

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011090433

ORDER GRANTING PARTIAL
MOTION TO DISMISS PROPOSED
RESOLUTION FOUR

On September 14, 2011, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) naming the Placentia-Yorba Linda Unified School District (District) as respondent. The complaint contains four issues related to school years 2010-2011 and 2011-2012 involving the appropriateness of the District's offer of placement and services and the appropriateness of the District's Behavior Intervention Plan (BIP). The complaint also contains five proposed resolutions.

On September 25, 2011, the District filed a pleading which included a Notice of Representation, a Response to the Complaint, and a partial Motion to Dismiss. In its Partial Motion to Dismiss, the District seeks an order striking the fourth proposed resolution, which requests the awarding of attorney fees and costs. The District contends that the Office of Administrative Hearings (OAH) is without jurisdiction to award attorney fees and costs. Student has not filed an opposition or any other response to the District's motion.

DISCUSSION

Education Code section 56507(b)(1) states:

An award of reasonable attorney 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 pursuant to Section 1415(i)(3) of Title 20 of the United States Code.

OAH is without jurisdiction to award attorney fees and costs in due process hearings. In order for a prevailing parent to obtain such fees and costs, the prevailing parent must seek such remedy from a competent court following the due process hearing. Accordingly, the District's motion to dismiss Proposed Resolution Number Four is hereby GRANTED.

IT IS SO ORDERED.

Dated: October 10, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings