

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090847

ORDER DENYING MOTION TO
DISMISS

On October 10, 2012, the South Pasadena Unified School District (District) filed a motion to dismiss or limit Student’s remedies. Student filed opposition on October 15, 2012. District filed a reply to Student’s opposition on October 15, 2012, and Student filed a response to the reply on October 16, 2012.

District contends that Student’s due process hearing request (complaint) seeks, in part, the remedy of prospective placement at Clearview Horizon Christian Boarding School (Clearview). District argues that Clearview is an out-of-state religious school without certification from the California Department of Education (CDE), and that an award of placement at Clearview is beyond the jurisdiction of the Office of Administrative Hearings (OAH) pursuant to Education Code section 56505.2, subdivision (a), which 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 CDE] pursuant to Education Code section 56366.1.” District submits a declaration of counsel attaching print-outs from the websites of the CDE and Clearview, and moves to dismiss “any and all requests for placement at Clearview...to be implemented prospectively as part of the ALJ’s final written decision following a due process hearing.”

Student’s complaint does not seek prospective placement at Clearview. Rather, Student’s complaint requests as a remedy that District fund placement in “a highly-structured therapeutic residential placement, such as Clearview,” giving Clearview’s program as an example of the type of structured program sought. In the event Student prevails on her claims, the administrative law judge (ALJ) hearing this matter will order such remedies as are permitted by law, whether prospective placement in a nonpublic nonsectarian school, reimbursement to parents for a private placement, or other relief, to be determined on the merits.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Here, District’s motion is not limited to a claim facially outside of

OAH jurisdiction, but instead seeks an advisory ruling directing the ALJ hearing the matter on how to craft his or her order on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: October 16, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings