BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LAWNDALE ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2017110329 ORDER GRANTING IN PART AND DENYING IN PART DISTRICT'S MOTION FOR OBSERVATION

On November 6, 2017, Student filed a request for due process hearing against Lawndale Elementary School District, alleging that various deficiencies in the educational program offered to Student by District denied her a free appropriate public education and requesting, among other things, reimbursement for Student's tuition at the Academy for Early Learning, a nonpublic school at which Student's parents placed her.

On December 6, 2017, District filed a Motion to Compel Observation by District of Student at the Academy for Early Learning. The motion also requests that District be permitted to speak with Academy staff about Student's educational program. The motion does not specify who will conduct the observation, or specify a length of time for the observation. On December 8, 2017, Student filed a response to the motion.

APPLICABLE LAW

Education Code section 56329, subdivision (d), provides in pertinent part:

> If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian. An observation conducted pursuant to this subdivision shall only be of the pupil who is the subject of the observation and shall not include the observation *or* assessment of any other pupil in the proposed placement. (Emphasis added.)

In general, the plain meaning of a statute controls and courts will not resort to extrinsic sources to determine the Legislature's intent unless its application leads to unreasonable or impracticable results. (*Nuclear Info. and Res. Serv. V. DOT Research* (9th Cir. 2006) 457 F.3d 956, 960; *In re Jennings* (2004) 34 Cal. 4th 254, 263.)

DISCUSSION

In this case, Student requests that District reimburse Parents for previously privately obtained educational services at the Academy since summer 2017. District requests that it be permitted to observe Student at the Academy, and to speak with Academy staff about Student's educational program there. District initially directed this request via email to Student's counsel. In subsequent correspondence between the parties Student objected to District's request because she contends that the observation is an assessment pursuant to 34 Code of Federal Regulations, parts 300.15 and 300.304 (2006) and therefore requires an assessment plan.[1] Student also bases her response to the motion on this contention.

Student cites no authority in support of her position that an observation pursuant to Education Code section 56329, subdivision (d) is an assessment and, as such, requires an assessment plan. The language of the statute itself distinguishes between an observation and an assessment with respect to students who are not the subject of the observation, and, moreover, does not equate the two activities with respect to students who are the subject of the observation. Consequently, District's request to observe Student at the Academy is granted subject to the conditions specified below.

District cites no authority to support that part of its motion seeking an order permitting District to speak with Academy staff about Student's educational program. The statute only refers to an observation; it does not authorize discussions as of right between District and school staff. Consequently, District's request to speak to Academy staff regarding Student's educational program is denied.[2]

ORDER

1. District's Motion to Compel Observation is granted, in part. Student shall permit one representative of District, regardless of whether the representative is a District employee, to observe Student for two hours at the Academy, at a date and time that is mutually agreeable to District and Student.

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[1] The Code of Federal Regulations refers to "evaluations" instead of "assessments." Education Code section 56302.5 states that the term "assessments" as used in the Education Code sections that are applicable to this motion have the same meaning as "evaluations." This Order therefore uses the term "assessments."

[2] Nothing in this Order is intended to prohibit Student from voluntarily granting permission to District to discuss Student or her educational program with Academy staff.

2. District's request that it be permitted to speak with Academy staff about Student's educational program is denied.

DATE: December 12, 2017

DocuSigned by:
Elsa H. Jones
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings