BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2013090674
v.	ORDER DENYING REQUEST FOR EXPERT OBSERVATION BEFORE HEARING
DIXON UNIFIED SCHOOL DISTRICT.	

On February 17, 2014, Student filed a motion to compel Dixon Unified School District (Dixon) to allow his expert to observe Student in his placement prior to the upcoming due process hearing. Student requests that Dr. Meade, who recently completed an independent behavioral assessment, observe Student in his school setting in order to give her crucial information upon which to base her opinion regarding compensatory education services. Student contends that Dr. Meade needs to know whether the Dixon is actually providing the recommended behavior services with fidelity and whether Student has new behaviors that require different services from those recommended and claimed to be currently provided. On February 19, 2014, Dixon filed an opposition to the motion. Student filed a reply on February 19, 2014.

APPLICABLE LAW

Compensatory education is an equitable remedy and must rely on a fact-specific and individualized assessment of a student's current needs. (*Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d at p.1496; *Reid v. District of Columbia* (D.C.Cir. 2005) 401 F.3d 516, 524 (*Reid*); *Shaun M. v. Hamamoto* (D. Hawaii (Oct. 22, 2009 (Civ. No. 09-00075)) 2009 WL3415308,pp. 8-9 [current needs]; *B.T. v. Department of Educ.* (D. Hawaii 2009) 676 F.Supp.2d 982,989-990 [same].) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Reid v. District of Columbia, supra,* 401 F.3d at p. 524.)

When a school district denies a child with a disability a FAPE, the child is entitled to relief that is "appropriate" in light of the purposes of the Individuals with Disabilities Education Act (IDEA). (*School Comm. of the Town of Burlington v. Dept. of Educ.* (1985) 471 U.S. 359, 374, [105 S. Ct. 1996, 85 L.Ed.2d 385]; 20 U.S.C. § 1415.) Based on the principle set forth in *Burlington,* federal courts have held that compensatory education is a form of equitable relief which may be granted for the denial of appropriate special education services to help overcome lost educational opportunity. (*See Parents of Student W. v. Puyallup Sch. Dist.* (9th Cir. 1994) 31 F. 3d 1489, 1496.) The purpose of compensatory

education is to "ensure that the student is appropriately educated within the meaning of the IDEA." (*Ibid.*)

DISCUSSION AND ORDER

Student cites no legal authority in his motion. Student contends that Dr. Meade needs to observe Student prior to the due process hearing because she requires an understanding of Student's current needs and whether the recommended behavior interventions she has proposed are being implemented for Student with fidelity or whether his continuing behavior issues are the result of a new and unidentified behavior problem.

Student has raised two discrete issues in his complaint in this case:

Issue 1 – Did Dixon deny Student a FAPE by failing to timely provide him with the independent educational evaluation that was agreed to in February 2013?

Issue 2 – Did Dixon deny Student a FAPE by requiring the Parent's chosen independent assessor to follow special education local plan area and Dixon requirements that were not consistent with the IDEA and state law?

Student has not raised in his complaint the issue of whether recommended behavior services are being implemented or any issue regarding the appropriateness of the behavioral services being provided to Student by Dixon. Student has not shown that testimony regarding the appropriateness of the behavioral services now delivered in the classroom currently has any relevance to the issues raised in this case.

Student has asked for the following proposed resolutions:

Student seeks compensatory education in the form of payment for the IEE by Dr. Christine Meade, appropriate behavior services that should have been provided to Student during the past two years and appropriate remedies as shall further be identified by Student's experts at hearing.

There is no nexus between the issues in this case and the proposed compensatory remedy of appropriate behavioral services. Even if Student prevails on both issues in this case, there would be no findings in the decision concerning the appropriateness of the behavioral services provided to Student over the past two years, because the issue has not been pled.

Any award of compensatory services must be reasonably calculated to provide the educational benefits that would have accrued had the denial of FAPE not occurred. In this case, Student has chosen not to allege that there was a denial of FAPE because of inappropriate behavioral services and, instead, brought a complaint solely regarding the provision and requirements for an IEE. Testimony regarding the appropriateness of the behavioral services currently in place is not relevant to the case at hand as the proposed remedy of compensatory behavioral services is not appropriate should Student prevail in this

matter. Student may not raise issues as part of his proposed remedy that are not raised in the body of his complaint. Student has not shown that an observation by Dr. Meade is necessary to give Parent access to relevant information regarding the issues in Student's complaint in preparation for the upcoming due process hearing.

Accordingly, Student's motion is denied.

IT IS SO ORDERED.

DATE: February 19, 2014

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings