BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025030634

ORDER GRANTING MOTION TO COMPEL OBSERVATIONS

MAY 23, 2025

On March 14, 2025, Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings called OAH, naming Los Angeles Unified School District. On April 2, 2025, OAH granted Student's motion to amend the complaint. OAH set the prehearing conference, or PHC, for May 12, 2025, and hearing for May 20, 21, and 22, 2025. On May 7, 2025, OAH granted the parties' request for mediation, set for May 13, 2025. Student cancelled the mediation on May 13, 2025.

On May 8, Student filed a motion to compel a classroom observation by her independent psychoeducational evaluator, Dr. Vindia Fernandez. Student also

requested a hearing continuance to allow Dr. Fernandez to observe Student's placement before the hearing.

Los Angeles did not file an opposition to the motion to compel.

At the May 12, 2025 PHC, the undersigned ALJ heard arguments from both counsel regarding the motion to compel. Following the arguments, Student's motion to compel an observation was taken under submission.

At or around March 2025, Los Angeles conducted a psychoeducational assessment of Student at the current placement. On March 20, 2025, Los Angeles held an individualized education program, called IEP, team meeting offering continued placement at Student's current school. At this IEP team meeting, Parent asked for an independent educational evaluation, called an IEE. Los Angeles did not agree to use public funds for the IEE. Parent then sought the services of a privately funded expert.

On April 8, 2025, Parent arranged for their privately retained expert, Dr. Fernandez of Center for Pediatric Neurology, to assess Student with the release of information signed on April 28, 2025. From April 29, 2025, to May 7, 2025, Student's expert contacted Los Angeles to arrange school observations.

On May 8, 2025, Student filed a motion to compel Los Angeles to allow Dr. Fernandez to observe Student for a total of 90 minutes in the classroom and recess settings as part of her psychoeducational IEE. Student's motion was supported by her attorney's declaration, a copy of Los Angeles' psychoeducation assessment report, a copy of Los Angeles' IEE Policy, and copies of the email communications between Dr.

Fernandez and Los Angeles. Los Angeles' May 2, 2025, email communicated to Student's expert that its school policy to protect the privacy interest of other students prohibited the expert's observation. OAH received no filed response to the motion from Los Angeles.

APPLICABLE LAW

California Education Code section 56329, subdivisions (b) and (c) provide "[i]f a public education agency observed the pupil in conducting its assessment…an equivalent opportunity shall apply to an independent educational assessment" for the parents with regards to observation of the proposed educational placement and setting. Subdivision (b) and (c) apply to publicly and privately funded independent educational evaluations, respectively. The purpose for allowing observation of placements and proposed placements by independent evaluators is to level the playing field between parents and a more knowledgeable school district. (*Benjamin G. v. Special Education Hearing Office* (Cal.Ct.App.2005) 131 Cal. App. 4th 875, 881 (*Benjamin G.*); *L.M. Capistrano Unified School Dist.* (9th Cir. 2009) 556 F.3d 900, 909 (*L.M. v Capistrano*.) The IDEA gives the child and their parents the right to be advised by experts and have those experts testify at a due process hearing. (*Benjamin G.*, at 909 (interpreting section 56329 as providing parents the right to have an expert observe a child's placement or proposed placement before a hearing.)

DISCUSSION

Student argued that Education Code Section 56239, subdivision (b), allows parents the right to participate in the IEP process by allowing their expert to conduct an

independent psychoeducation evaluation similar to Los Angeles' psychoeducational assessment. Student seeks an order allowing their expert to observe Student for 90 minutes in the classroom and recess settings. Student noted that Los Angeles' IEE policy allowed the observation; yet Los Angeles' May 2, 2025, email response stated that observations were prohibited due to a need to protect the confidentiality of other students.

Los Angeles refused several requests from Student's expert to schedule a school-site observation to complete the independent psychoeducational evaluation. Los Angeles denied Dr. Fernandez' requests based on the confidentiality of other student as noted in the May 2, 2025, email. However, at the PHC, Los Angeles admitted that their May 2, 2025, was not an accurate statement regarding Los Angeles' classroom observation policy. Los Angeles offered no updates or additional information about their observation policy. Los Angeles provided no legal authority permitting it to refuse school observations by Student's expert.

Los Angeles argued that Student was not entitled to have their expert observe Student at the school site because the issue of a classroom observation by Student's expert must not be heard as a pre-hearing motion and that a ruling on said motion would deny Los Angeles the opportunity to present mitigating or exculpatory evidence at hearing. Los Angeles offered no legal authority for this position. This argument fails to be persuasive on its face because of the lack of case law or statutory law to support this position.

In *Benjamin G.*, the Parents of an eight-year-old autistic boy challenged Long Beach Unified School District's refusal to allow parents' expert witness to observe the

placement proposed in the IEP offer for their son, before a due process hearing. The court held that Education Code 56329 mandated an opportunity for student's hired expert to observe the proposed placement prior to testifying at a due process hearing. The court opined:

"Because the parents have a statutory right to have their expert testify at their administrative hearing, they ipso facto are entitled to have their expert observe the proposed placement before they participate in the administrative hearing at which the propriety of the proposed placement will be determined." (*Benjamin G.*, supra, at 879.

In *L.M. v. Capistrano,* parents challenged Capistrano Unified School District's refusal to allow student's expert to observe student in the classroom for more than 20 minutes, despite the fact that the district's own expert had observed student for much longer. In its discussion of student's right to an expert observation, the Ninth Circuit observed that section 56329 levels the playing field between parents and a more knowledgeable school district by providing parents with a means to gather all the evidence they can muster to challenge the school district's placement decision. (*L.M. v. Capistrano, supra, at* 556 F.3d 900, 909.)

Student's expert is entitled to an opportunity to observe Student in the classroom and unstructured settings for an equivalent amount of time that Los Angeles observed Student for its psychoeducational assessment. Los Angeles observed Student for at least 40 minutes in a testing environment and for an additional unstructured recess. In emails to Los Angeles, Dr. Fernandez requested approximately 60-minutes to observe Student in the classroom. Los Angeles did not dispute the reasonableness of a 60-minute classroom observation. On the other hand, Student did not present a

declaration from Dr. Fernandez supporting the necessity of a sixty-minute classroom observation and additional observation of Student in an unstructured setting. Balancing the equities, and consistent with the purposes of expert observations of placements under the IDEA, it is appropriate to order as follows. Student's expert may observe Student for up to sixty-minutes, in total. Dr. Fernandez can determine whether the entirety of the observation will be in Student's classroom or whether the observation time will be spread out to include observation of Student during unstructured time, such as recess or lunch.

ORDER

1. Student's motion to compel Los Angeles to allow Dr. Fernandez's observation in Student's school setting is granted.
2. Los Angeles shall contact Student's expert, Dr. Fernandez, to arrange Dr. Fernandez' school observation of Student, which shall take place no later than June 6, 2025.
3. Dr. Fernandez shall have 60 minutes, total, to observe Student in the classroom and during unstructured time. The observation time shall start when Dr. Fernandez enters Student's classroom or arrives at the unstructured observation area.

Thanayi Lindsey
Thanayi Lindsey (May 23, 2025 16:35 PDT)

Thanayi Lindsey
Administrative Law Judge
Office of Administrative Hearings