

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH Case No. 2013110550

ORDER DENYING STUDENT'S
MOTION TO COMPEL CLASSROOM
OBSERVATION BY STUDENT'S
COUNSEL

On April 30, 2013, Student's attorney filed with the Office of Administrative Hearings (OAH) a Motion to Compel Classroom Observation (Motion) in Student's current placement so that Student's counsel could observe his classroom before the due process hearing, scheduled to commence on May 27, 2014. The Motion was supported by Student attorney's declaration and authenticated exhibits. On May 5, 2014, Cupertino Union School District's (District) attorney filed an opposition supported by a declaration.

APPLICABLE LAW

A student has the right to have his or 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. 2008) 538 F.3d 1261.).

Education Code section 56329, subdivisions (b) and (c), are essentially identical in their relevant parts and provide as to assessments at public or private expense 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.* examined the legislative history of Education Code section 56329, subdivision (b) and held that the statute mandated an opportunity for student's hired expert to observe the school district's proposed placement prior to testifying at a due process hearing and regardless of whether the observation is technically a part of an independent educational evaluation. (*Benjamin G.*, *supra*, 131 Cal.App.4th at pp. 883-884.)

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.)

DISCUSSION

Student contends that his legal counsel should be allowed to observe Student in his current placement because legal counsel for District has observed Student in his classroom and to be prepared for hearing.¹ However, Student has not pointed to any legal authority that counsel for Student is the equivalent of an expert retained to observe the proposed placement, as set forth in Education Code section 56329, subdivision (c). Further, District provided a declaration from its attorney that no attorney retained by District has observed Student in his classroom and Student provided no evidence to the contrary. Therefore, Student's Motion is denied.

ORDER

Student's Motion to Compel Observation is denied.

DATE: May 5, 2014

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ Whether Student's Parents may observe the classroom when a teacher is present, which is mentioned several times in Student's Motion why counsel needs to observe the classroom, is not before OAH and will not be ruled upon.