BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014010895
v.	ORDER DENYING MOTION TO COMPEL OBSERVATION OF EDUCATIONAL PLACEMENT
GARDEN GROVE UNIFIED SCHOOL DISTRICT.	

On January 24, 2014, Parents, on behalf of Student, through counsel, filed with the Office of Administrative Hearings (OAH) a Due Process Complaint naming the Garden Grove Unified School District (Garden Grove).

On February 17, 2014, Student filed with OAH a Motion to Compel Observation of Garden Grove's proposed educational placement by her hired expert in the upcoming due process hearing. In the motion, Student explained that despite numerous requests, she has not received any date from Garden Grove to have her expert observe Garden Grove's program. Therefore, Student seeks an order compelling Garden Grove to permit her expert to observe the proposed educational placement for her.

On February 24, 2014, counsel for Garden Grove filed with OAH a response to the Motion to Compel Observation. In its response, the Garden Grove represents that it has no objection to the requested observation and has "worked diligently with Student" and her attorney. Garden Grove explained that the observation is currently scheduled to take place on March 5, 2014, and thus, argues that OAH's ruling on Student's Motion to Compel Observation is unnecessary as there is no dispute between the parties.

In Student's reply to Garden Grove's response filed with OAH, also on February 24, 2014, Student confirms that Garden Grove has, in fact, scheduled her expert's observation. Nonetheless, Student argues that OAH should still rule on her Motion to Compel Observation because Garden Grove may cancel the scheduled observation.

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

In this case, Student wants her expert to observe Garden Grove's proposed educational placement in preparation for expert testimony at the upcoming due process hearing. Garden Grove does not oppose this request, and in fact, has scheduled Student's expert observation to take place on March 5, 2014. Therefore, because the parties have agreed to have Student's expert observe Garden Grove's proposed educational placement on March 5, 2014, there is no current dispute between the parties regarding the requested observation. Accordingly, the pending Motion to Compel Observation is moot, and is accordingly denied.[1]

ORDER

1. Student's Motion to Compel Observation by her expert is denied.

DATE: February 24, 2014

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

[1] Under the doctrine of mootness, a court may refuse to hear a case because it does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.)