

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2016010472

ORDER GRANTING MOTION TO  
DISMISS AND CLOSING CASE  
WITHOUT ISSUING WRITTEN  
DECISION

On January 13, 2016, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Elk Grove Unified School District. Student's sole issue is whether Elk Grove denied Student a free appropriate public education in the least restrictive environment by failing to offer placement at Elizabeth Pinkerton Middle School for the 2016-2017 school year. Student's offer of placement for the 2016-2017 school year is in the general education setting.

On February 5, 2016, Elk Grove filed a motion to dismiss the matter, alleging both that the issue is not ripe and is moot. On February 8, 2016, Student filed an opposition to the motion, and Elk Grove filed a response to Student's opposition. Following oral argument heard during the prehearing conference, that motion to dismiss was denied. The Order Following Prehearing Conference and Denying Motions to Dismiss and Continue the Due Process Hearing stated that a determination of whether the issue was ripe or moot would require the admission of evidence and was not a proper basis for dismissal of the matter at that time.

On February 23, 2016, Administrative Law Judge Lisa Lunsford convened the due process hearing in this matter in Elk Grove, California. Student's Father represented Student, and Mother was present. Attorney Cathy S. Holmes represented Elk Grove. Douglas Phillips, Director of Special Education, and Erica Winn, Program Specialist, were present on behalf of Elk Grove.

Upon the conclusion of Student's presentation of his case, Elk Grove renewed its motion to dismiss the matter because the issue is not ripe and is moot. Elk Grove asserted that the issue is not ripe because Student's recent move resulted in Elk Grove's need to change its 2016-2017 placement offer at Student's former home school, Samuel Jackman Middle School, in order to consider Student's new home school, Kerr Middle School.

Subsequent to learning of Student's move, Elk Grove has attempted to convene individualized education program team meetings to discuss and make a new placement offer, but Parents have refused to participate. This change in home schools, Elk Grove argued, renders litigation regarding the placement offer for the next school year not yet ripe. Elk Grove further argued that dismissing the matter would not harm Student in that there is no dispute over his current placement, and there is adequate time to resolve Student's placement prior to the start of the 2016-2017 school year. Elk Grove also asserted that it would be inappropriate for OAH to order placement at a specific school for the 2016-2017 school year as a remedy when the IEP team has not yet had an opportunity to discuss the effect, if any, Student's move has on the IEP placement offer for next year. Elk Grove asserts that it has an obligation and a right to go through the IEP process to determine a new appropriate placement now that Jackman will no longer be considered. Finally, Elk Grove was notified earlier that morning that Student has been accepted to Pinkerton through Elk Grove's open enrollment process, which entitles him to attend Pinkerton next year as long as his IEP can be implemented there.

Student opposed the motion, arguing that placement at Pinkerton was never discussed in an IEP team meeting, and convening a new IEP team meeting to discuss placement at Kerr is irrelevant to Student's request to attend Pinkerton. Student is not interested in discussing placement at Kerr. Father stated that Elk Grove's delay in responding to Student's request to attend Pinkerton and overall lack of discussion and communication with Parents about potential placement at Pinkerton led Parents to file this matter. Finally, Father asserted that Student will be harmed by the decline in his independence if he loses the support of his current peer support network which will be located at Pinkerton.

Elk Grove's motion to dismiss based on the issue not being ripe for adjudication was denied, because an actual dispute over Student's educational placement existed at the time of the complaint's filing. Elk Grove made Student an offer of placement for the 2016-2017 school year at Jackman, and Student disputed that offer, which created a ripe issue. However, in order to properly evaluate whether that issue had become moot, both parties were given the opportunity to offer evidence for that limited purpose. Erica Winn and Douglas Phillips testified on behalf of Elk Grove, and Student did not offer additional evidence. The hearing was then continued to March 2, 2016, with an additional day scheduled on March 3, 2016, and the parties were informed that an order on Elk Grove's motion to dismiss would be issued by February 26, 2016.

#### 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 becomes moot when the court cannot provide the parties with any effectual relief. (*Knox v. Service Employees Intern. Union, Local 1000* (2012) 132 S.Ct. 2277, 2287.) 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.)

## DISCUSSION

Elk Grove contends that the sole issue for adjudication, whether it denied Student a FAPE by failing to offer placement at Pinkerton for the 2016-2017 school year, is moot. Mr. Phillips testified that the open enrollment lottery took place the day before, and he received information from the Superintendent regarding the open enrollment lottery outcomes. Student's name was on the list of students selected for Pinkerton that was provided to Mr. Phillips on the morning of February 23, 2016, the first day of hearing. Mr. Phillips verified Student's selection twice. Student is not on a waiting list; he has a confirmed seat at Pinkerton.

Ms. Winn similarly testified that Student was accepted to Pinkerton through the open enrollment process the previous night. She described the open enrollment process as a general process, open to all parents, that allows students to enter a lottery for the opportunity to attend school sites other than their home schools. The schools included in the lottery are those that have space to enroll additional students. She stated that if Parents accept the offer to attend Pinkerton, then Elk Grove would start planning what the services and supports would look like at that campus. The IEP team would meet to discuss placement at Pinkerton, and Ms. Winn would invite Pinkerton staff to the next meeting. Ms. Winn believes, based on her knowledge of Pinkerton, Student, and Student's IEP, that Student's IEP can be implemented at Pinkerton.

The evidence showed that Student's IEP services could be implemented at nearly all middle schools, because he is placed in general education classes with inclusive educational supports and paraeducator support which is available at every campus. Student's other services, like occupational and speech therapy, are available at Pinkerton, Kerr and Jackman. Ms. Winn verified that Student can attend Pinkerton on an open enrollment transfer with IEP supports. Ms. Winn further stated that, should Student's parents choose to accept the offer for Student to attend Pinkerton, Elk Grove's intention, without predetermining or making an offer, would be to implement the IEP at Pinkerton.

The testimony of Ms. Winn and Mr. Phillips was consistent and credible. The evidence established that Student now has an offer and opportunity through the open enrollment process to attend Pinkerton for the 2016-2017 school year. The sole issue to be determined in this matter was based on Elk Grove's failure to offer placement at Pinkerton for the 2016-2017 school year. Although the IEP team has not yet had the opportunity to discuss and formally offer to implement Student's IEP at Pinkerton, it can no longer be said that Elk Grove is failing to offer this placement. In fact, Elk Grove has now secured a spot for Student at Pinkerton and intends to discuss implementation of Student's IEP at Pinkerton at the next IEP team meeting with Pinkerton staff in attendance, and no barriers to IEP implementation at Pinkerton are anticipated.

A case is moot if there is no existing controversy by the time of decision. Whether Elk Grove's failure to offer placement at Pinkerton for the upcoming school year denied Student a FAPE no longer remains a triable issue for hearing. The sole issue to be determined has been rendered moot. In addition, the relief requested by Student is an order that Elk Grove place Student at Pinkerton for a school year which will not begin for more than five months. Since Student has now been accepted to Pinkerton and Student has requested that placement for Student, Student's requested relief is moot. There is no other effectual relief that OAH can provide at this time.

Under these narrow facts and circumstances, the matter shall be dismissed as moot. Nothing in this order shall be construed to bind Elk Grove or Student's IEP team or preclude Student from filing a future request for due process hearing concerning Student's placement for the 2016-2017 school year.

#### ORDER

1. Elk Grove's Motion to Dismiss OAH Case No. 2016010472, *Parent on Behalf of Student v. Elk Grove Unified School District*, is granted.
2. All dates currently on calendar are vacated.
3. OAH Case No. 2016010472 is closed effective the date of this order.
4. No written decision will be issued in this matter.

IT IS SO ORDERED.

DATE: February 26, 2016

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LISA LUNSFORD  
Administrative Law Judge  
Office of Administrative Hearings