

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010389

ORDER DENYING MOTION TO
DISMISS

On January 14, 2011, Student filed a request for due process hearing (complaint) naming the Newport-Mesa Unified School District (District). On February 11, 2011, 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 parochial school she is now attending. On February 16, 2011, Student filed an opposition to the District's motion.

Student contends that the District denied her a free appropriate public education (FAPE) by failing to provide her with a general education class with structure and a home school component. Student asserts that as a result of the District's failure to offer her an appropriate placement, her parents privately placed her at Spirit Academy. As proposed remedies, Student requests that OAH order the District reimburse her parents for costs for Student's tuition according to proof, and that the District be ordered to provide a general education class with an aid and RSP support, a home school component, and other related services. Student did not ask that the District be ordered to prospectively place Student at Spirit Academy for the remainder of the 2010-2011 school year.

In its motion, the District contends that Student's proposed remedy for prospective placement at Spirit must be dismissed because it 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 her parents have a right to seek reimbursement for the costs they incurred for privately placing Student if OAH finds that the District has denied her a FAPE.

The District specifically states that it is moving to dismiss Student's request for *prospective placement* at Spirit Academy for the 2010-2011 school year. However, Student's Due process Request does not include such a proposed resolution.

The District does not move for dismissal of Student's request for *reimbursement for costs already incurred*. 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. There is no basis for granting the District's motion.

ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: February 22, 2011

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings