

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

**IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,**

v.

**SOLEDAD UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2019070067**

**ORDER DENYING MOTION TO DISMISS REQUEST FOR DUE PROCESS
HEARING**

On June 28, 2019, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing, referred to as a complaint, naming Soledad Unified School District. The Office of Administrative Hearings is referred to as OAH.

On September 20, 2019, Soledad filed a Motion to Dismiss Student's complaint supported by sworn declarations from its director of special education and its counsel. Attached to the motion is an email from Parent to Soledad wherein Parent states she wishes to dismiss the case. Soledad also attaches various email communications between counsel regarding the status of the case and a draft settlement agreement. Soledad alleges that OAH lacks jurisdiction to adjudicate the issues raised in the complaint as there is no longer an existing controversy between the parties and the case is moot.

On September 24, 2019, Student's counsel filed a Notice of Attorney's Withdrawal and Notice of Attorney Lien for Fees and Expenses along with a declaration in response to the motion to dismiss. Student's counsel avers she has made numerous unsuccessful attempts to communicate with her client her and that her client has not directed her to dismiss the case.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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); Ed. Code, § 56501, subd. (a) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). Although OAH will grant motions to dismiss allegations that are facially outside its jurisdiction, special education law does not provide for a summary judgment procedure.

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) ___ U.S. ___, 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

Student identifies four issues for hearing. Specifically, Student alleges that Soledad failed to fulfill its child find obligations since approximately 2017; and then failed to appropriately assess her in all suspected areas of disability in the course of its 2019 assessments. Student additionally alleges Soledad denied her a free appropriate public education by failing to develop an appropriate individualized education program to address all areas of need, failed to develop measurable goals based on accurate present levels, and committed additional procedural violations. Student seeks multiple independent educational evaluations, compensatory education, reimbursement for educational expenses, staff training, and attorney fees.

Soledad contends that OAH does not have jurisdiction to preside over this due process hearing as Parent no longer wishes to pursue the complaint as evidenced by numerous communications it has had with Parent. Soledad argues there is no live controversy and that any decision by OAH would therefore be an impermissible advisory opinion. Soledad further asserts that OAH must dismiss the complaint because Student's counsel is not speaking on behalf of Student or Parent.

Soledad's arguments are not persuasive. The issues raised in Student's complaint are within OAH's jurisdiction. There is no evidence that the parties have entered into a

settlement agreement resolving the complaint. Student has not withdrawn her complaint and is entitled to a full evidentiary hearing and a ruling by OAH as to the issues raised. Soledad'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. If Parent no longer wishes to pursue this matter, she may file with OAH a written request to withdraw the complaint. Accordingly, the request to dismiss is denied.

ORDER

Soledad's Motion to Dismiss is denied. The matter shall proceed as scheduled.

DATED: September 26, 2019

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Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings