BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. GOLDEN PLAINS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019040042 ORDER DENYING MOTION TO DISMISS

On April 2, 2019, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Golden Plains Unified School District as a party.[1] Student raises the following issues for hearing: whether Golden Plains denied him a free appropriate public education during the "2017, 2018 and 2019 school years" by failing to conduct an educationally related mental health assessment; failing to conduct a functional behavior assessment; failing to develop a behavior assessment plan; failing to offer an appropriate level of psychological and counseling services; failing to conduct an appropriate psycho-educational and social-emotional assessment; failing to develop appropriate and measurable academic goals; and failing to provide prior written notice.

On May 8, 2019, Golden Plains filed a Motion to Dismiss Student's complaint alleging that OAH is without jurisdiction to hear this matter as there is no existing case or controversy. Golden Plains argues there is no dispute between the parties as evidenced by its response to Student's complaint in which it agreed that it denied Student a FAPE for the prior two years and offered to provide Student with his requested relief of independent assessments and compensatory counseling and tutoring services. It further contends a hearing is not necessary as it will "consent to allow OAH to issue an Order finding that Student was not provided a FAPE from March 31, 2017 through March 31, 2019, and ordering the District to provide the relief requested in Petitioner's Complaint and as described in the Response."

On May 9, 2019, Student filed an opposition.

[1] Student's complaint was filed after business hours on March 31, 2019. As such, it is deemed filed as of the next business day.

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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) 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.)

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.

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

Golden Plains contends that OAH does not have jurisdiction to preside over this due process hearing as it has resolved Student's complaint through its response in which it conceded that it denied Student a FAPE during the relevant time period and offered to provide Student with his proposed remedies as well as additional relief in the form of in-service staff training. This argument is not persuasive. The issues raised by Student are within OAH's jurisdiction. Further, Golden Plains fails to provide any evidence in support of its motion to dismiss. There is no evidence or declaration under penalty of perjury of a stipulation between the parties or other settlement agreement resolving each of Student's issues. Indeed, Golden Plains' response indicates that it disagrees that Student required a functional behavior assessment or behavior plan or that it was required to provide prior written notice. OAH may issue effective relief by ordering Golden Plains to provide relief; in the absence of such an order, it does not appear that

Student has an enforceable agreement. Student has not withdrawn his complaint and is entitled to a full evidentiary hearing and a ruling by OAH as to the issues raised.

Golden Plains' motion to dismiss is predicated on factual information which it provides by way of its attached response to Student's complaint. It is not limited to matters factually outside of OAH's jurisdiction, but instead seeks a ruling on the merits. Golden Plains' 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. Golden Plains 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 the specific alleged FAPE denials and whether he is entitled to any additional relief other than that proposed in his complaint. To determine whether Student's complaint should be dismissed as moot, additional information is needed and requires the admission of evidence at hearing. Accordingly, the request to dismiss is denied.

ORDER

Golden Plains' Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: May 20, 2019

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings