BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

V.

MILPITAS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2026020736

ORDER DENYING MOTION TO COMPEL

APRIL 14, 2026

On February 17, 2026, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Milpitas Unified School District, called Milpitas.

On March 25, 2026, Student filed a motion to compel Milpitas to provide Student's retained assessor Lakshmi Balasubramanian specified access for an independent inclusion assessment. Student contends Milpitas should have offered a general education placement instead of specialized academic instruction for the majority of the school day outside the general education classroom.

Balasubramanian represented in a declaration supporting the motion to compel that as an inclusion specialist, she regularly observed a student between three to 10

hours before making placement recommendations. She also represented that she typically conducted in-person interviews as part of her assessments.

Student requested OAH compel Milpitas to provide access to:

1. All of Student's educational records;
2. In-person interviews of 15 to 30 minutes with each of Student's individualized education program, called an IEP, team members of their perspectives on Student's IEP; and
3. Classroom observations of Student's current placement including the general education setting, and specialized academic instruction services for a minimum of six hours over two days.

Balasubramanian represented she has a disability in her declaration. The motion did not state that Balasubramanian requested the enumerated access above to accommodate her disability. However, to the extent Student intended the reference to Balasubramania's disability as support for its motion, OAH does not have the authority over Milpitas' procedures regarding disability accommodations and therefore did not base this Order on consideration of the mentioned disability.

On March 27, 2026, Milpitas filed an opposition to Student's motion to compel. Milpitas objected to Student's requests as unreasonable and beyond the equivalent opportunity access required by law. On March 27, 2026, Student filed a reply to Milpitas' opposition.

The relevant portions of Education Code section 56329, subdivisions (b) and (c) provide 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 law is clear that a student's assessor or expert may observe student's placement or proposed placement at the school district before 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 School District (*9th Cir. 2008) 538 F.3d 1261 (*L.M.*).)

The *Benjamin G.* court went through a lengthy review of the legislative history of Education Code section 56329, subdivision (b). The court noted that the purpose of portions of the Individuals with Disabilities Education Act, called the IDEA, and of the Education Code sections permitting observations by a student's expert, were to "level the playing field" by permitting students to present evidence at a due process hearing, be advised by experts, have the experts testify at hearing, and to have a neutral hearing officer, and to permit the student's expert to observe a district's placement whether or not the student was attending school there. (*Benjamin G., supra*, 131 Cal. App. 4th at pp. 881-883.) *Benjamin G.* held that the Education Code statutes required school districts to permit a student's expert to observe a district's proposed placement before testifying at a due process hearing regardless of whether the observation is part of an independent educational evaluation. (*Benjamin G., supra*, 131 Cal.App.4th at pp. 883-884.)

Likewise, in *L.M., supra*, 538 F.3d at pp. 1267-1270, the United States Court of Appeals for the Ninth Circuit found that Education Code section 56329, subdivision (c), required a school district to provide observation time to a student's expert if the district

conducted its own observation of the student. The Ninth Circuit court affirmed OAH's finding that the district's failure to provide the student's expert with an equal amount of observation time did not constitute a denial of FAPE to the student because the student presented no evidence that parents' right to participate in student's IEP process was significantly affected.

MILPITAS IS NOT REQUIRED TO PROVIDE BALASUBRAMANIAN WITH STUDENT'S EDUCATIONAL RECORDS

California Education Code section 56504 provides that "[t]he parent shall have the right and opportunity to examine all school records of his or her child and to receive copies pursuant to this section and to Section 49065 within five business days after the request is made by the parent, either orally or in writing." (Ed. Code § 56504)

Education Code section 56504 did not require that educational records be provided to Student's assessor. Education Code section 56329, subdivisions (b) and (c) and cases interpreting equivalent opportunity access to placement observations by students' assessors did not include also providing the assessors with Student's educational records. However, nothing prevents Parent from requesting and obtaining Student's educational records under California Education Code section 56504 and sharing it with Balasubramanian.

Student did not cite to any legal authority providing OAH the ability to compel Milpitas to give Balasubramanian access to all of Student's educational records. Therefore, Student's motion to compel Milpitas to give Balasubramanian access to all of Student's educational records is denied.

MILPITAS IS NOT REQUIRED TO PROVIDE BALASUBRAMANIAN IN-PERSON INTERVIEW ACCESS TO ITS EMPLOYEES OR STAFF

In general, there is no right to prehearing discovery in due process proceedings under the IDEA. Rather, a party to a due process hearing under the IDEA has the right to present evidence and compel the attendance of witnesses in a hearing conducted pursuant to subsection (f) or (k) of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings but does not confer the right to prehearing discovery. (Ed. Code, § 56505, subd. (e).)

Student did not show Milpitas was required to give Balasubramanian in-person access to interview its employees or staff even if they are part of Student's IEP team. Milpitas interviewed Student's special education teacher and education specialist in its inclusion assessment. Therefore, Student argued that Balasubramanian should be given access to in-person interviews with all of Student's IEP team members for 15 to 30 minutes each. Nothing prevents Balasubramanian from interviewing Parent as an IEP team member. However, Student also argued that Balasubramanian was entitled to in-person interviews with Milpitas' employees or staff for the time parameters dictated by Balasubramanian's custom and practice. Student further argued that Milpitas' offer for Balasubramanian to contact its employees or staff through emails and assessment questionnaires was not equivalent opportunity access. Student then concluded that Milpitas' refusal to give Balasubramanian the access dictated by her custom and practice would interfere with the family's right to participate in the educational planning process.

Milpitas' decision to interview its staff did not render the offer for Balasubramanian to email IEP team members inappropriate and did not oblige Milpitas to have Balasubramanian also interview staff for compliance with equivalent opportunity

access established under Education Code section 56329, subdivisions (b) and (c). Decisions regarding equivalent opportunity access given to assessors in *Benjamin G.* and *L.M.* did not provide that a student's assessor or expert had a right to discuss issues pending in an upcoming due process hearing with a district's employees or staff. Equivalent opportunity access relates to in-classroom observation of a student's educational placement and setting. It did not extend to interviewing a district's employees or staff, essentially circumventing the established special education framework prohibiting prehearing discovery in due process hearings.

Student did not cite to any legal authority providing OAH the ability to compel Milpitas employees' or staff's participation in what would amount to informal depositions. Therefore, Student's motion to compel Milpitas to provide Balasubramanian in-person interviews of 15 to 30 minutes each of all of Student's IEP team members is denied.

MILPITAS' OFFER OF TWO HOURS OF OBSERVATION CONSTITUTED EQUIVALENT OPPORTUNITY ACCESS TO BALASUBRAMANIAN

Milpitas completed its own inclusion assessment in November 2025. Milpitas' assessor observed Student for a total of 80 minutes over three days, specifically:

1. 20 minutes in the classroom where Student received specialized academic instruction on October 16, 2025;
2. five minutes in the classroom where Student received specialized academic instruction on October 20, 2025; and
3. 55 minutes in both the general education classroom and classroom where Student received specialized academic instruction on October 28, 2025.

Milpitas offered two hours of observation, 40 minutes more than Milpitas' assessor's observation time when it assessed Student. Balasubramanian stated that she typically observed students between three and 10 hours and requested a minimum of six hours over two days to observe Student. Student argued that equivalent opportunity access should not be pegged to the time Milpitas' assessor used in Milpitas' inclusion assessment. Instead, Student argued that Balasubramanian's preferences, custom and practice should dictate the procedures of equivalent opportunity access and Milpitas' refusal amounted to interference with the family's right to participate in the educational planning process.

However, Student did not cite to any legal authority requiring Milpitas to submit to the custom, practice or preferences of a student's expert to satisfy the equivalent opportunity access established under Education Code section 56329, subdivisions (b) and (c), or any cases interpreting these statutes. Student's generalized conclusions that two hours of observation time did not adhere to Balasubramanian's customs and practice were unpersuasive in establishing Milpitas failed to provide equivalent opportunity access or that its refusal automatically resulted in significantly affecting parental right to participate in Student's IEP process. (See *L.M., supra*, 538 F.3d at pp. 1267-1270.)

Therefore, Student's motion to compel Milpitas to provide a minimum of six hours of observation access to Balasubramanian is denied.

Student's motion to compel is denied in its entirety.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings