

**BEFORE THE OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES  
STATE OF OKLAHOMA**

CREOKS BEHAVIORAL HEALTH  
SERVICES, INC.; FAMILY AND  
CHILDREN'S SERVICES, INC.,

*Protestants,*

v.

THE OFFICE OF MANAGEMENT AND  
ENTERPRISE SERVICES,

*Respondent.*

FILED  
09.10.2025  
OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES  
Clerk of Administrative Records

Protest No. 2024-01  
Solicitation No. EV00000232

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**ORDER IN RE RESPONDENT'S MOTION TO DISMISS**

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***Introduction***

This matter came on for oral argument June 16, 2025, regarding Respondent, the Office of Management and Enterprise Services' ("OMES"; "Respondent") Second Motion to Dismiss, via Microsoft Teams. (Doc. 86). Ms. Hilary Velandia, along with Mr. Sam Kiehl and Ms. Allison Loehr, appeared as counsel on behalf of Protestant Family and Children's Services, Inc. ("FCS"; "Protestant"). Mr. Matthew LaFon and Ms. Courtney Templeton appeared as counsel on behalf of Respondent. Mr. Paul DeMuro, along with Ms. Jennifer Johnson and Mr. Michael Medina, appeared as counsel on behalf of Intervenor CREOKS Behavioral Health Services, Inc. ("CREOKS"). Ms. Haily Huber appeared as counsel on behalf of Intervenor Grand Lake Mental Health Center, Inc. ("Grand"). The Undersigned has considered all representations made by all parties during oral argument, as well as all briefing related to Respondent's motion. (Docs. 86, 90, 94, 95, 96).

Respondent, as well as Intervenors CREOKS and Grand, argue that, following Respondent's April 10, 2025, cancellation of the contracts awarded pursuant to the solicitation process, Protestant's appeal of its protest denial is moot as matter of law, as the only remedy for a successful protest is the cancellation of the contracts and rebidding of the same, which has now occurred. (Doc. 86).

Protestant argues in response that, if this matter may be deemed moot, certain exceptions to mootness are applicable under the circumstances which necessitate a resolution on the merits. Specifically, Protestant alleges the public interest, likelihood of recurrence and collateral consequences exceptions to the mootness doctrine apply in this instance. (Doc. 90); *See State ex rel. Okla. Firefighters Pension and Ret. Sys. v. City of Spencer*, 2009 OK 73, 237 P.3d 125.

### ***Discussion***

Under OMES rules, the Undersigned is limited to recommending to the OMES Director the following remedial actions: 1) denial of the supplier's appeal; or 2) cancellation of the contract award(s) and rebidding of the same. Okla. Admin. Code 260:115-3-19(a)(5)(G). In the Undersigned's view, as there are no longer active contracts, there are no awards of the same to protest. The Undersigned therefore agrees that this matter is moot. *See Rhodes v. Judiscak*, 676 F.3d 931, 933 (10th Cir.2012) (quoting *Iron Arrow Honor Soc'y v. Heckler*, 464 U.S. 67, 70, 104 S.Ct. 373, 78 L.Ed.2d 58 (1983)). ("[W]hen a plaintiff no longer suffers 'actual injury that can be redressed by a favorable judicial decision,' the matter is deemed moot.) While Protestant undoubtedly maintains they continue to suffer injury, this tribunal is

without the ability to redress such harm, regardless of whether Protestant in fact continues to be harmed. See *Chihuahuan Grasslands Alliance v. Kempthorne*, 545 F.3d 884, 891 (10th Cir. 2008) (“We have held a case or controversy no longer exists when it is impossible to grant any effectual relief.”) (citing *Colo. Off-Highway Vehicle Coal. v. U.S. Forest Serv.*, 357 F.3d 1130, 1133 (10th Cir. 2004)).

Regarding the exceptions to the mootness doctrine, the Oklahoma Supreme Court has indicated that Courts only apply these exceptions “when the practical considerations indicate that doing so would avoid, rather than prolong, confusion . . .” *In re Guardianship of Doornbos*, 2006 OK 94, ¶ 4, 151 P.3d 126, 126–27, citing *Rogers v. Excise Bd. of Greer Cnty.*, 1984 OK 95, ¶ 15 & n. 19, 701 P.2d 754, 761 & n. 19. Further, the Oklahoma Supreme Court has further “consistently held that it will not decide abstract or hypothetical questions when no practical relief will result.” 2006 OK 94 at ¶ 2, 151 P.3d at 126. Even assuming that this tribunal is considered an appellate court with requisite authority to decide moot issues, there is no mechanism for relief afforded under the rules of this proceeding that could accompany any such determination.

Most state courts, including Oklahoma, recognize some sort of “public interest” exception to their mootness doctrine and the same “permit their *appellate courts to entertain appeals* about issues of ‘continuing public importance’ . . .” *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d 711, 716 (6th Cir. 2011) (emphasis added). While this tribunal may be literally entertaining an appeal of a protest denial under Okla. Admin. Code 260:115-3-19, the same does not transform this tribunal

into an “appellate court.” Moreover, mere alleged violations of law are not necessarily sufficient to overcome mootness. *Westinghouse Elec. Corp. v. Grand River Dam Auth.*, 1986 OK 20, ¶ 21, 720 P.2d 713, 720 (“While it is true that violations of statutes such as those cited may have a substantial impact upon vital public interests, not every *alleged* violation is sufficient in magnitude to preserve the controversy for review.”) Here, while it appears possible, and even likely, in the Undersigned’s view, that Protestant may have been able to demonstrate violations of law by ODMHSAS at the time of hearing, clear proof of the same is not presently before the tribunal at this time. Indeed, considering the lengths ODMHSAS went to avoid or delay relevant discovery production in this matter, it should be specifically noted there exists more than an indicia of likelihood that evidence of improper conduct by ODMHSAS’ former leadership, including during the time preceding the solicitation and pervading through the contract award process, may have been presented at hearing, but for cancellation of the previously awarded contracts.<sup>1</sup>

Moreover, ODMHSAS initially represented that certain responsive materials did not exist, then subsequently revised positions and contended that the same

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<sup>1</sup> Protestant alleged, and provided emails evidencing, that the then-ODMHSAS Commissioner provide information in advance to Grand that it would be issuing the solicitation at issue in this protest. *See* Doc. 80. Protestant also alleged, and provided emails evidencing, that this advanced information followed (1) Grand informing ODMHSAS that it desired CCBHC status in the service area covered under the contemplated and discussed, but not yet issued, solicitation; and (2) Grand’s receipt of information from ODMHSAS to position itself into eligibility for the contemplated and discussed, but not yet issued, solicitation. Protestant additionally alleged, and provided emails evidencing, that despite ODMHSAS providing Grand with the advanced information, the then-ODMHSAS Commissioner requested that Grand’s CEO forego informing Protestant’s CEO that ODMHSAS intended to issue a RFP. *See* Doc. 80. Lastly, Protestant alleged, and provided emails illuminating, that Grand—equipped with advanced information from ODMHSAS—expanded into Tulsa County with an apparent motive of improving its likelihood of securing the contract. *Id.* Notably, this type of conduct, if true, is precisely what H.B. 2164, 60th Leg, 1st Reg. Sess. (Okla. 2025), effective on November 1, 2025, seeks to prevent and imposes penalties for violating.

materials may have existed but were inaccessible. While this adjustment was inquiry-provoking, though perhaps not coincidental, ODMHSAS then ultimately *partially* produced the materials, followed by Respondent's cancellation of the contracts and underlying solicitation altogether, thereby precluding further discovery in this matter.<sup>2</sup> As such, and because Respondent's cancellation of the contracts rendered moot this proceeding, Protestant's allegations remain allegations.

Additionally, likelihood of a different outcome, which can also be necessary for successful invocation of the public interest exception, has not been demonstrated by Protestant. *Westinghouse Elec. Corp. v. Grand River Dam Auth.*, 1986 OK 20, ¶ 21, 720 P.2d 713, 720 ("Given that WEC has failed to demonstrate that a different result would have been obtained or any substantial public interest in having Contract 2-R rebid, other than to have this Court issue an advisory opinion concerning proper conduct for GRDA, we find no reason to invoke the exception in this case."). Finally, even where a public law issue is involved, to warrant invocation of an exception to a dismissal based on mootness, there should be some indication there is a need for a quick or immediate resolution of the question. *Ne. Oklahoma Elec. Co-op., Inc. v. State ex rel. Corp. Comm'n*, 1991 OK 28, ¶ 11, 808 P.2d 680, 683 ("[T]here is no public-law issue presented here which calls for urgent resolution."). It is not clear, at least

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<sup>2</sup> See Doc. 35, in reference to Ms. Slatton-Hodges' ODMHSAS-issued cell phone allegedly used to communicate with Grand's leadership preceding and during the RFP process, which may or may not have been "shredded," even if it were locatable. See also Doc. 85. Additionally, other significant problems persisted with responsive production, including an inexplicable failure to use the correct search criteria and failure to produce known responsive materials, the existence of which was confirmed via Grand's own production in this matter. Doc. 67. Finally, fluctuating representations were made regarding the accessibility of Ms. Slatton-Hodges' ODMHSAS-issued iPad which allegedly contained additional communications between Ms. Slatton-Hodges and Grand's leadership. *Id.*; see Doc. 69; see Doc. 75; see Doc. 85.

to the Undersigned, what urgent resolution would be warranted here, especially where the solicitation has already been rebid.

As to the likelihood-of-recurrence exception, the same is only applicable in “exceptional situations.” *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015), citing *Chihuahuan Grasslands Alliance v. Kempthorne*, 545 F.3d 884, 892 (10th Cir. 2008) (internal quotation and alterations omitted). Moreover, courts applying the recurrence exception are careful to do so where the possibility of recurrence is merely hypothetical or based on conjecture. *Lawrence v. Cleveland Cnty. Home Loan Auth.*, 1981 OK 28, ¶ 9, 626 P.2d 314, 316. Here, while it is possible that misconduct by the letting agency may occur once more, it is specifically noteworthy that the ODMHSAS’ former leadership alleged to have committed misfeasance and/or malfeasance are no longer employed by the agency and have not been for some time, making the conduct unlikely to recur as alleged under the facts of this protest.

### ***Order***

Under these considerations, and in light of the facts presently before the tribunal, the Undersigned has determined that this proceeding is moot, and that the exceptions to the mootness doctrine are either inapplicable or inappropriate in the circumstances presently before the tribunal. Accordingly, the Undersigned has no choice but to grant Respondent’s motion to dismiss and the same is hereby **GRANTED**.

**IT IS SO ORDERED.**

Issued this 10 day of September, 2025.



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**ALEX A. PEDRAZA**  
*Administrative Law Judge*

**CERTIFICATE OF MAILING**

I hereby certify that on the 10 of September, 2025, the above and foregoing Order was sent to the following via electronic mail:

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