

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT(S) ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013060091

ORDER DENYING MOTION TO
DISMISS

On May 28, 2013, Student filed a Request for Due Process Hearing (complaint), naming Los Angeles Unified School District (District) as the respondent. On June 11, 2013, Student assigned educational decision making authority to Parent pursuant to her rights under Education Code section 56041.5. The complaint alleged that Student qualified for special education as a child with an intellectual disability who was denied a free appropriate public education (FAPE) for the 2011-12 and 2012-13 school years because, among other things, she did not receive appropriate levels of speech and language therapy and technical communication assistance. Student sought compensatory education and other remedies.

Student's complaint included a motion for stay put. On June 6, 2013, District filed an opposition arguing that Student was not entitled to stay put beyond June 30, 2013, because Student's 22nd birthday was July 11, 2013. On June 12, 2013, OAH issued an order denying Student's motion for stay put finding that stay put was no longer available to Student after June 30, 2013, pursuant to 20 U.S.C. §1412(a)(1)(A) and Education Code section 56026(c)(4)(B). As set forth in the Order, a school district is only obligated to provide FAPE to a student with disabilities up to the age of 21. (20 U.S.C. §1412(a)(1)(A)). Education Code section 56026(c)(4)(B) provides that "[a]ny person who is otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that new fiscal year. The end of the fiscal year in this case was June 30, 2013.

On July 5, 2013, District filed a Motion to Dismiss on the grounds the complaint was moot because Student turned 22 years of age on July 11, 2013, and District's fiscal year ended on June 30, 2013. District argues that because Student is no longer eligible for special education services, OAH cannot provide a remedy for past violations. OAH received no response to the Motion to Dismiss from Student. For the reasons set forth below, District's motion to dismiss is denied.

APPLICABLE LAW

Parents have 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); see also Ed. Code, § 56501, subd. (a).) 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.)

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.) However, 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.)

Under federal and state law, courts have broad equitable powers to remedy the failure of a school district to provide FAPE to a disabled child. (20 U.S.C. § 1415(i)(1)(C)(iii); Ed. Code, § 56505, subd. (g); see *School Committee of the Town of Burlington, Massachusetts v. Dept. of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) This broad equitable authority extends to an ALJ who hears and decides a special education administrative due process matter. (*Forest Grove School Dist. v. T.A.* (2009) 557 U.S. ____ [129 S.Ct. 2484, 2494, fn. 11, 174 L.Ed.2d 168].) An ALJ can award compensatory education as a form of equitable relief. (*Park v. Anaheim Union High School Dist.* (9th Cir. 2006) 464 F.3d 1025, 1033.) “Compensatory education is a prospective award of educational services designed to catch-up the student to where he should have been absent the denial of a FAPE.” (*Brennan v. Regional School Dist. No. 1* (D.Conn. 2008) 531 F.Supp.2d 245, 265.) Compensatory education awards depend upon the needs of the disabled child, and can take different forms. (*R.P. v. Prescott Unified School Dist.* (9th Cir. 2011) 631 F.3d 1117, 1126.) Typically, an award of compensatory education involves extra schooling, in which case “generalized awards” are not appropriate. (*Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.) Relief is appropriate where it is designed to ensure that the student is appropriately educated within the meaning of the IDEA.” (*Ibid.*) In an appropriate case an ALJ may grant relief that extends past graduation, age 22, or other loss of eligibility for special education and related services as long as the order remedies injuries the student suffered while he or she was eligible. (*Maine School Admin. Dist. No. 35 v. Mr. and Mrs. R.* (1st Cir. 2003) 321 F.3d 9, 17-18 [graduation]; *San Dieguito Union High School Dist. v. Guray-Jacobs* (S.D.Cal. 2005, No. 04cv1330) 44 IDELR 189,105 LRP 56315 [same]; see also *Barnett v. Memphis City Schools* (6th Cir. 2004) 113 Fed.App. 124, p. 2 [nonpub. opn][relief appropriate beyond age 22].)

DISCUSSION

Student’s age does not bar her remedy for past violations even if District has no ongoing obligation to provide Student a FAPE. The IDEA emphasizes the need for special education and related services designed to meet a child’s unique needs not only for academics but to prepare them for employment and independent living. Student alleged,

among other things, she did not receive speech and language therapy and access to communication technology. Communication, whether accomplished with speech and language skills or with assistive technology, prepares the child with special needs for employment and independent living.

Based on the allegations in the complaint, one of the issues at hearing will likely be whether District failed to provide Student services appropriate to prepare her for employment and independent living during the time she was eligible for special education. Should Student meet her burden of proof on that issue, an ALJ has authority to award Student compensatory services designed to catch Student up to the skill levels she would have acquired had those services been provided, depending upon the evidence presented in the hearing. An award of compensatory education can be given without extending eligibility.

District contends Student's complaint must be dismissed in its entirety. Since there is at least one basis upon which to deny the motion, the motion is denied. This Order does not limit the issues to be determined at hearing to only speech and language therapy and communication technology. The issues to be determined at hearing will be finalized at a pre-hearing conference.

ORDER

1. District's Motion to Dismiss is denied.
2. The matter shall proceed as scheduled.

Dated: July 24, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings