

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012070544

ORDER DENYING WITHOUT  
PREJUDICE DISTRICT’S MOTION TO  
DISMISS STUDENT’S PROPOSED  
REMEDY FOR PROSPECTIVE  
PLACEMENT AT SHELTERWOOD

On July 17, 2012, Parents on behalf of Student (Student) filed a request for due process hearing (complaint) naming the Orange Unified School District (District) as respondent. On October 10, 2012, the District filed a motion to dismiss Student’s proposed remedy which requests that the Office of Administrative Hearings (OAH) order the District to prospectively place Student at the Shelterwood School, a Christian boarding school that is not State certified. Student filed an opposition to the District’s motion on October 15, 2012.

In the Due Process Hearing request (Complaint), Student requests as part of her proposed remedies that the Office of Administrative Hearings (OAH) issue an order reimbursing Student’s parents for all expenses incurred for educationally related placement and services, and as compensatory education *continued* placement at residential treatment center (RTC) and for any other required support services.

In its motion, the District states that Student was, and continues to be, placed at Shelterwood. In her opposition, Student correctly states that the Complaint does not request reimbursement or prospective funding specifically for Shelterwood.<sup>1</sup> In fact, the District’s motion fails to contain any evidence to demonstrate that Student is presently attending Shelterwood other than a mere statement that the District has since learned that she is attending Shelterwood. (Motion at p. 2.)

In her opposition, Student incorrectly labels the District’s motion as “spurious.” That is not the case. OAH has granted a similar motion in *Student v. Newport-Mesa Unified School District* (OAH Case Number 2010100605). In that case, the ALJ granted a motion to dismiss the remedy sought for prospective placement at a religious school prior to the hearing citing Education Code section 56505.2, subdivision (a) which specifically states that “[a] hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, . . . if the school . . . has not been

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<sup>1</sup> Student also does not state that she is attending Shelterwood.

certified [by the California Department of Education (CDE)] pursuant to Education Code section 56366.1.”

In *Struble v. Fallbrook Union High School District* (S.D. Cal. 2011), 2011 WL 291217, the United States District Court, citing 20 U.S.C. section 1412(a)(10)(B) and Education Code section 56505.2, noted that the it would be inappropriate to place a student in a non-certified nonpublic school.<sup>2</sup>

Because the District’s motion fails to offer admissible evidence that Student is attending Shelterwood, its motion must be denied without prejudice.

ORDER

The District’s motion to dismiss Student’s proposed remedy for prospective placement is denied without prejudice.

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IT IS SO ORDERED.

Dated: October 19, 2012

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> In *Struble*, Student sought prospective placement in a non-religious nonpublic school that was not state certified.