

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

v.

DEHESA ELEMENTARY SCHOOL
DISTRICT AND COMMUNITY
MONTESSORI CHARTER SCHOOL,

OAH Case No. 2016030188

DEHESA ELEMENTARY SCHOOL
DISTRICT AND COMMUNITY
MONTESSORI CHARTER SCHOOL,

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2016050107

ORDER GRANTING IN PART AND
DENYING IN PART STUDENT'S
MOTION TO DISMISS

PROCEDURAL BACKGROUND

Student filed a request for due process hearing (complaint) on April 29, 2016, naming the Dehesa Elementary School District and the Community Montessori Charter School. His complaint raises three issues. Student first alleges that Districts unilaterally changed his placement. Student's second issue alleges that Districts' offer of placement in other than general education with sufficient supports denied him a free appropriate public education. Lastly, Student alleges that Districts have prevented Parents from meaningfully participating in Student's IEP process in several specified ways.

Districts filed a complaint on April 26, 2016, raising three issues. The first is whether its January 6, 2016 individualized education program offered Student a FAPE such that Districts may implement it without Parents' consent. Second, whether Districts are required to fund the independent educational evaluation requested by Parents in the area of speech and language and, if so, must Districts pay more than what is permitted under their present cost criterion. The third issue is whether Districts may assess Student the area of behavior without Parents' consent.

On May 16, 2016, the Office of Administrative Hearings granted Districts' motion to consolidate the two matters.

On May 12, 2016, Student filed a motion to dismiss issues two and three of Districts' complaint. Student contends that the issues are moot, and therefore must be dismissed. Student also contends that OAH has no jurisdiction over Districts' issue two as it calls for an advisory opinion.

Districts filed a response to Student's motion on May 17, 2016. Districts do not oppose the motion to dismiss issue three, as they acknowledge that Parents gave consent for Districts to assess Student after Districts filed their complaint. Districts oppose Student's motion to dismiss issue two of their complaint based on the fact that although Districts have agreed to fund an independent evaluation in speech and language, Parents have not provided the name of an independent provider to Districts who will meet Districts' cost criteria.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (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.)

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.)

With regard to Districts' issue three, the parties are in agreement that Parents did not consent to Districts' proposed behavior assessment within 15 days of receiving the assessment plan dated March 11, 2016. On April 26, 2016, Districts appropriately filed their

complaint seeking to assess Student without his Parents' consent, approximately six weeks after first proposing the assessment. Parents have since given unconditional agreement to the assessment. All parties acknowledge that Districts' issue three is now moot. Student's motion to dismiss is therefore granted without prejudice.

Student raises two related contentions regarding Districts' issue two. He contends that the issue is moot as Districts have agreed to fund the independent speech and language evaluation. Because that portion of issue two is moot, Student contends that OAH has no jurisdiction over the portion of issue two that seeks a ruling on whether Districts' cost criteria are appropriate. Student contends that this second prong of Districts' issue two only seeks an advisory opinion. As correctly stated by Student, seeking an advisory opinion is beyond the scope of a due process hearing.

However, the evidence presented by Student and Districts in their pleadings regarding the motion to dismiss indicates that there are many disputed facts regarding the requested evaluation. Districts offered to fund the evaluation, but initially only at their present cost criteria of \$750. Districts informed Parents that they could request a costlier evaluation if they demonstrated unique circumstances warranting the additional cost. Districts maintain that Parents never provided any information regarding unique circumstances. Districts subsequently voluntarily agreed to cover the cost of the evaluation up to \$1000. Districts assert that Parents have not agreed to this amount or provided the name of an evaluator willing to conduct the evaluation for no more than that amount with whom Districts can contract. Accordingly, there is still an issue in controversy between the parties and the issue of whether Districts must fund the independent evaluation is not moot.

Since the issue is not moot, Student's assertion that Districts' issue two requests an advisory opinion is not persuasive. Certainly, if the parties were in agreement as to the cost of the evaluation, asking OAH to decide in the abstract whether Districts' cost criteria per se is appropriate would constitute a request for an advisory opinion. Here, however, Districts have not fully agreed to the independent evaluation requested by Parents because they have not agreed to cover the cost of the assessor Parents have chosen. Districts therefore properly present the issue of whether their speech and language evaluation is appropriate such that that they do not have to fund the requested independent evaluation. In the alternative, Districts properly place in front of OAH their argument that if they must fund an independent evaluation, their cost criteria is appropriate in this case and they are not required to fund an evaluation that exceeds that cost.

For these reasons, Student's motion to dismiss Districts' issue two is denied.

ORDER

1. Student's motion to dismiss Districts' issue three is granted.
2. Student's motion to dismiss Districts' issue two is denied.

3. This case shall proceed to hearing as scheduled on Student's complaint and on issues one and two of Districts' complaint.

DATE: May 18, 2016

DocuSigned by:

Darrell Lepkowsky

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings