

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2014080713

ORDER GRANTING MOTION TO
COMPEL TWO HOUR
OBSERVATION OF STUDENT

On August 19, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a request for due process hearing against the Temecula Valley Unified School District. Student seeks as one of his remedies reimbursement for the costs of obtaining behavioral services from Big Springs Academy at a rate of \$2,830.00 per month for two hours of behavioral therapy sessions daily plus transportation costs.

On January 9, 2015, Temecula filed with OAH a Motion to Compel Two Hour Observation by a school psychologist from Temecula of a session of behavioral therapy provided by Big Springs Academy. On January 13, 2015, Student filed with OAH an opposition to the motion. Temecula filed a reply to Student's opposition on January 13, 2015.

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."

Section 56329, subdivision (d) has been applied by OAH to observations of the provision of behavioral services, such as Applied Behavior Analysis. (*Student v. Temecula Valley* (2009) Cal.Ofc.Admin.Hrngs. 2009040514/2009040514/2009050048, in which the district was permitted to observe student in a home behavior program; *Student v. San Luis Coastal District* (2011) Cal.Ofc.Admin.Hrngs. 2011070615 which granted the district an observation of the delivery of behavioral services at home for a period of up to two hours.)

DISCUSSION

In this case, Student requests that the District reimburse Parent for privately obtained behavioral services provided by Big Springs Academy in an amount exceeding two thousand dollars plus transportation. Student received two hours of behavioral intervention on a daily basis.

In his opposition, Student opposes the motion on grounds that Section 56329, subdivision (d) is not applicable to this situation, any observation of Student while receiving would be disruptive, and any observation should not exceed 30 minutes because Temecula limits classroom observations to 30 minutes. As discussed above, Section 56329, subdivision (d) has been applied to situations similar to the instant matter.

As to Student's contention that any observation would be disruptive of Student receiving benefit from the behavior therapy session, Student fails to offer any evidence to support this contention whatsoever. In support of its motion, Temecula attaches a declaration by Sunday Landraint, a Temecula school psychologist. Ms. Landraint has been trained and is experienced in conducting observations of children in a range of educational settings without disrupting the children's receipt of services. Thus, Student's contention has no merit.

Student's argues that Temecula's observation should be limited to 30 minutes because Temecula has a policy to limit classroom observations to 30 minutes. Ms. Landraint declares that a 30 minute observation of the daily behavior therapy session would likely not be sufficient to permit a meaningful observation. Student offers no evidence to contradict Ms. Landraint's contention. Also, the observation would be for the entire session and be less disruptive then having Ms. Landraint enter and exit the session in a short time period.

In support of this contention, Student cites *Student v. San Luis Coastal Unified School District* (2012) Cal.Ofc.Admin.Hrngs. 2011110858/2011090132 (*San Luis Coastal*).¹ In *San Luis Coastal*, the requested observation was for two persons to observe a child in a five pupil private school class for a two hour period. Evidence was produced that the teacher opined that such an observation would be disruptive to her class. Additionally, one of the observers had previously observed the child in the class at an earlier date. Here, the

¹ The order was made by the undersigned ALJ.

observation is not in a class but of behavior therapy, and there had not been a previous observation. Here, the observation is for a single therapy session which is reasonable under these circumstances.

ORDER

Temecula's motion to compel a two hour observation of Student during his behavior therapy session is GRANTED.

DATE: January 15, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings