

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN DIEGUITO UNION HIGH SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016030004

ORDER DENYING STUDENT'S
MOTION TO DISMISS

BACKGROUND INFORMATION

The San Dieguito Union High School District filed a complaint naming Parents on behalf of Student, which the Office of Administrative Hearings deemed filed as of March 8, 2016. San Dieguito raised one issue in its complaint: whether it has a right to assess Student without his parents' consent pursuant to an assessment plan dated February 1, 2016.

On March 14, 2016, Student filed a motion to dismiss the complaint. Student presented three arguments as to why San Dieguito did not have a right to assess him. Student argued that the request to assess was untimely because his triennial assessment was not due until 2017. He argued that as a home-schooled student, San Dieguito did not have a right to assess him. He also argued that the request to assess was moot because OAH had already ordered San Dieguito to assess him in a recent decision in a prior case between the parties. He further argued that the request to assess was improper because San Dieguito had previously withdrawn a complaint it filed in response to Student's request for independent educational evaluations.

OAH denied Student's motion to dismiss in an order dated March 18, 2016, finding that Student's motion to dismiss was effectively a motion for summary judgment. OAH does not entertain motions for summary judgment.

On April 11, 2016, Student filed a second motion to dismiss the complaint. Student again contends that San Dieguito does not have a right to assess him because the request to assess is only an attempt to circumvent Student's request for independent evaluations. As an additional issue, Student contends his parents have consented to the assessments requested by San Dieguito. Student in essence contends that his parents' consent to the assessments has rendered the complaint moot because there is nothing left for OAH to order as a remedy.

San Dieguito filed an opposition to Student's motion to dismiss on April 13, 2016. San Dieguito opposes the motion on the grounds that it is a motion for summary judgment.

San Dieguito also contends that there remains a factual dispute as to whether Student's parents have given clear consent to the proposed assessments. Therefore, the issue for hearing is not moot.

APPLICABLE LAW AND DISCUSSION

With regard to Student's contention that the instant case should be dismissed based upon the fact that San Dieguito's request to assess is merely a way to circumvent the procedures for parents to obtain independent evaluations that argument was previously made by Student in his first motion to dismiss and is similarly rejected here.

In support of his motion to dismiss based on his parents having already agreed to San Dieguito's proposed assessments, Student has attached several written communications between his parents and San Dieguito staff. In a letter dated April 2, 2016, Student's parents agree to have Student assessed.

First, the letter constitutes evidence in support of Student's motion, which turns his motion to dismiss into a motion for summary judgment. As indicated to Student in the previous order denying his first motion to dismiss, OAH does not entertain motions for summary judgment.

More significant, however, is the fact that the wording of the letter indicates that Parents' consent to the assessments is not unequivocal. First, Parents state that they agree to "appropriate" assessment by San Dieguito. They do not define what they mean by that, creating a dispute as to whether they have, in fact, agreed to the assessments as proposed by San Dieguito.

Parents' ambiguous consent is further highlighted in the letter by conditions they appear to place on the assessment process. They request that San Dieguito provide accommodations to Student during the assessments due to his autism and speech delays. Parents request that the assessments include non-verbal testing to be administered by assessors trained to administer non-verbal tests. Parents also state that the assessments need to include certain testing instruments they specify. They further state the conditions under which Student must be tested, including the number of hours per day San Dieguito may assess Student.

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.) An exception to the mootness doctrine is made if a case presents a potentially recurring issue of public importance. (*DiGiorgio Fruit Corp. v. Dept. of Employment* (1961) 56 Cal.2d 54, 58.)

The scope of Parents' April 2, 2016 letter indicates that there are material facts disputing Parents' contention that they have consented to the assessments. (See *R.A. v. West Contra Costa Unified Sch. Dist.* (Aug. 17, 2015, Case No. 14-cv-0931-PJH) 2015 WL 4914795, *13-15 [school district not obligated to accommodate parent's unreasonable assessment demands].) San Dieguito's complaint is therefore not moot, because it appears that Parents have only given conditional consent to the assessments. Therefore, there still remains a controversy between the parties that is appropriately before OAH for resolution. San Dieguito's complaint is not moot.

ORDER

Student's motion to dismiss is denied.

DATE: April 14, 2016

DocuSigned by:

Darrell Lepkowsky

A228F8201132499

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings