BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: BONSALL UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT,	OAH Case No. 2016080681
PARENTS ON BEHALF OF STUDENT, v. BONSALL UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016070664 ORDER GRANTING DISTRICT'S MOTION TO OBSERVE STUDENT

On July 6, 2016, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing in OAH case number 2016070664, naming Bonsall Unified School District. Amongst other issues, Student alleges that District failed to provide Student an appropriate placement. For this issue, Student seeks an order for District to fund a non-public school placement.

On August 15, 2016, District filed a Request for Due Process Hearing in OAH case number 2016080681, naming Student. On August 19, 2016, OAH granted the parties' request to consolidate the cases.

On October 10, 2016, District filed a motion to compel observations of Student at his current placement, Arch Academy, a non-public school.[1] District requests an order from OAH permitting observations by three education specialists employed by District. On October 13, 2016, Student opposed the motion.

[1] District's request for a continuance, contained in its motion, is deemed moot by OAH's October 16, 2016 Order Following Prehearing Conference, wherein OAH granted District's request for continuance. This Order does not preclude District or Student from submitting a separate motion to continue, should good cause exist.

APPLICABLE LAW AND DISCUSSION

Education Code section 56329, subdivision (d), which provides in pertinent part:

> If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian.

In *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875, 884, (*Benjamin G.*), the Court construed Education Code section 56329, subdivision (c), as permitting an independent expert to observe a proposed placement not only as part of a parent-funded independent education evaluation, but also as part of an expert's preparation for a due process hearing. *Benjamin G.* also provides for a pre-hearing order to compel a school district to permit the observation. The reasoning by the *Benjamin G.* court should apply to the expert for a District as to the appropriateness of the Parent selected placement. Here, District seeks to have its expert, Robin Ross, and two education specialists selected by Ms. Ross and employed by District, observe Student's current placement as part of its expert's preparation for a due process hearing.

Student does not dispute that District is entitled to an opportunity to observe Student at Arch Academy, a non-public school that was unilaterally selected by Parents. Rather, she argues that District's request is moot because Student has agreed to permit the requested observation. However, District submitted sufficient supporting documentation, including declarations, which demonstrate that Student has not been cooperative with District's attempts to observe Student at Arch Academy. Rather, Student has placed burdensome restrictions on District's ability to observe Student; including limiting the observation to 20 minutes by one person. Student has also unilaterally canceled observations that were scheduled by District and Arch Academy, when she believed that those restrictions were not going to be met. Student's conduct shows that District's request is not moot.

Overall, Student has failed to present any legal argument that overcomes District's right to observe Student in his current placement. Consequently, District's motion is granted.

ORDER

1. District's motion to conduct observations of Student is granted.

2. District shall be permitted to have three educational specialists employed by District to observe Student at his current educational placement, for a period of one hour each. Student is directed to assist District in completing those observations.

DATE: October 21, 2016

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Paul H. Kamoroff
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PAUL H KAMOROFF
Administrative Law Judge
Office of Administrative Hearings