BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BEVERLY HILLS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018050012 ORDER GRANTING MOTION TO COMPEL CLASSROOM OBSERVATION

On April 30, 2018, Parents on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Beverly Hills Unified School District. On May 11, 2018, Student filed a Motion to Compel Classroom Observation. On May 16, 2018, District filed an opposition to the motion. On May 18, 2018, Student filed a reply to the opposition.

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.)

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 at pp. 883-884.)

DISCUSSION

Student contends that Student's independent educational evaluation assessor, Dr. Betty Bostani, requires a continuous observation of 90 minutes to allow Dr. Bostani to obtain a comprehensive view of Student's current levels of functioning in structured and unstructured settings, in social opportunities with peers, and during transitions. Student argues that a shorter duration of 60 minutes, as proposed by District, would not allow Dr. Bostani to obtain an adequate sampling of Student's ability to manage his anxiety and behaviors. Student asserts that Dr. Bostani's observation should not be limited to an hour-to-hour, or minute-to-minute "equivalent opportunity" to that of District's assessor, school psychologist Raquel Carungcong. Student relies on a letter issued by the Office of Special Education Programs opining that it is inconsistent with the Individuals with Disabilities Act for a school district to have a policy limiting a third party evaluator's observation window, unless the school district imposes the same limitation on its assessors. (*Letter to Savit*, 64 IDELR 250 (OSEP 2014).) Such a limitation may restrict the scope of the independent educational evaluation and prevent an independent evaluator from fulfilling their purpose. (*Ibid.*)

District contends that Student is not entitled to have his private assessor receive more observation time than used by Ms. Carungcong. District claims that Dr. Bostani is only entitled to an opportunity to observe Student in school equivalent to that of Ms. Carungcong, who observed Student three times for a total of approximately 60 minutes. District argues that Dr. Bostani is therefore, limited to 60 minutes of observation.

If District had placed a limitation on Ms. Carungcong's observation of Student, District's limitation on Dr. Bostani's observation to less than a 90-minute continuous observation would be consistent with the IDEA. However, District placed no limitation on Ms. Carungcong as to the frequency, duration, and total amount of time she could observe Student for her assessment. Ms. Carungcong was allowed to exercise her own judgement to determine the appropriate amount of observation she required to appropriately assess Student. Accordingly, Dr. Bostani should be permitted an "equal opportunity" to determine the amount of observation time she requires to properly assess Student based on her training, experience and the standards of conducting an observation within her profession. An opportunity by a private assessor to conduct a school observation is not limited to an equal minute-for-minute allocation of time. In Dr. Bostani's opinion, she requires 90-minutes of continuous observation to properly assess Student across various school environments.

However, a hired expert's ability to observe a Student in the classroom is not without limitations. Here, it is unclear what 90 minutes of continuous observation would entail, since it must take into account natural breaks, such as possible restroom breaks for Student and Dr. Bostani. In addition, teachers must exercise control of the classroom to ensure the class is on task and students are properly attended to. If a teacher determines that an observation is interfering with the students' educational needs, the teacher may stop the observation. Accordingly, the length of an observation should only be as long as reasonably necessary.

Here, Dr. Bostani's request is not unreasonably lengthy as it is only 30 minutes longer than the time Ms. Carungcong required for her assessment.

ORDER

Prior to the end of the 2017-2018 school year, District shall permit Dr. Bostani to observe Student for 90 continuous minutes at Student's current education program and setting, unless determined by a teacher that the observation is interfering in the students' education, in which case, the teacher may briefly stop the observation. If stopped, the observation will resume as soon as the teacher deems it appropriate. Nonetheless, District shall allow Dr. Bostani to complete her observation in one day, within a three-hour window. Dr. Bostani shall inform District of the date and start time of her observation at least 48 hours in advance.

IT IS SO ORDERED.

DATE: May 25, 2018

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Rommel P. Cruz
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ROMMEL P. CRUZ
Administrative Law Judge
Office of Administrative Hearings