

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. REDLANDS UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013030602
REDLANDS UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013020305 ORDER DENYING MOTION TO DISMISS DISTRICT’S CASE; AND DISMISSING STUDENT’S CASE AT STUDENT’S REQUEST

On June 10, 2013, Student filed a document entitled “Motion to Dismiss District Case #2013020305 and Withdrawal of Student Case #2013030602.” Student contends title 34 Code of Federal Regulations part 300.300(b)(4) bars OAH from considering District’s case because Student withdrew Student’s case, OAH Case number 2013030602, and Parent simultaneously revoked consent to Student’s special education services. District filed an opposition on June 12, 2013. Student filed a “preliminary” reply and a reply on June 13, 2013. District filed an amended opposition on June 14, 2013.

District’s case was filed February 8, 2013. District sought an order that Student’s November/December 2012 individualized education program (IEP) offered Student a free appropriate public education (FAPE) in the least restrictive environment. Student’s case was filed March 15, 2013. On Student’s motion, OAH consolidated the two matters on March 25, 2013. On April 30, 2013, the parties agreed that the hearing on the consolidated matter would take place on June 17, 18, 19 and 20, 2013. A prehearing conference (PHC) was held on June 10, 2013, and an Order Following PHC was issued on June 11, 2013.

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. Here, Student’s Motion to Dismiss fails to demonstrate that District’s case is outside of OAH jurisdiction. As discussed below, 34 Code of Federal Regulations part 300.300(b)(4), as amended in 2008, does not operate to deprive OAH of jurisdiction over a case in progress under these facts.

Title 34, part 300.300(a) addresses parental consent for a student's initial evaluation. Part 300.300(b) addresses parents' initial consent for services. Part 300.300(b)(4) addresses the revocation of parental consent for services after the public agency has initially provided services. Part 300.300(b)(4) provides:

(4) 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 § 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 § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(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 §§ 300.320 and 300.324 for the child for further provision of special education and related services.

Part 300.300(b)(4) applies to the continued provision of services after revocation of parental consent. As to the continued provision of services, District may not use mediation and due process to obtain an agreement or a ruling that services may continue to be provided. Nothing in Part 300.300(b)(4) operates to limit District's right to due process to determine whether it offered or provided Student a FAPE in the past. Nothing in Part 300.300 eliminates OAH jurisdiction during the pendency of a due process hearing request. Parent's revocation of consent to special education results in an end of services for Student but does not deprive District of the right to a determination that Student's November/December 2012 IEP offered Student a FAPE the least restrictive environment.

ORDER

1. The motion to dismiss is denied. The due process hearing on OAH Case number 2013020305 will go forward on June 17, 2013, as set forth in the Order Following PHC.
2. Case number 2013030602 is dismissed pursuant to Student's request.

Dated: June 14, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings