BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: MANHATTAN BEACH UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040110 ORDER GRANTING/DENYING REQUEST FOR RECONSIDERATION

On April 22, 2013, Parent, on behalf of Student, filed a motion to compel observations of Student's proposed placement by Student's expert prior to the due process hearing. On _____, District filed a response, opposing in part, Student's motions.

APPLICABLE LAW

With respect to observations of school placements, 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, subd. (b) and (c); *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875; *L.M. v. Capistrano Unified Sch. Dist*. (9th Cir. 2008) 538 F.3d 1261.) Further, a student's observation right is not conditioned on reciprocity.

Education Code section 51101, subdivision ___, provides in pertinent part that the parents and guardians of an enrolled student shall have the right, within a reasonable time following the request, to "observe the classroom...in which the child is enrolled or for the purpose of selecting the school in which their child will be enrolled" in accordance with school district policies.

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. v. Special Education Hearing Office, supra,* 131 Cal.App.4th at pp. 883-884.) Education Code, section 56329, subdivision (c) was drafted in accord with subdivision (b), so whether the observation is approached as one related to public funding or private funding, the outcome is the same.

DISCUSSION

Student contends that he has retained an expert, Dr. Ronald Leaf, to observe Student in his current educational setting at Mira Costa High School, and at the District's proposed interim alternative educational setting (IAES) at the Switzer Learning Center (Switzer). Student argues that his expert should be permitted to observe the current and proposed settings as part of his preparation for the due process hearing in this matter per *Benjamin G.*, and under Section 51101.

Student submits District's Administrative regulations 502 and 6164.4, which provide, respectively, that parents may observe the instruction of their child, and that if a parent disagrees with a District evaluation in which the child was observed, the parent has the right to obtain an independent educational evaluation in accordance with 34Code of Federal Regulations part 300.502, and the qualified specialist shall have an equivalent opportunity to observe the student's placement "as well as observation of the district's proposed placement and setting, regardless of whether the independent educational evaluation is initiated before or after the filing of a due process hearing proceeding."

Student has not filed evidence of Dr. Leaf's qualifications to conduct an independent educational evaluation of Student.

, and due process preparation in this matter complete an IEE. As part of the IEE, Student requests that Dr. Grandison be allowed to observe District's proposed placement at Vintage Hill.

District asserts that it does not object to Dr. Grandison's observation. It provides the contact information and guidelines for Parent to set up Dr. Grandison's observation at Vintage Hill. Because District has not denied Student the right to have his expert observe the placement, an order is not required. Student's request for an order to compel observation is denied as not being ripe for resolution.

IT IS SO ORDERED.

Dated: April 22, 2013

/s/
ALEXA HOHENSEE
Administrative Law Judge
Office of Administrative Hearings