

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011100096

ORDER DENYING MOTION TO
DISMISS

On October 13, 2011, District filed a response to Student’s complaint, which included a “Partial Motion to Dismiss.” District’s motion seeks dismissal of Student’s proposed resolution number four, which seeks reimbursement for attorney and legal fees. Student did not file an opposition to the partial motion to dismiss.

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.

An award of reasonable attorney’s fees to the prevailing parent, guardian, or pupil, as the case may be, may only be made either with the agreement of the parties following the conclusion of the administrative hearing process or by a court of competent jurisdiction. (*See* 20 U.S.C. 1415(i)(3); Ed. Code, §56507, subd. (b).) Education Code section 56507, subdivision (d), requires that the hearing decision indicate the extent to which each party has prevailed on each issue heard and decided, which can be a factor in determining attorney fees.

Here District’s motion to dismiss proposed resolution number four is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits as to whether Student is entitled to recovery of attorneys fees, which in essence is a motion for summary judgment. However, the issue is not ripe because Education Code section 56507, subdivision (b), appears to contemplate that in some cases, fees may be awarded by agreement at the conclusion of a hearing. Moreover, District will suffer no harm if the proposed resolution remains in Student’s complaint, as Education Code section 56507, subdivision (b) makes clear that such fees can only be awarded by agreement or by a “court of competent jurisdiction,” which OAH is not.

Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: October 25, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings