BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018060323
v.	ORDER GRANTING STUDENT'S MOTION TO COMPEL CLASSROOM OBSERVATION
GOLETA UNIFIED SCHOOL DISTRICT.	

On June 1, 2018, Student filed a due process hearing request naming Goleta Unified School District. Student alleges Goleta's offer of placement and services in Student's May 31, 2018 individualized education program denies Student a free appropriate public education, by proposing to move Student from a general education classroom with inclusion support and other appropriate services and curriculum modifications, to a more restrictive environment. Student's complaint does not challenge any Goleta assessment.

On September 17, 2018, Student filed a motion to compel Goleta to permit Board-Certified Behavior Analyst Nancy Franklin to observe Student at school to assess Student's participation and inclusion in his general education program. Student seeks an order directing Goleta to permit Ms. Franklin to observe Student for up to seven hours over two or more days, with Ms. Franklin having discretion to observe Student for continuous periods up to 3.25 hours. Student based his request on Education Code section 56329, subdivision (c), which requires a district to provide an independent educational assessor an opportunity to observe a pupil in class equivalent to the opportunity given to a district assessor. Student seeks a classroom observation opportunity corresponding to the total time of observation, and longest continuous period of observation, afforded Goleta assessor Amanda Martinez-Iqbal for her March 2017 special circumstances independence assessment of Student.

On September 20, 2018, Goleta filed a response, contending Goleta board policy limits classroom observation to one hour at a time, accompanied by Goleta personnel. Goleta also contends that Education Code section 56329, subdivision (c), does not apply because Ms. Franklin's assessment is not an independent educational assessment being conducted at public expense. Goleta also contends that it would be unreasonable to require Goleta staff to accompany Ms. Franklin for 3.25 hours at a time, and that the proposed observation time would be highly disruptive to the learning environment.

On September 24, 2018, Student filed a reply brief.

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) (*L.M v. Capistrano*).)

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 875, at pp. 883-884). In *L.M. v. Capistrano* the court found that the district committed a procedural error in failing to provide an equal observation opportunity to the student's independent assessor, whose observation was not associated with any challenge to a district assessment. (*L.M. v. Capistrano, supra,* 538 F.3d 1261, at pp. 1264-1269.)

The Education Code does not require that independent assessors be accompanied by district personnel during classroom observations.

DISCUSSION

Student's request that Goleta give Student's independent assessor Nancy Franklin a classroom observation opportunity corresponding to the total time of observation, and longest continuous period of observation, afforded Goleta assessor Amanda Martinez-Iqbal for her March 2017 special circumstances independence assessment of Student., is appropriate under Education Code section 56329, subdivisions (b) and (c), and *Benjamin G.* and *L.M. v Capistrano*, *supra*.

Education Code section 56329, subdivisions (b) and (c) does not authorize a district to limit a student's right to an equal classroom observation opportunity in any way, whether by application of district policy, or arguments of inconvenience to district

personnel or theoretical disruption of the learning environment. Goleta's policy regarding classroom interruptions gives school principals discretion whether to accompany some classroom visitors, but requires that visitors related to a private assessment must be accompanied by the Assistant Superintendent of Pupil Services or a designee. This policy is Goleta's choice, and it allows Goleta to minimize the disruption to the Assistant Superintendent by designating other personnel to accompany an independent assessor.

ORDER

1. Student's motion is granted.

2. On or before October 15, 2018, Goleta shall permit Student's expert, Nancy Franklin, to conduct observations of Student during school for a total of up to seven hours over two or more days, with Ms. Franklin having discretion to observe Student for continuous periods up to 3.25 hours.

3. Student shall propose four observation dates and times to Goleta by close of business on September 27, 2018. Goleta will confirm two or more of the proposed dates and times totaling seven hours or more by close of business on September 28, 2018. If Goleta does not timely confirm such dates and times, Student may select from the proposed dates and times and notify Goleta of the selection by close of business on October 1, 2018.

4. Ms. Franklin shall conduct herself on campus in compliance with Goleta policies for campus visitors, and in a manner that does not disrupt or disturb classroom activities.

DATE: September 26, 2018

DocuSigned by:
Marian H. Tully
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ROBERT G. MARTIN
Administrative Law Judge
Office of Administrative Hearings