

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CAMPBELL UNION HIGH SCHOOL  
DISTRICT.

OAH Case No. 2016050354

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

BACKGROUND INFORMATION

Parents on behalf of Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings on May 5, 2016 naming the Campbell Union High School District. Student raises two issues in his complaint. In his first issue, Student contends that District failed to provide him with a free appropriate public education during the 2015-2016 school year by failing to offer an appropriate placement in the least restrictive environment. In his second issue, Student alleges that District discriminated against him in violation of federal and state laws by refusing to allow him access to his service dog at school. Student requests five remedies for these alleged violations. First, for OAH to find that specialized academic instruction without a therapeutic component is the appropriate placement for Student. Second, that OAH find it does not have jurisdiction to hear claims brought under the Americans with Disabilities Act, Section 504 (of the Rehabilitation Act) or California's Unruh Act, and that such claims have been exhausted (presumably by the filing of this due process complaint.) Third, any remedy OAH believes is appropriate in order to exhaust (unspecified) administrative remedies. Student also requests attorney's fees and costs and, finally, any and all appropriate remedies as supported by law.

On May 16, 2016, District filed a motion to dismiss a portion of Student's first claim on the grounds that the issue has been resolved and therefore there is no triable issue in dispute. District moves to dismiss Student's second issue, as well as his second and third proposed resolutions, on the grounds that they are beyond OAH's jurisdiction.

Student has not filed an opposition or other response to District's motion to dismiss.

APPLICABLE LAW

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.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51).

Additionally, 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.) 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.)

## DISCUSSION

District contends that the portion of Student’s issue one that alleges it denied Student a FAPE by refusing to permit him to bring his service dog to school is, in effect, moot. District bases this contention on the fact that Student acknowledges in his complaint that District permitted Student’s service dog at school as an accommodation in his individualized education program developed on November 17, 2015.

District’s argument is not persuasive for two reasons. First, Student’s first issue alleges a denial of FAPE based on an alleged failure to provide Student with an appropriate placement in the least restrictive environment. The issue as stated does not reference a failure to provide necessary accommodations or related services, as stated in issue two.

Additionally, Student alleges a violation of FAPE during the 2015-2016 school year. According to Student’s complaint, he began the school year on August 17, 2015, three months before District permitted him to bring his service dog to school. Therefore, the issue of Student’s service animal is not moot as to the months preceding the development of

Student's November 17, 2015 IEP. District's motion to dismiss Student's issue one is denied.

As to the second issue, District is correct that OAH does not have jurisdiction over Student's allegations that it discriminated against him in violation of federal and state laws, including the state Unruh Act, the ADA, and section 504. Student acknowledges in his complaint that he raises his discrimination claim under the ADA, section 504, and the Unruh Act, in order to exhaust them for purposes of further litigation in a trial court.

Since OAH does not have jurisdiction to hear matters brought under the ADA, section 504, or the Unruh Act, it follows that it has no jurisdiction to determine if a petitioning party has exhausted claims brought under those statutes.

For these reasons, District's motion to dismiss issue two of Student's complaint is granted, as is its motion to dismiss Student's second and third proposed resolutions.

Additionally, OAH does not have jurisdiction to order attorney's fees and costs to prevailing parties in due process proceedings. Student's proposed resolution four is therefore dismissed sua sponte.

#### ORDER

1. District's Motion to Dismiss issue one is denied.
2. District's Motion to Dismiss is granted as to issue two and the second and third proposed resolutions.
3. Student's proposed resolution four is dismissed sua sponte.
3. This matter will proceed as scheduled as to Student's issue one and proposed resolutions one and five.

DATE: May 24, 2016

DocuSigned by:

*Darrell Lepkowsky*

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings