BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019120387

ORDER GRANTING MOTION TO COMPEL OBSERVATION

FEBRUARY 11, 2020

On December 10, 2019, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing, called a complaint, naming Paso Robles Joint Unified School District. The Office of Administrative Hearings is referred to as OAH. On January 6, 2020, OAH granted Student's request to file an amended complaint. This matter is scheduled for hearing beginning March 10, 2019. On January 29, 2020, Student filed a Motion to Compel Observation. Student seeks an order allowing her expert to observe a proposed placement. Paso Robles did not respond to the motion.

APPLICABLE LAW

The law is clear that a student has the right to have 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. 2009) 556 F.3d 900, 909 (*L.M.*).)

The relevant portions of Education Code section 56329, subdivisions (b) and (c) provide 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.* went through a lengthy review of the legislative history of Education Code section 56329, subdivision (b). The court noted that the purpose of portions of the Individuals with Disabilities Education Act, and of the Education Code sections permitting observations by a student's expert, were to "level the playing field" by permitting students to present evidence at a due process hearing, be advised by experts, have the experts testify at hearing, and to have a neutral hearing officer, and to permit the student's expert to observe a district's placement whether or not the student was attending school there. (*Benjamin G., supra,* 131 Cal. App. 4th at pp. 881-883.)

The court in *Benjamin G.* held that the Education Code statutes required school districts to permit a student's expert to observe a district's proposed placement prior to testifying at a due process hearing regardless of whether the observation is part of an independent educational evaluation. (*Benjamin G., supra,* 131 Cal.App.4th at pp. 883-884.)

Likewise, the Ninth Circuit in its decision in *L.M., supra,* 556 F.3d at pp. 910-911, found that Education Code 56329, subdivision (c), requires a school district to provide an amount of observation time to a student's expert if the district conducted its own observation of the student. The court, however, affirmed the OAH finding that the district's failure to provide the student's expert with an equal amount of observation time did not constitute a denial of FAPE to the student because the student presented no evidence that parents' right to participate in student's IEP process was significantly affected.

DISCUSSION

Student's amended complaint places at issue the appropriateness of Paso Robles' September and November 2019 individualized education program or IEP offers of placement in its adult transition program. Student attended the adult program for a period of time, though her whereabouts are currently unknown. In her motion to compel, Student seeks an order authorizing her expert, Dr. Paula Solomon, to observe Paso Robles' adult transition program. Student asserts that at a January 2020 IEP team meeting, Paso Robles' offered placement in a residential treatment center, without identifying a specific, available placement.

Pursuant to the legal authority specified above, Student has the right to have her expert observe Paso Robles' offered placement at its adult transition program. Accordingly, Student's motion to compel is granted.

ORDER

Paso Robles shall allow Student's expert to observe its adult transition program.

IT IS SO ORDERED.



Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings