BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013110737
v.	ORDER GRANTING DISTRICT'S MOTION FOR OBSERVATIONS OF STUDENT
IRVINE UNIFIED SCHOOL DISTRICT.	

On November 21, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) naming the Irvine Unified School District (District) as respondent. The complaint contains two issues. Issue one is whether the District denied Student a free appropriate public education (FAPE) by failing to provide Independent Education Evaluations to Student. Student seeks to have OAH order the District to reimburse Student for the cost of evaluations funded by Student. Issue two contends that the District's offered education program fails to provide Student a FAPE. Student seeks to be placed in a general education class with support services provided by nonpublic agencies that are currently servicing Student at his current placement.

On December 23, 2013, the District filed a motion to compel observations of Student at his current placement at A Child's Place Learning Center (CPLC). The District requests an order from OAH permitting a total of three hours of observation by District employed education specialist, speech and language pathologist (SLP), and occupational therapist (OT).

APPLICABLE LAW

Education Code section 56329, subdivision (d), which 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.

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. & Res. Serv. v. DOT Research* (9th Cir. 2006) 457 F.3d 956, 960; *In re Jennings* (2004) 34 Cal. 4th 254, 263.) Similarly, the Education Code

expressly states the principle of statutory construction that "the definitions prescribed by this article apply unless the context otherwise requires." (Ed. Code, § 56020.)

Here, section 56329, subdivision (d) expressly states that a school district has a right to observe a "proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by a parent or guardian." Thus, contrary to Student's interpretation of the statute, it is only after there is a unilateral placement that a school district may seek an observation. Accordingly, because unilateral placement is a prerequisite to a district observation, the word "proposed" in section 56329, subdivision (d) does not limit a district's right to observe a placement only if a parent is prospectively requesting a placement in the IEP process. Instead, section 56329, subdivision (d) on its face applies to the circumstance presented here, i.e., a parent has unilaterally placed a student and is seeking public funding through a due process hearing. (*San Luis Unified School District*, Order Granting District's Request for Observation, OAH Consolidated Cases Numbered 09031275/2008110557/2009020316, p.2.)

In *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875, 884, the Court construed Education Code section 56329, subdivision (c), as permitting an independent expert to observe a proposed placement not only as part of a parent-funded independent education evaluation, but also as part of an expert's preparation for a due process hearing. *Benjamin G.* also provides for a pre-hearing order to compel a school district to permit the observation. The reasoning by the *Benjamin G.* court should apply to the expert for a District as to the appropriateness of the Parent selected placement. Here, the District seeks to have its expert, Dr. Siegel and Mr. Johnson, observe Student's current placement as part of the expert's preparation for a due process hearing. (See also, *San Luis Unified School District*, Order Granting District's Motion for Observation, OAH Consolidated Cases Numbered 2011110858/2011090132.)

DISCUSSION

Student in his complaint basically alleges that the District relied on an inappropriate assessment. Student contentions are basically based on the finding by District assessors that Student had an IQ score of 64 as compared to the IQ score obtained by Student retained assessor, Dr. Christine Majors, which was 95. In the complaint, Student alleges that Student should be placed in a general education class, with supports, based on "several recent observations" by Dr. Majors at his current parentally placement, CPLC.

In its motion, the District requests an opportunity to conduct observation of Student at CPLC to determine whether CPLC is an appropriate placement and to view the "progress" that Student's parents and independent assessors claim. The District cites a July 10, 2013 letter forwarded by Student's counsel informing the District that Student's parents intend to

place Student at CPLC and seek reimbursement for all costs related to the placement.[1] Under Education Code section 56329, subdivision (d), the District is entitled to conduct an observation at the private placement.

Additionally, it is expected that Dr. Majors will testify on her findings. In the complaint, Student alleges: "Dr. Majors has conducted several recent observations to update Student's present levels of performance and Student's progress." (Complaint, p. 11.) Thus, it is reasonable to assume that Student will have Dr. Majors testify on her opinions which would be partially based, at a minimum, on these recent observations. The District is entitled to a like opportunity to observe Student in his current placement. (*San Luis Unified School District*, Order Granting District's Motion for Observation, OAH Consolidated Cases Numbered 2011110858/2011090132.)

ORDER

1. The District's motion to conduct observations of Student is GRANTED.

2. The District will have an opportunity for each of its designees to observe Student at his current placement for a period of one hour each. Parents are directed to assist in consenting to said observations. In the event that the District is not able to make said observations, the District may file a motion in limine to limit the testimony of Dr. Majors to her assessment results only.

IT IS SO ORDERED.

Dated: December 30, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

[1] Student does not seek as a remedy in the complaint reimbursement for CPLC placement, although it would be expected that such a remedy would be requested at the Prehearing Conference or at Hearing.