norwalk offered to stipulate that they were jointly responsible for providing Student with a FAPE during the time covered by Student's complaint. They also stipulated to jointly providing Student with 80 hours of compensatory education to make up for his loss of approximately

one month of education before OAH issued its order granting Student's motion for stay put. Based upon this stipulation, the Districts moved to dismiss Student's complaint as moot. Student opposed the motion to dismiss.

The ALJ denied this initial motion to dismiss because the stipulation offered by Glendale and Norwalk did not resolve the two issues presented for hearing. It did not answer the issue of whether Glendale improperly dis-enrolled Student on June 15, 2012, and did not answer the question of which of the three remaining districts was presently responsible for providing Student with a FAPE.

The ALJ then granted the Districts' request for a short break. Upon their return, the Districts, through Glendale, proposed the following stipulations:

1. Glendale Unified School District was Student's school of residence as of June 15, 2012.
2. Glendale Unified School District continued to be Student's school of residence up to the date of the hearing.
3. Norwalk agreed to provide Student with 80 hours of compensatory education even though Student had never requested compensatory education as resolution to his issues for hearing.

The Districts, through Glendale, then moved to dismiss Student's complaint as moot because there was no longer an existing case or controversy based upon Glendale's stipulation, which answered Student's issues affirmatively as to Glendale and provided Student with the remedy he requested.

APPLICABLE LAW

Under the doctrine of mootness, a court may refuse to hear a case because it does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.) However, mootness is not a jurisdictional defect. (*Plymouth v. Superior Court* (1970) 8 Cal.App.3d 454, 460.) A case may be moot when the court cannot provide the parties with effectual relief. (*MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 201, 214.)

DISCUSSION

The issue which the ALJ then posed to the Districts was whether the allegations in Student's complaint were "capable of repetition yet evading review." Specifically, the ALJ expressed concern that the offered stipulations did not protect Student from Glendale taking the position the next day that it was no longer responsible for Student's education. Glendale then offered an additional stipulation:

4. Glendale agrees that it is responsible for providing Student with a FAPE unless another conservator is appointed for Student who or which does not reside within Glendale's boundaries, or until Father changes his residency from his present circumstances.

Based upon the totality of the offered stipulations, the Districts contended that the issue of Student's residency was resolved; the stipulations provided Student with the remedy he requested; and the stipulations provided Student with additional relief that addressed any potential loss of education to him.

With the addition of the fourth stipulation, Student, through Father, agreed to the stipulations. Further, Student stated that the stipulations offered him the relief he sought through the filing of a due process complaint. Student therefore agreed with the Districts' motion to dismiss.

The Districts' motion to dismiss here is distinguishable from the respondent's motion to dismiss in the recent case of *Student v. Shandon Unified School District* (April 5, 2012) Cal.Offc.Admin.Hrngs. Case No. 2012020281. There, in a pre-hearing motion, the respondent school district moved to dismiss the student's complaint based upon its admission in declarations attached to its motion that Student was a resident of the district. OAH denied the district's motion to dismiss because: 1) the school district did not provide evidence in support of its motion; 2) even if evidence had been provided, the motion would amount to a motion for summary judgment, which OAH does not have jurisdiction to entertain; 3) there were still triable issues of fact based on remedies requested by the student; and 4) there was no stipulation or settlement between the parties that resolved the issues for hearing.

In contrast, the Districts here move to dismiss at hearing based upon stipulations to which Student has agreed. The offered stipulations resolve each issue presented by Student and leave no triable issues of fact because the stipulations provide Student with the remedy he requested. The stipulations also provide Student an additional remedy that he never requested in his complaint or during the prehearing conference.

As the stipulations address all of Student's issues for hearing leaving no triable issues of fact, and because Student has joined in the stipulations and agrees with the Districts' motion to dismiss, the Districts' motion to dismiss is hereby granted.

ORDER

The Districts' unopposed motion to dismiss Student's amended due process complaint is granted.

Dated: August 17, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings