BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017010619 ORDER GRANTING STUDENT'S MOTION TO COMPEL CLASSROOM OBSERVATION

On March 3, 2017, Student filed a motion to compel observations of his language arts, mathematics, American literature, and lunch time by Student's expert witness, Dr. Christine Majors, in order to prepare for hearing and update an independent educational evaluation from December 2015. Counsel's declaration and authenticated exhibits accompanied the motion.

On March 8, 2017, District filed its response arguing Student's request far exceeds the amount of time District assessors observed Student in his placement. A declaration and exhibits accompanied District's response.

On March 14, 2017, Student filed a reply brief.

APPLICABLE LAW

Education Code section 56329, subdivision (b), provides an unequivocal, nonreciprocal right to have Student's expert observe the District's proposed placement, providing in relevant part:

> If a public education agency observed the pupil in conducting its assessment, or if its 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. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875, at pp. 883 – 884 (*Benjamin G.*); *L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2008) 538 F.3d 1261.).

DISCUSSION

Dr. Majors conducted an independent neuropsychological assessment in August and September of 2015, culminating in a 23 page report dated December 7, 2015. The report documents Dr. Major's observations of Student for one-and-a-half-hours, during his music class and lunch time. Dr. Major's did not note any deficiencies regarding the amount of time allowed for her observations of Student.

Subsequently, Student privately retained Dr. Majors to conduct an independent evaluation of Student's current educational program. Specifically, Student has concerns in reading, writing, math, and social skills. District provides "embedded" reading programs in Student's English language arts and American literature classes. District implements Student's math goals in his specialized academic instruction mathematics class. Therefore, Student seeks an order allowing Dr. Majors to observe him in three classes, each 50 minutes in duration, and during his lunch time.

Student argues that, in order to put on his case, it is essential that his expert have access to clear information about his educational program, without having to rely solely on District representations.

District argues that having students and teachers in the three classes would create undue disruption. However, Dr. Majors previously observed Student at school for 90 minutes, without disrupting instruction. District further argues that Student should not be allowed to evaluate Student's teachers or their methodological choices.

District admits that it does not have a policy limiting the length of school observations by outside experts. Rather, District applies a reasonableness standard, which allows the parties flexibility to discuss parameters on a case-by-case basis. Here, District argues that allowing Dr. Majors to observe the three classes at issue and Student's lunch break, over a 90 minute time period, is unreasonable.

Student has the right to have his independent expert observe his educational placement, so that Student is "in a position to challenge the proposed placement at hearing." (*Benjamin G., supra* at p. 882.)

> "IDEA acknowledges the fact that school districts have better access to information and more educational expertise than parents and thus provides for a "due process" hearing to "level the playing field" by permitting the parents to present all the evidence they can muster to challenge the district's decision.

(*Burlington School Comm. v. Mass. Dept. of Ed.* (1985) 471 U.S. 359, 368-369, 373; *Davis v. District of Columbia Bd. of Ed.* (D.C. 1981) 522 F.Supp. 1102, 1107-1108.)" (*Benjamin G., supra* at p. 882)

It would be inconsistent with the IDEA to limit independent evaluators to observations that restrict the scope of their assessment to the extent that they are prevented from fulfilling their purpose. (See *Letter to Savit* (OSEP 2014) 64 IDELR 250.)

Here, Student demonstrated the need for observations based upon the upcoming due process hearing and the changes in Student's classes since Dr. Major's last independent evaluation. Further, because Student's reading program is embedded into the class instruction, Dr. Major should be allowed to observe and assess those classes, in their entirety. Finally, nothing in the argument or evidence presented shows that District will be prejudiced by allowing Student's expert to observe all three classes and lunch period.

ORDER

1. Student's motion is granted.

2. On or before April 10, 2017, District shall permit Student's expert, Dr. Majors, to conduct observations of Student in his current language arts, mathematics, and American literature classes, and during lunch, for a total of three hours. The observations shall take place over the course one school day, within the ordered time frame. The observations shall be conducted in compliance with all District policies and in a manner that does not disrupt or disturb classroom activities.

DATE: March 27, 2017

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COLE DALTON
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Administrative Law Judge
Office of Administrative Hearings