BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: BALDWIN PARK UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018020103 ORDER DENYING STUDENT'S MOTION FOR OBSERVATION OF THE AUTISM SPECTRUM DISORDER CLASS

On February 2, 2018 Baldwin Park Unified School District filed a due process complaint naming Student. On March 2, 2018, District filed a request to amend the complaint which contained two issues: whether its December 19, 2017 triennial multidisciplinary psychoeducation assessment report was appropriate such that Student was not entitled to a publicly funded independent evaluation; and whether its October 20, 2017 individualized education program offered Student a free appropriate public education in the least restrictive environment. District's amended complaint was deemed filed on March 20, 2018.

On March 22, 2018, Student filed a Motion to Compel School Observation of Charter Oak High School's Autism Spectrum Disorder class which was not offered to Student. The East San Gabriel Valley Special Education Local Plan Area had two autism classes, the Autism Spectrum Disorder class (a higher functioning/near grade level autism class) and the Autism Spectrum Disorder-I class (a functional curriculum class). Student contends that their independent evaluator should be allowed to observe the Autism Spectrum Disorder class because: it was discussed and considered at two October 2016 IEP team meetings; District had placed Student in the Autism Spectrum Disorder-I class at the October 25, 2016 IEP team meeting for a trial period, and later determined it was inappropriate for Student; parents disagreed with District's assessment concluding that autism was not Student's area of need which resulted in District's May 26, 2017 placement offer of specialized academic instruction, instead of parents' preferred placement in one of the autism classes.

On March 27, 2018, District opposed the Motion to Compel asserting that Student's independent evaluator was not entitled to observe the Autism Spectrum Disorder class because District never proposed, nor offered it as FAPE; District had already determined since October 2016 that the Autism Spectrum Disorder class was inappropriate for Student; placement in the Autism Spectrum Disorder class is not at issue in this matter and District did not observe Student in the Autism Spectrum Disorder class.

APPLICABLE LAW

A student has the right to have his or her expert observe a school district's proposed placement prior to testifying in a due process hearing. (Ed. Code, § 56329, subds. (b) and (c); *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875 (*Benjamin G.*); *L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2008) 538 F.3d 1261.).

Education Code section 56329, subdivisions (b) and (c), are essentially identical in their relevant parts and provide as to assessments at public or private expense that, "if [the public education agency's] assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding."

The court in *Benjamin G.* examined the legislative history of Education Code section 56329, subdivision (b) and held that the statute mandated an opportunity for student's hired expert to observe the school district's proposed placement prior to testifying at a due process hearing and regardless of whether the observation is technically a part of an independent educational evaluation. (*Benjamin G., supra,* 131 Cal.App.4th at pp. 883-884.)

DISCUSSION

The Autism Spectrum Disorder class does not fall within the definition of "current education placement", or a "district's proposed placement" under Education Code section 56329, subdivisions (b) and (c) compelling observation access by Student's independent evaluator. District neither proposed, nor offered, the Autism Spectrum Disorder class to Student as placement. Further, District's assessor did not observe Student in the Autism Disorder class, and this class is not at issue in District's due process complaint. Mere discussion of the existence of the Autism Spectrum Disorder class at the October 2016 IEP team meetings, without an offer of placement in the class, was insufficient to compel District to make the class available for observation by Student's independent evaluator. Although parent may disagree with District about the appropriateness of the Autism Spectrum Disorder class and District's placement offer, observation of this class is not necessary to Student's defense of this matter. The onus is on District to prove that it offered Student an appropriate placement in the least restrictive environment. (*See* 20 U.S.C. § 1412(a)(5)(A); Ed. Code, § 56031; 34 C.F.R. 300.114 (a).) The onus is not on Student to find an appropriate placement through observation of placements not offered by District.

Based on the foregoing, Student's independent evaluator is not entitled to observe Student in the Autism Spectrum Disorder class because District neither proposed, nor offered, it to Student as FAPE. Therefore, Student's Motion to Compel Observation of the Autism Spectrum Disorder class is denied.

ORDER

Student's Motion to Compel Observation of the Autism Spectrum Disorder class by his independent evaluator is denied.

IT IS SO ORDERED.

DATE: April 9, 2018

DocuSigned by:
Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings