

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.

OAH CASE NO. 2012010266

ORDER DENYING MOTION TO
DISMISS

On January 30, 2012, the Etiwanda School District (District) filed a motion to dismiss, contending that Student's complaint is moot as Parents consented on January 19, 2012, to the District's placement offer that is at issue in the complaint. Student did not file an opposition.

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.) 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.)

Although the Office of Administrative Hearings (OAH) will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

DISCUSSION

The District asserts that Student's complaint is moot because after Parents revoked consent to the District placement offer that is at issue in the complaint, Parents consented to the District's placement offer on January 19, 2012. The District's request that OAH determine that Student's complaint is moot is in fact a motion for summary judgment, which OAH does not have jurisdiction to entertain. While Student's placement may be resolved, a

triable issue for hearing exists whether the District's purported conduct in refusing to acknowledge Parents' revocation of consent denied Student an educational benefit and possibly entitles him to compensatory education. Therefore, the District's motion to dismiss is denied as a triable issue for hearing exists.

ORDER

The District's motion to dismiss is denied. The matter shall proceed as scheduled.

Dated: February 7, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings