

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. 2011080051

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

On August 1, 2011, Student filed a Request for Due Process Hearing (complaint) that stated two problems, nine proposed resolutions, and asked for an award of attorney fees. On August 11, 2011, District filed a Partial Motion to Dismiss, in which District argued that two of the nine proposed resolutions, and the request for fees, are outside Office of Administrative Hearings (OAH) jurisdiction. OAH has received no response from Student to District's motion. As discussed below, the motion is denied as to the proposed resolutions but granted as to the request for attorneys fees.

APPLICABLE LAW

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

A hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in a service for an individual with exceptional needs provided by a nonpublic, nonsectarian agency, if the school or agency has not been certified by the California Department of Education. (Ed. Code, § 56505.2, subd. (a).)

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. (Ed. Code, § 56507, subd. (b)(1).)

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.

DISCUSSION

Proposed resolutions C and D of the complaint seek math and language services from two named providers. District's motion argues that these named providers are not certified nonpublic agencies, and therefore that OAH is without jurisdiction to award the proposed relief. However, the status of the providers as certified, or not, does not appear on the face of the complaint. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. To the extent District contends that the proposed resolutions are not available in an OAH due process proceedings as a remedy for IDEA violations, its argument should be made after the hearing, based on the facts developed there.

However, the request for attorneys fees is facially outside OAH jurisdiction and is therefore subject to dismissal. This order is without prejudice to Student seeking those fees in a court with jurisdiction to grant them.

ORDER

1. The motion to dismiss proposed resolutions C and D is denied.
2. The 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. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: August 18, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings