

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT

OAH CASE NO. 2011090491

ORDER DENYING DISTRICT'S
MOTION TO DISMISS ISSUE 3

On September 16, 2011, Dry Creek Joint Elementary School District (District) filed a request for due process hearing (complaint) naming Parents on behalf of Student (Student) as respondents. On December 6, 2011, the District filed with the Office of Administrative Hearings (OAH) an amended complaint without an accompanying motion for leave to file it. On December 16, 2011, Student filed a response to the amended complaint.

OAH, per ALJ Gary Geren, conducted a telephonic prehearing conference (PHC) with District counsels and Student's parents (Parents), who are pro se, in attendance. At the PHC, the issues to be heard at the due process hearing were discussed by the parties and the ALJ. On February 24, 2012, OAH issued its PHC order setting the following issues to be determined at the due process hearing:¹

1. Whether the District developed an offer of a free appropriate public education to meet Student's needs for the 2011-2012 school year as set forth in individualized education program offers made on January 28, 2011 and November 30, 2011?
2. Whether District may conduct proposed assessments in reading and writing processes, academics, and assistive technology?
3. May the District deny Parents' requests for independent educational evaluations in the following areas:
 - a. Educational Assessments in the areas of Math, Reading, and Writing;

¹ In the Order Following Prehearing Conference, the District's issues are referred to by letter designations. This Order refers to the issues by number designations following the District's references to its issues in its Amended Complaint and its Notice of Withdrawal of Issue 1.

- b. Speech and Language;
- c. Social Skills;
- d. Occupational Therapy;
- e. Functional Behavioral Assessment;
- f. Neuropsychological Assessment;
- g. Central Auditory Processing Disorder Assessment; and
- h. Assistive Technology Assessment?

4. May the District conduct assessments in the areas of Functional Behavior, Central Auditory Processing Disorder, and Adaptive Physical Education, as proposed in the assessment plans dated September 8, 2011, November 16, 2011, and December 2, 2011?

On March 1, 2012, Parents disenrolled Student from the District and enrolled him at Visions in Education, a charter school within the San Juan Unified School District. On March 14, 2012, the District withdrew its Issue 1.

On April 26, 2012, the District filed a Motion to Determine Threshold Issue Re: Obligation to Litigate Independent Education Evaluation Issues. The District seeks an order from OAH “whether the District is obligated under 34 C.F.R. §300.502.(b)(2) to defend its assessments, its right to assess, and right to deny Parents’ IEE requests.”² Thus, the District is requesting that OAH dismiss Issue 3 as moot.

On April 30, 2012, Student filed opposition to District’s motion. Student contends that the issue is not moot as Parents have spent over \$6,000.00 on IEEs and they have reserved the right to be reimbursed from the District.

Mootness describes the doctrine under which courts decline to hear a case because it fails to present an existing controversy. (See *Wilson v. Los Angeles County Civil Service Commission*(1952) 112 CAL. App.2d 450, 453.)

As to Issue 3, Student has established that there is still an on-going dispute since Parents have the right to seek reimbursement for the IEE’s obtained. But, the parties should note that even if Student prevails at hearing, OAH cannot award reimbursement to Parents since they did not file a request for due process.

² This order does not address whether or not Issue B (the District’s right to conduct assessments) is moot as it is not the subject of the District motion.

ORDER

1. The District's motion to determine threshold issue is hereby deemed a motion to dismiss Issue 3 because of mootness.

2. The District's motion to dismiss is DENIED.

IT IS SO ORDERED.

Dated: May 2, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings