

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

JULIAN CHARTER SCHOOL AND
JULIAN UNION ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2012100933

ORDER DENYING MOTION TO
DISMISS

On October 1, 2012, the Julian Charter School (District), by and through the Julian Union Elementary School District, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Parents on behalf of Student (Student) in case number 2012100043. On October 24, 2012, Student filed with OAH a complaint naming the District, in OAH case number 2012100933. OAH consolidated the two cases, naming Student's case as the primary case. The District thereafter withdrew its portion of the case, leaving Student's case (case number 2012100933) as the sole matter to be heard.

According to the prehearing conference order dated January 14, 2013, there are two issues to be decided in this matter:

- a) Whether the District failed to offer Student with a free appropriate public education (FAPE) in the least restrictive environment at the August 14, 2012 Individualized Education Program (IEP) meeting when it offered placement in a restrictive self-contained classroom?
- b) Whether the April 11, 2011 IEP appropriately documents Student's need for aide support?

On January 10, 2013, the District filed a motion to dismiss Student's complaint. The District contends that the complaint is now moot, because the District is no longer seeking to enforce the IEP to which Student objected and has offered to provide Student with the remedies Student seeks.

On January 15, 2013, Student filed an opposition to the motion. Student contends that this matter has not been resolved and that a hearing on this matter is necessary. On January 16, 2013, the District filed a reply.

DISCUSSION

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 204, 214.)

The District's own moving papers admit that the District has not provided Student with *all* requested relief. For example, the attachments to the motion indicate that the District refused to reimburse the parent for an expert's report.

Further, and more importantly, Student's parents are not in the same position they would have occupied had the District made a different IEP offer initially. Student's parents were required to hire an attorney to represent them against the District. If they succeed in proving before OAH that the District denied them a FAPE in the August 2012 IEP offer, they will be entitled by law to recover their attorneys' fees in federal court. Although the District is proposing to change its IEP offer now, it has not admitted that its prior offer was inappropriate. As such, a genuine controversy exists between these parties regarding the appropriateness of that IEP offer.

The District argues that OAH cannot award attorney fees, even if Student prevails at hearing. That is correct. However, a finding by OAH that Student is a prevailing party is what permits Student to recover those attorney fees in federal court. A decision by OAH in this matter may result in relief to Student and is therefore not moot.

This is not a situation in which the parties have agreed to a settlement of their dispute. If there is truly no longer a dispute about Student's educational program and services, it would be an excellent time for the parties to settle this case. However, absent such a settlement, there is no basis to dismiss the case at this time.

ORDER

The motion to dismiss is denied. The hearing will proceed as scheduled.

Dated: January 17, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings