

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT .
OAH CASE NUMBER 2021080425

ORDER DENYING MOTION TO COMPEL OBSERVATION

NOVEMBER 12, 2021

On August 13, 2021, Parents on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming Bellflower Unified School District as respondent. On November 9, 2021, OAH granted a request for continuance of the due process hearing to begin on January 25, 2022.

On November 2, 2021, Student filed a Motion to Compel Bellflower Unified to allow Student's expert witness, Dr. Molly Rearick, to observe Student in his current classroom, through remote access via Zoom. On November 8, 2021, Bellflower Unified filed its opposition to the Motion to Compel in which it agreed to allow Dr. Rearick to complete an in-person observation of Student in his current in-person classroom, but it does not agree to allow the observation to take place via Zoom or remote platform. On November 9, 2021, Student filed a reply to Bellflower Unified's opposition.

If the parent obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the school district with respect to the provision of a free appropriate public education to the child, and may be presented as evidence at a due process hearing regarding the child. If the school district observed the student in conducting its assessment or if its assessment procedures make it permissible to have in-class observation of a student, and equivalent opportunity shall apply to an independent educational assessment of the student in the student's current educational placement and setting. (Ed. Code, § 56329, subd. (c).)

The IDEA acknowledges the fact that school districts have better access and more educational expertise than parent and thus provides for a due process hearing to "level the playing field" by permitting the parents to present all the evidence they can muster to challenge the district's decision. (*Burlington School Comm v. Mass. Dept. of Ed.* (1985) 471 U.S. 359, 368-369, 373; *Benjamin G. v. Special Education Hearing Office*, (2005) 131 Cal. App. 4th 875, 881.)

According to *Benjamin G.*, the rationale for the policy is if parents are not permitted to have an expert observe the current educational placement and setting on an equivalent basis, this practice will lead parents to suspect that something about the current placement is being hidden, preventing them from being able to fairly participate in the administrative hearing process.

Student contends that without the classroom observation, Dr. Rearick will not be able to provide crucial information to Parents and as a result their ability to prepare for due process hearing will be significantly impeded. Student will be unable to gather key evidence about the appropriateness of her educational program. At the time of filing of the motion, Student requested the remote observation due to time constraints for Dr. Redick prior to hearing.

Student contends she is entitled to an opportunity to observe Student equivalent to the observations made by Bellflower Unified's assessors, who observed remotely. The situation is not the same. Remote observations were born out of necessity due to COVID-19 restrictions, and those restrictions are no longer in effect. The equivalency described in *Benjamin G.* relates to the observation. Dr. Rearick will be provided an opportunity to observe Student in-person as contemplated in the statute.

Both Student and Bellflower Unified have been provided the ability to observe Student in his current placement. Student has returned to an in-person classroom setting. Student has not indicated a reason Dr. Rearick cannot conduct an in-person observation of Student in his current classroom setting other than Dr. Rearick's convenience and time constraints due to an impending due process hearing date.

The due process hearing in this matter has been continued to January 25, 2022, thereby providing Dr. Rearick ample time to complete her observation. Student has provided no evidence of actual prejudice to Student which would constitute good cause to compel a remote observation.

Student's Motion to Compel is denied.

IT IS SO ORDERED.



Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings