BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GARDEN GROVE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016030420 ORDER DENYING MOTION TO DISMISS

On Saturday, April 2, 2016, Student faxed a motion to dismiss District's request for due process complaint on the ground that on April 2, 2016, Parent on behalf of Student notified District, in writing, that she revoked her consent to special education and related services. Student contends this rendered District's complaint moot.[1]

On Monday, April 4, 2016, District filed an opposition to Student's motion. OAH notified both parties there was insufficient time to prepare a written ruling on Student's motion prior to the scheduled hearing date of April 5, 2016. Therefore, the parties were requested to appear at the hearing location at 9:30 a.m. on April 5, 2016, to provide oral argument and oral ruling on Student's motion. On April 4, 2016, at 10:43 p.m., Student faxed a response to District's opposition to OAH.[2] On April 5, 2016, both parties appeared and argued their contentions regarding Student's motion to dismiss.

APPLCABLE LAW AND DISCUSSION

District's complaint requests a finding that its offer of placement in the adult transition program for the 2016-2017 school year pursuant to the February 9, 2016 individualized education program is appropriate and that a certificate of completion is appropriate for Student. District's complaint also requested a remedy that District be allowed to implement the February 9, 2016 IEP without parental consent, should Student desire to continue with special education and related services through District.

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1 Student's motion was not received by the ALJ until April 4, 2016.

2 Student's reply to District's opposition was not received by the ALJ until oral arguments on April 5, 2016.

Student is 17 year old in the 12th grade. On April 2, 2016, three days before hearing, Parent, on behalf of Student, revoked consent to further special education and related services. Student contends District's complaint is moot as a parent may revoke consent in writing for the continued provision of special education and related services (34 C.F.R. § 300.300(b)(4)(i) (2006).[3]) Further, District may not use the due process procedures under §§ 300.507 through 300.516 to obtain a ruling that the services may be provided to the child. (34 C.F.R. § 300.300(b)(4)(ii).)

District does not assert it may prospectively provide Student with special education and related services after Parent's notice of revocation. District acknowledges revocation renders the remedy of future implementation without parental consent moot. Instead, District contends its cause of action arose before revocation was given, and OAH retains the jurisdiction to determine whether District's offer of placement in the February 9, 2016 IEP was appropriate for Student.

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.)

A request for a due process hearing shall be file within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis of the request…(Ed. Code, § 56505, subd (l).)

District's complaint identifies a dispute regarding Student's placement and services which arose prior to parental revocation of special education and related services. Parental consent as defined under title 34 Code of Federal Regulations, part 300.09, also provides that "if a parent revokes consent, that revocation is not retroactive." Therefore, District maintains a valid request for determination of issues which can be raised District and/or Student for that matter, anytime within prescribed statute of limitations. Further, Student will soon reach the age of majority, and could pursue the appropriateness of the February 9, 2016 IEP on her

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3 All citations to the Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

own, which District would be obligated to defend. The issues remain ripe for determination under District's due process request. Accordingly, Student did not establish that District's claims in its complaint were moot because Parent withdrew consent for District to provide special education and related services.

ORDER

Student's motion to dismiss District's complaint is denied. The matter will proceed to hearing as scheduled.

IT IS SO ORDERED.

DATE: May 18, 2016

DocuSigned by:
Judith Pasewark
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JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings