

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SHANDON JOINT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012020281

ORDER DENYING MOTION TO
DISMISS

On March 30, 2012, Kathleen LaMay, attorney for Shandon Joint Unified School District, (District) filed a Motion to Dismiss as Moot Student's request for due process hearing (complaint), filed with the Office of Administrative Hearings (OAH) on February 8, 2012. On April 4, 2012, OAH received Student's Opposition to Dismiss filed by Edwin Egelsee, attorney at law.¹ On April 5, 2012, District filed a Response to Student's Opposition.

District contends that Student's complaint should be dismissed as moot because there is no existing case or controversy. Student argues that the issue of Student's residency must be heard as it is an issue "capable of repetition yet evading review"; that triable issues remain for hearing; and that District should be denied relief on the grounds of "unclean hands."

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.*

¹ Student indicates in his facsimile cover sheet dated April 4, 2012, that he has included a fax transmission report dated April 2, 2012, providing confirmation of previous submission of his opposition on April 2, 2012. The transmission report is unclear as it lists the fax numbers for District as well as OAH, with a notation that the transmission status was both "successful" and "unsuccessful." Regardless, OAH has received and considered Student's timely opposition.

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 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

District maintains that the sole issue to be determined, whether Student meets residency requirements, has been resolved. District's representation that it now has sufficient evidence to conclude that Student is a resident of the District does not render Student's complaint moot. District provides no evidence in support of its motion to dismiss. The letters attached to District's motion are hearsay. District Superintendent Rodney Wallace, in his letter of March 20, 2012, concludes that Student meets the requirements for residency "according to the district's current policy." There is no evidence or declaration under penalty of perjury of a stipulation between the parties or other settlement agreement establishing that Student remains a resident of the District. Further, Student has not withdrawn his complaint and is entitled to a ruling by OAH on this issue. District did not seek reconsideration of Administrative Law Judge (ALJ) Peter Paul Castillo's order of February 23, 2012, denying District's initial motion to dismiss for lack of jurisdiction, which found that a triable issue existed as to Student's residency. ALJ Castillo ordered the matter to proceed to hearing.

Even if the parties resolved the issue of residency, a triable issue for hearing exists as to whether Student is entitled to the costs of lodging. In addition to seeking an order from OAH that Student remains a resident of the District, Student's complaint requests continued funding for his placement and program at his non-public school (NPS) in Orange County, and that District fund temporary lodging for Student near his school. District contends that Parent previously agreed to waive the living expenses for staying near Orange County where Student attends school. District cites to ALJ Trevor Skarda's 2009 decision in this matter finding that Parent waived any right to housing costs. (*Parent on behalf of Student v. Shandon Joint Unified School District*, (May 18, 2009) Cal.Offic.Admin.Hrngs. Case No. 2008090525). This factual finding is limited to the time frame then at issue and references the initial year of attendance at the NPS wherein the Mother intended to stay at her parent's house. Student contends that Parent has solely assumed, without waiving any rights, the financial responsibility for lodging and is now seeking funding for prospective lodging. This issue of funding remains a live controversy to be resolved at hearing. A case is moot if there is no existing controversy by the time of decision. District's position is that its March 20, 2012 letter to Parent eliminated the controversy. Neither the District's letter nor its internal hearing review process resolved the issues raised in the complaint. A live controversy exists, and the case is not moot

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. District fails to provide any authority that would require OAH to hear and determine the equivalent of a motion for summary judgment, without giving Student the opportunity to develop a factual record as to whether the District adequately resolved the issues of residency and funding for lodging, as identified in the complaint.

The request to dismiss is denied in its entirety.²

ORDER

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

Dated: April 6, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

² Having determined that Student's complaint is not moot, OAH need not address Student's claim that District's motion to dismiss should be denied based upon the doctrine of unclean hands or that the issue of residency falls under an exception to the mootness doctrine as a matter "capable of repetition yet evading review."