

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FOUNTAIN VALLEY SCHOOL
DISTRICT.

OAH CASE NO. 2011090037

ORDER PARTIALLY GRANTING
MOTION TO DISMISS PROBLEM
NUMBER TWO OF THE COMPLAINT

On September 27, 2011, District filed a Motion to Dismiss “Problem Number Two” from Student’s complaint for due process. Student did not file an opposition or response.

Although special education law does not provide for a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, incorrect parties, etc.....).

Here, Problem Number Two incorporates all of the facts from Problem Number One. However, it alleges that District discriminated against Student thereby denying Student federal and state constitutional rights based upon disability, in violation of “[t]he Unruh Civil Rights Act, California Civil Code §§ 57 and 51.7; California Education code §§ 200, 201, 262.3, and 32261; the due process and equal protection clauses of both federal and state constitutions; Title II of the Americans with Disabilities Act, 42 U.S.C. §12131 et seq; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.” Thus, on its face, Problem Number Two alleges civil rights and constitutional violations that are outside OAH jurisdiction.

Accordingly, to the extent Problem Number Two alleges civil rights and constitutional violations, those claims are dismissed. The matter will proceed as to all remaining issues alleged under the Individuals with Disabilities Education Act. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: October 3, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings