

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENTS ON BEHALF OF STUDENT,	OAH CASE NO. 2012100123
v.	
TEMPLETON UNIFIED SCHOOL DISTRICT,	
TEMPLETON UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012070354
v.	
PARENTS ON BEHALF OF STUDENT.	ORDER GRANTING MOTION FOR OBSERVATION BY DISTRICT

On July 12, 2012, the Templeton Unified School District (District) filed a request for due process hearing against Parents on behalf of Student (Student). On October 3, 2012, Student filed for due process against the District, whereby he requests that the District fund Student's current placement at the Trinity Lutheran School for the remainder of the 2012-2013 school year. On October 4, 2012, the Office of Administrative Hearings (OAH) consolidated the cases. On December 14, 2012, the District filed an amended due process request, which OAH granted.

On December 28, 2012, the District filed a Motion to Compel Observation to permit the District's autism program specialist, Dr. Bryna Siegel, to observe Student in his current placement at Trinity Lutheran School, in Paso Robles, California. On January 2, 2013, Student filed an opposition to the District's motion.

APPLICABLE LAW

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 general, the plain meaning of a statute controls and courts will not resort to

extrinsic sources to determine the Legislature's intent unless its application leads to unreasonable or impracticable results. (*Nuclear Info. & Res. Serv. v. DOT Research* (9th Cir. 2006) 457 F.3d 956, 960; *In re Jennings* (2004) 34 Cal. 4th 254, 263.) Similarly, the Education Code expressly states the principle of statutory construction that “the definitions prescribed by this article apply unless the context otherwise requires.” (Ed. Code, § 56020.)

DISCUSSION

In this case, Student requests that the District fund Student’s tuition and related services in his current general education placement at Trinity Lutheran School, from the date of the Decision through the remainder of the 2012-2013 school year. Student has been unilaterally placed at Trinity Lutheran School by his parents.

The District requests to observe Student at the Trinity Lutheran School for two hours, one day during the week of January 7-11, 2013, by Dr. Bryna Siegel. Student objects to the District’s request because the District has previously observed Student at the Trinity Lutheran School for several hours in 2011 and 2012, and because Dr. Siegel has not previously observed or assessed Student.

The District contends that Education Code section 56329, subdivision (d), permits such an observation because it applies to any request for public funding and the term “nonpublic school” in the statute is not limited to the technical meaning of “nonpublic, nonsectarian school” as set forth section 56034. Student does not dispute the District’s contention that Trinity Lutheran School is a nonpublic school covered by Education Code section 56329, subdivision (d), but contends that the District’s observation request is duplicative because the District has already observed Student in 2012.

Student failed to provide any legal authority which would preclude Dr. Siegel from observing Student merely because she has not previously observed or assessed Student. The District’s observation request falls squarely under the statutory provision that grants it the right to observe Student in a nonpublic school because Parents are seeking public funding for a nonpublic school placement. Finally, the District’s request is not overly burdensome or duplicative because the requested observation is only for two hours. Accordingly, the District’s established its right to observe Student at Trinity Lutheran School for two hours.

ORDER

The District’s Motion for Observation is granted. During the week of January 7-11, 2013, Student shall permit Dr. Bryna Siegel to observe him in his current non-public school placement, for a period of up to two hours.

Dated: January 3, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings