BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023060486

ORDER PARTIALLY GRANTING MOTION TO COMPEL OBSERVATION

AUGUST 23, 2023

On June 13, 2023, Student filed his request for due process in this case with the Office of Administrative hearings, called OAH, naming Palo Alto Unified School District, called Palo Alto, as the respondent. Prior to filing this case Parents unilaterally privately placed Student at the Esther B. Clark School, a nonpublic school, called EBC. Student's complaint seeks an Order finding, in part, that Palo Alto shall reimburse Parents for costs they incurred by placing Student at EBC during the 2022-2023 school year, and that Palo Alto shall fund Student's placement at EBC during the 2023-2024 school year.

On August 14, 2023, Palo Alto, filed its Motion to Compel Observation. Palo Alto's motion seeks an order allowing three of its professional employees (school

psychologist, education specialist, and program specialist) to observe Student for two hours each at EBC on one school day. On August 17, 2023, Student filed his Opposition to that motion. The hearing in this case is scheduled to commence on September 26, 2023. As discussed below, Palo Alto's Motion to Compel Observation is granted.

APPLICABLE LAW AND DISCUSSION

California Education Code section 56329, subdivision (d) states: "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." Here, Student was parentally placed at EBC. Student's due process hearing request alleges that Palo Alto denied Student a free appropriate public education, called a FAPE, and requests remedies of reimbursement for placement at EBC and continued placement at EBC at Palo Alto's expense. Thus, Education Code section 56329, subdivision (d) applies, and Palo Alto is entitled to observe Student at EBC, under conditions that will not disrupt Student or his classmates.

Student argues that: (1) Palo Alto's motion is untimely; and (2) Palo Alto's request to observe Student is improper prehearing discovery. Student further argues that if the observation is allowed, to avoid disrupting EBC's program, it should be limited to a maximum of two observers at any one time, for observations of no longer than 50 minutes. These parameters for observation conditions are supported by the Declaration of Sarah Knepper, EBC's Instructional Services Manager.

The Declaration of Palo Alto's attorney, Tracy Petznick Johnson, established good cause for its late filing of the motion. Also, Student failed to demonstrate any prejudice to Student based on when Palo Alto filed its motion.

Student's assertion that Palo Alto's request to observe is improper prehearing discovery is not persuasive. California Education Code section 56329, subdivision (d) gives Palo Alto the right to observe a child in a placement when funding for it is requested, as in the complaint. However, Student's request to limit the observation in accordance with EBC's requested parameters for observations is reasonable.

ORDER

1. Palo Alto's Motion to Compel Observation is granted.
2. Palo Alto may conduct observations of Student in his placement at EBC before September 26, 2023.
3. Palo Alto's school psychologist, education specialist, and program specialist may each observe Student for one 50-minute session. No more than two of these people may observe Student at EBC at one time.
4. Parents will execute consent for the above-described limited observation at EBC to occur. Parents' failure to comply with this Order may result in a reduction or denial of the requested reimbursement.

5. Palo Alto is required to serve a copy of this order on EBC prior to making arrangements for the observations.

IT IS SO ORDERED.

Christine Arden

Christine Arden

Administrative Law Judge

Office of Administrative Hearings