

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011070567

ORDER GRANTING IN PART AND  
DENYING IN PART DISTRICT'S  
MOTION FOR PARTIAL DISMISS

Student, through his parents, filed a request for due process hearing (complaint) on July 18, 2011, naming the Irvine Unified School District (District). On July 25, 2011, the District filed a response to Student's complaint along with a motion to partially dismiss the complaint. Student has not filed an opposition or otherwise responded to the District's motion.

The District requests that the Office of Administrative Hearings (OAH) dismiss issue five of Student's complaint, contending that it is duplicative of Student's issue 10. Issue five alleges that the District denied Student a free appropriate public education during the 2010-2011 school year by failing to have a general education teacher in attendance at Student's annual individualized education plan (IEP) meeting. Student's issue 10 alleges that the District denied Student a free appropriate public education during the 2011-2012 school year by failing to have a general education teacher in attendance at Student's June 15, 2011 IEP meeting.

Although the District contends that issues five and 10 both refer to the IEP meeting held for Student on June 15, 2011, because that was the date of Student's first annual IEP meeting, it is not clear that issue five is meant to reference that meeting. Issue five does not specify which IEP meeting is at issue. Paragraph three of the facts portion of Student's complaint states that there was no general education teacher in attendance at Student's initial IEP meeting, which took place on August 31, 2010. Issue five of Student's complaint may be a reference to the meeting which took place on that date, rather than a reference to the IEP meeting that occurred on June 15, 2011. Since it is unclear which IEP meeting issue 5 was intended to address, it is unclear if issue five and 10 are duplicative allegations. It is thus premature to dismiss issue five.

The District also moves to dismiss proposed resolution five of Student's complaint, which asks OAH for an order indicating that Student's parents are entitled to reimbursement for reasonable attorneys' fees and costs as the prevailing party. The District correctly states that OAH does not have jurisdiction to order such reimbursement. The District's motion to dismiss Student's proposed resolution five is therefore granted.

ORDER

1. The District's motion to dismiss Student's issue five is denied without prejudice.
2. The District's motion to dismiss Student's claim for attorneys' fees is granted without prejudice to Student seeking those fees in a court with jurisdiction to grant them.
3. This matter shall proceed as scheduled.

Dated: August 02, 2011

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings