

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

SADDLEBACK VALLEY UNIFIED  
SCHOOL DISTRICT,

OAH CASE NO. 2010090212

SADDLEBACK VALLEY UNIFIED  
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010100932

ORDER GRANTING DISTRICT'S  
MOTION TO DISMISS STUDENT'S  
PROPOSED RESOLUTION FOR  
PROSPECTIVE PLACEMENT AT  
NONCERTIFIED NONPUBLIC SCHOOL

As of December 29, 2010, pursuant to an Order Granting Motion to Amend Complaint, Student was permitted to file an amended request for due process hearing (complaint) dated December 20, 2010, naming District as the respondent. The complaint sought, as proposed resolution number (3), "The ALJ should order *that [Student] continue in Crean* until such time as either the parties agree to an alternative placement, or the District proves an alternative placement is appropriate in a court of competent jurisdiction." (Emphasis added.)

On May 18, 2011, District filed a motion to dismiss Student's proposed resolution number (3). Student filed an opposition to District's motion on May 19, 2011. Because District is correct that state law prevents OAH from ordering prospective placement of students at private schools that have not been certified as a nonpublic school, and because Student's May 19, 2011 opposition misquotes the complaint and misrepresents the nature of the proposed resolution stated therein, District's motion is granted.

BACKGROUND FACTS AND CONTENTIONS

In her complaint, Student contends that District denied her a free appropriate public education (FAPE) by failing to provide her with an appropriate placement. Student asserts that as a result of District's failure to offer her an appropriate placement, her parents

privately placed her at Crean Lutheran School (Crean). As proposed resolution number (3), Student requests, in pertinent part, “The ALJ should order *that [Student] continue in Crean. . .*” (Emphasis added.)

In its motion, District contends that Student’s proposed resolution is for prospective placement at Crean and must be dismissed because Crean is not a certified non-public school. Rather, it is a religious school which is not certified by the California Department of Education.

Student responds that she has a right to seek reimbursement for the costs incurred for privately placing Student if OAH finds that District denied her a FAPE. She also contends that the fact that Crean is a sectarian school should not prevent reimbursement to Student’s parents for their costs. Student’s opposition contends that she is not seeking prospective placement but rather reimbursement, and misquotes proposed resolution number (3), misrepresenting that it reads as follows: “The ALJ should order *that the District continue to provide reimbursement for placement in Crean* until such time as either the parties agree to an alternative placement, or the District proves an alternative placement is appropriate in a court of competent jurisdiction.” (Emphasis added.)

#### ANALYSIS

District is correct that Student’s complaint seeks prospective placement, and that state law prevents OAH from ordering prospective placement at an uncertified school. Student’s contention, that there is no state statutory prohibition that prevents OAH from ordering reimbursement for costs incurred at a non-certified school if the facts of the case warrant reimbursement, is irrelevant since that is not what proposed resolution number (3) seeks.<sup>1</sup>

Two sections of the Education Code inform the ALJ’s decision to grant District’s motion. First, Education Code section 56034 defines a non-public school as a non-sectarian school that is certified by the Department of Education. There is no provision under the Education Code for the certification of sectarian or parochial schools as a non-public school.

Second, Education Code section 56505.2, subdivision (a) 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 certified [by the California Department of Education (CDE)] pursuant to Education Code section 56366.1.”

Student in her opposition does not dispute that Crean is sectarian, nor does Student assert that Crean has been certified by the Department of Education as a non-public school. OAH is therefore prevented by state statute from ordering the District to prospectively place

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<sup>1</sup> Proposed resolution number (2) does seek reimbursement for the costs of placement at Crean, and is not the subject of District’s Motion to Dismiss.

Student at Crean or rendering a decision that would result in her placement there. District's motion to dismiss Student's proposed resolution number (3) asking for prospective placement at Crean is therefore granted.

IT IS SO ORDERED.

Dated: May 20, 2011

/s/

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JUNE R LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings