

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
PARENTS ON BEHALF OF STUDENT,

and

IRVINE UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2021080012
OAH CASE NUMBER 2021080052

ORDER GRANTING MOTION TO COMPEL OBSERVATION

SEPTEMBER 23, 2021

On September 14, 2021, Student filed a Motion to Compel Irvine Unified School District to allow its independent assessor and expert to observe Irvine's proposed placement for Student. On September 17, 2021, Irvine filed an opposition to Student's motion. On September 21, 2021, the first day of the hearing in this case, the parties put forth additional arguments related to the motion. The undersigned ALJ granted the Motion to Compel on the record for the reasons discussed in this Order.

Student argued its independent assessor and expert should be allowed to observe the placement Irvine proposed for Student during the 2018-2019, 2019-2020, and 2020-2021 school years, which are at issue in this case. Irvine argued Student's

expert should only be allowed to observe the placement proposed for Student during the current 2021-2022 school year, and that allowing Student's expert to observe placements proposed in prior school years would be akin to formal discovery, which special education law does not authorize.

Education Code section 56329, subdivision (b), allows independent assessors to observe a student in their current educational placement, and in an educational placement proposed by a school district, regardless of whether the assessment is initiated before or after a due process filing. Further, the court in *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875, held that to "level the playing field," the Individuals with Disabilities Education Act, called IDEA, gives students and parents the right to be advised by experts and to have those experts testify at a due process hearing. (*Benjamin G., supra*, at p. 881.) "The very purpose of subdivision (b) of section 56329 is to permit the independent observation before the hearing is held so that the student and his parents are in a position to challenge the proposed placement at the hearing." (*Benjamin G., supra*, at p. 883.)

Recently, the court in *E.C. v. Fullerton School District*, (C.D.Cal. 2021) WL 2337630, agreed with *Benjamin G.*, holding that a California school district could not deny a student's expert the right to observe a placement that had not yet been proposed. The court reiterated that section 56329, subdivision (b), allows observation "in any educational placement proposed by the District." (*E.C., supra*, at p. 11.)

Pursuant to Education Code section 56329, subdivision (b), and the courts' holdings in *Benjamin G. and E.C.*, Student's request to have its independent assessor and expert observe Irvine's proposed placement at issue in this case, is reasonable. Irvine's argument that Student's expert should only be allowed to observe the placement

proposed for the 2021-2022 school year is unpersuasive, as any such observation, would not be relevant to issues in this case.

Accordingly, Student's Motion to Compel is granted. Irvine must allow Student's independent assessor and expert to observe the placement Irvine proposed for the 2018-2019, 2019-2020, and 2020-2021 school years, before the expert testifies at the due process hearing in this case.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings