

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.

OAH CASE NO. 2013050446

ORDER DENYING ETIWANDA
SCHOOL DISTRICT'S MOTION TO
DISMISS

On May 31, 2013, the Etiwanda School District (District) filed a motion to dismiss Student's complaint as moot. No opposition has been received.

Student's complaint alleges that, in her May 6, 2013 individualized education program (IEP), District offered to transition Student from a special day class at Lightfoot Elementary School (Lightfoot) to inclusion in a general education classroom with resource support at Lightfoot, but then declined to implement the IEP because Student did not complete an intradistrict transfer to attend Lightfoot, which was not her home school.

District moves to dismiss Student's complaint as moot, because Student's parent has not yet consented to the IEP and all parties agree that Student's placement should be at Lightfoot. District also contends that the controversy is not ripe, because Student will not be required to complete an intradistrict transfer request seeking permission to attend Lightfoot as a general education student until her parent consents to the IEP. District references the IEP document, but does not attach a copy to its motion.

Although 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. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Although District presents its argument as one of mootness or ripeness, it seeks a determination that Student was not denied a free appropriate public education by its refusal to implement Student's IEP at Lightfoot unless her parent complied with additional District procedures, requiring a pre-hearing factual inquiry into documentary evidence. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

Etiwanda School District's motion to dismiss Student's complaint is denied.

Dated: June 07, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings