BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022120745

ORDER GRANTING STUDENT'S MOTION TO COMPEL CLASSROOM OBSERVATION

JANUARY 5 2023

On December 27, 2022, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings naming Chino Valley Unified School District. The Office of Administrative Hearings is called OAH. Chino Valley Unified School District is called Chino Valley.

Student alleges Chino Valley's offer of placement and services in Student's November 10, 2021, October 24, 2022, and November 30, 2022 individualized education programs, denied Student a free appropriate public education, called FAPE. Student contends Chino Valley did not offer Student placement in the least restrictive

environment and further that Student has been subjected to bullying in his current placement.

On December 27, 2022, Student filed a motion to compel Chino Valley to allow his private evaluators from The Prep Group to observe Student's current educational placement. Specifically, Student requests his experts observe Student and provide input whether they believe Student's placement serves his needs, and how, if at all, Student's behaviors or those of others affect his ability to access his education. The motion to compel is supported by declarations from Student's counsel and Parent. Student seeks an order directing Chino Valley to permit Dr. Tomaino and Dr. Miguel to observe Student in his current educational program and setting for 60 minutes of both structured and unstructured times, including transitions. Student's request is based on Education Code section 56329, subdivision (c), which requires a district to provide an independent educational assessor an opportunity to observe a student in class equivalent to the opportunity given to a district assessor.

On January 4, 2023, Chino Valley filed an opposition to Student's motion. Chino Valley argues Student's motion does not confirm Parents retained the experts to conduct an independent educational evaluation of Student. Chino Valley further argues the request is an impermissible attempt to allow a private service provider to conduct classroom observations and obtain pre-hearing discovery.

Student filed a reply brief on January 5, 2023.

The Individuals with Disabilities Education Act, called IDEA, "acknowledges the fact that school districts have better access to information and more educational expertise than parents and thus provides for a 'due process' hearing to 'level the playing field' by permitting parents to present all evidence they can muster to challenge the

district's decision." (*Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal.App.4th 875, 883 (*Benjamin G.*).) "To that end, [the] IDEA gives the child and his parents the right to be advised by experts, to have those experts testify at their due process hearing, and to have someone other than a district employee as a hearing officer." (*Id.*; see also 20 U.S.C. § 1415(h); *L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2009) 556 F.3d 900, 909.)

While the IDEA does not allow for pretrial discovery, California law specifically provides for a student's expert witness to observe the student's current or proposed placement in preparation for a due process hearing. (Ed. Code, § 56329, subds. (b) and (c).) 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 the due process hearing proceeding." (Ed. Code, § 56329, subds. (b) and (c).)

The court in *Benjamin G.* examined the legislative history of Education Code section 56329, subdivision (b), and held the statute mandated an opportunity for a 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.) Education Code section 56329 subdivision (b) and (c), also expressly contemplate in-class observation of a student in the student's current

educational placement (at least when part of an independent educational assessment) and observation in any educational placement proposed by the school district. (*E.C. v. Fullerton School District* (C.D. Cal., April 30, 2021, No. SA CV 18-1496-JFW(JDex) 2021 WL 2337630, at * 10 (*E.C.*) (holding the school district committed a procedural violation by failing to allow student's medical doctor with a specialty in child neurology to observe student in his classroom before the school district made an offer of placement and services.) A student has a right to have their expert observe the student's current or proposed placement "regardless of whether he exercises the right to conduct an expensive and time-consuming independent educational assessment." (*Id.*, citing *Benjamin G.*, *supra*, 131 Cal.App. 4th at 883-884.)

Student's request that Chino Valley provide Student's experts Dr. Tomaino and Dr. Miguel a classroom observation opportunity corresponding to the total time of observation permitted by Chino Valley's assessors is appropriate under Education Code section 56329, subdivisions (b) and (c). (*E.C.*, *supra*, 2021 WL 2337630, at * 10; *Benjamin G.*, *supra*, 131 Cal.App. 4th at 883-884.) Parent's sworn declaration confirms they retained the services of Dr. Tomaino and Dr. Miguel "to provide input regarding [Student's] behaviors at school, whether [Student's] placement serves his needs, and how, if at all, [Student's] and the other students' behavior affected his ability to access his education." Student's attorney's sworn declaration confirms he requested on behalf of Student at the November 30, 2022 IEP team meeting, that Chino Valley permit Dr. Tomaino and Dr. Miguel to observe Student in his classroom setting.

Chino Valley does not dispute Student requested the classroom observation but argues the request did not mention it was part of an independent evaluation. However, California law does not limit a student's right to have their expert observe the student's current or proposed placement only where they have exercised their right to conduct an

independent educational assessment. (*E.C.*, *supra*, 2021 WL 2337630, at * 10; *Benjamin G.*, *supra*, 131 Cal.App. 4th at 883-884.) Chino Valley also does not dispute the reasonableness of the length or scope of the requested observation.

Student demonstrated the need for observations based upon the upcoming due process hearing and Parents' concerns about the appropriateness of Student's placement. Chino Valley did not establish a factual or legal basis to deny Student's request for classroom observations.

ORDER

1. Student's motion to compel is granted.

2. On or before January 27, 2023, Chino Valley shall permit Student's experts Dr. Tomaino and Dr. Miguel from The Prep Group to conduct observations of Student during the regular school day for up to 60 minutes each for structured and unstructured time, including transitions, for a total of no more than two hours The observations shall take place over the course of one school day.

3. Student shall propose three observation dates and times to Chino Valley by 5:00 p.m. on January 9, 2023. Chino Valley shall confirm one of the proposed dates and times totaling no more than two hours by 5:00 p.m. on January11, 2023. If Chino Valley does not timely confirm such date and time, Student may select from the proposed dates and times and notify Chino Valley of the selection by the close of business on January 13, 2023.

4. Dr. Tomaino and Dr. Miguel shall conduct themselves on the school-site in accordance with Chino Valley's policies for campus visitors, and in a manner that does not disrupt or disturb classroom activities.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings