

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010021086

ORDER DENYING DISTRICT'S
MOTION TO LIMIT STUDENT'S
CLAIMS

On February 26, 2010, attorney for Student, filed a Request for Due Process Hearing (complaint), against the Orange Unified School District (District). On May 3, 2010, attorney for District, filed a motion to limit Student's claims¹ on the grounds that Student was not entitled to seek relief for the time period after he had allegedly been withdrawn from special education. The Office of Administrative Hearings (OAH) received no response to the motion to limit Student's claims.

APPLICABLE LAW

Under the Individuals with Disabilities Education Act (IDEA), consent to an individualized education program (IEP) is voluntary. A parent may revoke consent to an IEP and to special education programs and services at any time. Title 34 Code of Federal Regulations, part 300.300(b)(4), provides in pertinent part:

If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency—

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with Sec. 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

¹ District's motion is titled "Respondent Orange Unified School District's Motion Prohibiting Relief."

- (iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- (iv) Is not required to convene an IEP Team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child for further provision of special education and related services.

The withdrawal of consent by a parent relieves a school district of its duty to provide a free appropriate public education (FAPE) to the student pursuant to the IDEA. (34 C.F.R. § 300.300(b)(4)(iii)-(iv).) However, a revocation of consent does not negate an action that has occurred after the consent was given and before it was revoked. (34 C.F.R. § 300.9(c)(2).)

DISCUSSION

Student's complaint alleges that the November 16, 2009 IEP failed to offer him a FAPE in the least restrictive environment (LRE), consequently "forcing" Parents to withdraw Student from special education. Student alleges the program that would have provided him a FAPE in the LRE was full, and District failed to offer an alternative placement. The complaint asserts that Student's withdrawal from special education and subsequent placement in a residential facility was due to District's alleged denial of FAPE in the November 16, 2009 IEP.

Student's proposed remedies seek continued placement at the residential facility, including travel and familial visitation costs, at public expense, reimbursement and compensatory education. The proposed remedies are based upon the alleged failure of the District to offer Student a FAPE in the LRE in the November 16, 2009 IEP.

District moves to limit Student's claims and proposed relief such that Student may not recover for any costs associated with private placement or services obtained by Student after November 16, 2009. In support, District has provided a copy of Parent's November 16, 2009 letter which states in its entirety, "I, [Parent], exiting my son [Student] from special ed. [sic] program." District further contends that OAH's April 20, 2010 Order Denying Motion to Dismiss found that while Student's claims may not be dismissed, they may be limited to the time period prior to November 16, 2010. Therefore, District brings the current motion. OAH's order also found that District's contention that Student withdrew consent to continued provision of special education and related services and District should be relieved of liability after November 16, 2009, is a defense to be raised at hearing.

Student's claims regarding the November 16, 2009 IEP and District's defense regarding the November 16, 2009 letter from Parent require an evidentiary hearing, allowing both parties to develop the record. Accordingly, District's motion is denied.

ORDER

District's Motion to Limit Student's Claims is denied.

Dated: May 18, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings