BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>TORRANCE UNIFIED SCHOOL DISTRICT. | OAH CASE NO. 2013041191<br><br>ORDER GRANTING STUDENT'S MOTION TO COMPEL CLASSROOM OBSERVATION FOR INDEPENDENT EDUCATION EVALUATION |

On May 14, 2013, Student's attorney filed a Motion to Compel Classroom Observation (Motion) in Student's current placement for a psycho-educational Independent Education Evaluation (IEE) by his assessor/expert in the 2012 -2013 school year. The Motion was supported by Student attorney's declaration and authenticated exhibits. On May 16, 2013, District's attorney filed an opposition supported by exhibits. On May 21, 2013, Student's attorney filed a reply. Upon consideration of all papers submitted, the Motion is granted for the reasons stated below.

## APPLICABLE LAW

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, subds. (b) and (c); *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875 (*Benjamin G.*); *L.M. v. Capistrano Unified Sch. Dist*. (9th Cir. 2008) 538 F.3d 1261.).

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 a due process hearing proceeding."

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., supra,* 131 Cal.App.4th at pp. 883-884.)

## DISCUSSION

Student contends that his assessor/expert should be allowed to observe Student in his current placement, school year 2012-2013, as part of an IEE. District contends that in the school year 2011-2012, it had allowed observations by two other of Student's assessors: 1) in November 2011 for treatment planning; and 2) in April 2012 for a functional assessment as part of an IEE. The District argues that Student should not be permitted to have a third assessor/expert observe Student because other children in the small class may be distracted.

Evidence shows that neither of the two prior observations was related to the current 2012-2013 school year, nor for purposes of the current IEE. Further, Student's request for observation appears reasonable both in scope and time. Student requested that the observation consist of a sampling of Student's instruction and activities. Student proposed that District's counsel assist in selecting an appropriate time based on the District counsel's provision of the daily schedule for the Student's classroom. District offered no evidence supporting how providing an observation opportunity for the 2012-2013 school year to Student's assessor would prejudice District, or would be contrary to the principles articulated in *Benjamin G., supra,* 131 Cal.App.4th at pp. 883-884. Therefore, Student's Motion is granted.

## ORDER

Within 14 days of the date of this Order, District shall permit Student's assessor/expert to observe Student in his current placement for purposes of a psycho-educational IEE.

Dated: May 21, 2013

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings