

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALTA LOMA SCHOOL DISTRICT.

OAH CASE NO. 2013050587

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On June 11, 2013, Alta Loma School District (District) filed a motion to dismiss Student's first amended due process hearing request (amended complaint). Student filed opposition on June 12, 2013.

APPLICABLE LAW

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.

DISCUSSION AND ORDER

Student's amended complaint states that he is eligible for special education under the categories of specific learning disability and other health impairment. Student's amended complaint alleges a single claim, that District failed to offer Student a free appropriate public education (FAPE) for the 2013 extended school year (ESY) and 2013-2014 school year in the individualized education program (IEP) of April 12, 2013, and as a result, Student's parents (Parents) unilaterally placed Student at Water of Life School (Water of Life) for the 2013 ESY with notice to District on May 24, 2013. As remedies for a denial of FAPE, Student seeks that District fund, for 2013 ESY and the 2013-2014 school year: (i) the tuition of a small, structured, monitored school setting with one-to-one specialized academic instruction, (ii) a full-time one-on-one aide, (iii) one-on-one academic tutoring and (iv) reimbursement to Student's parents (Parents) for providing such services.

District argues that Water of Life is a religious school without certification from the California Department of Education (CDE), and that the request for prospective placement at Water of Life must be dismissed as beyond the jurisdiction of the Office of Administrative Hearings (OAH). District argues that (i) pursuant to Education Code section 56505.2, subdivision (a), "[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,” that (ii) Article 16, section 5 of the California Constitution bars school districts from paying “from any public fund...anything to or in the aid of any religious sect, church, creed or sectarian purpose, or help to support or sustain any school...controlled by any creed, church or sectarian denomination,” and that (iii) the Establishment Clause of the First Amendment of the United States Constitution prohibits the use of government funds for a secular purpose. District moves to dismiss Student’s request for prospective placement, and because no other relief is requested, that Student’s amended complaint be dismissed in its entirety and/or deemed “insufficient” for failing to allege proposed resolutions.

In his opposition, Student concedes that Water of Life is a sectarian school. However, Student argues that he has done well there, and that Parents cannot afford to privately place Student there for the 2013 extended school year (ESY) or the 2013-2014 school year.

Student’s amended complaint does not seek prospective placement at Water of Life. Rather, Student’s amended complaint requests that District “fund the tuition of a small, structured, monitored school setting with one-to-one specialized academic instruction.” The reference to Water of Life in the proposed resolutions is separately stated as Parents’ preference. In the event Student prevails on his 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.

Student’s proposed resolutions are not limited to prospective placement in a sectarian school. Student’s amended complaint also requests that District fund one-on-one aide services, tutoring services and reimbursement to Parents. Each of these remedies may be awarded within the ALJ’s discretion, and would survive dismissal of a claim for prospective placement in a religious school.

Here, District’s motion is not limited to a claim facially outside of OAH jurisdiction, but instead seeks summary adjudication of the remedies available to the hearing ALJ should Student prevail on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: June 17, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings