BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

URBAN DISCOVERY ACADEMY.

OAH CASE NUMBER 2021040345

ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING REQUEST FOR OBSERVATION

MAY 19, 2021

On April 9, 2021, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Urban Discovery Academy as respondent. On April 29, 2021, Student filed a motion to compel observation by an independent evaluator. That motion was denied on the grounds that Student failed to establish a basis for granting the order.

On May 12, 2021, Student filed a motion for reconsideration of the denial of the observation request. On May 13, 2021, Urban filed an opposition to the motion, arguing that Student had failed to identify a basis for reconsideration of the original order.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time, generally within ten days. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Student has offered some new information in this motion for reconsideration, specifically the assessor's name and area of practice, but has failed to explain why the information was not provided in his original motion. The request for reconsideration is granted based on the new facts offered. However, Student should not assume that multiple considerations of motions will be available in the future due to a failure to include complete information in the original filing.

REQUEST FOR OBSERVATION

Student renews his request for an order allowing his expert witness, Dr. Mitchel Perlman, the opportunity "to observe UDA's general education classroom, UDA Specialized, Academic Instruction (SAI) push in, and pull out for Student's reading program offered for Student in the 6/18/20 email from Tiffany Salayer, UDA's Attorney, and in the 6/23/20 IEPT meeting by Chloe Medina, UDA Principal and Will Burns, Student's Ed Specialist, via in-person or Zoom observation, based on Covid restrictions." Student also describes the placement to be observed as "the placement Student had previously and was offered" in the June 18, 2020 email from Ms. Slayer and during the June 23, 2020 IEP team meeting.

California law provides for Student's assessor to have an equivalent opportunity to observe a pupil in class, in the pupil's current educational placement, if a public education agency observed the pupil in conducting its assessment; or if the educational agency's assessment procedures made it permissible to have in-class observation of a pupil. Student's expert is also allowed to observe an educational placement and setting, if any, being offered as FAPE by the public education agency. (Ed C. § 56329, subd. (b).) Both of these observation opportunities are available to Student's assessor regardless of whether the independent educational assessment was initiated before or after the filing of a due process hearing proceeding and either for purposes of an assessment to be considered by an Individualized Educational Program or IEP Team or as evidence during a due process hearing. (Ed. Code § 56329, subds. (b) and (c).).

The purpose of allowing Student's assessor these observation opportunities is to "level the playing field" by permitting students to present evidence at a due process hearing, be advised by experts and have the experts testify at hearing. (Benjamin G. v. Special Education Hearing Office (2005) 131 Cal. App. 4th 875 (Benjamin G.); L.M. v. Capistrano Unified Sch. Dist. (9th Cir. 2009) 556 F.3d 900, 909.) Opportunities to have an expert observe a school program permit the student's expert to observe a district's proposed placement whether or not the student is attending school there and regardless of whether the expert is conducting an ongoing independent educational evaluation. (Benjamin G., 131 Cal. App 4th at p. 883-884.)

Despite the additional facts provided, Student has failed to establish the threshold facts necessary to be granted an order allowing Student's assessor to observe. Neither the class(es) to be observed or the purpose of the observation are clear. Student has failed to identify the class he wants Dr. Perlman to observe. No grade level, teacher or service provider has been identified to designate what is to be observed.

While Student states he wishes Dr. Perlman to observe "UDA's general education classroom, UDA Specialized Academic Instruction (SAI) push in, and pull out for Student's reading program" as offered in a June 2020 email and at a June 23, 2020 IEP team meeting. Student does not identify what grade level classroom is to be observed. Nor is the purpose of the observation explained.

Most importantly, however, Student has still not established that he is asking for an observation for an on-going assessment, or of a placement that is currently being offered. Student refers to the placement as Urban's "past and proposed placement" but has offered no legal authority supporting his right to observe a "past" offer and no facts establishing the June 2020 offer is still available to Student.

Student's request for an observation is denied. All dates set in this matter are confirmed.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings