BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016100202 ORDER GRANTING MOTION TO COMPEL OBSERVATION

On October 6, 2016, Student filed a Request for Due Process (complaint) naming Irvine Unified School District as respondent. Student's complaint asserted that Student was denied a free, appropriate public education by Irvine Unified School District on various grounds. On October 27, 2016, Student filed an amended complaint expanding on the original complaint and seeking remedies including reimbursement for Student's placement in private school, year-round funding for intensive individual behavioral therapy provided by a nonpublic agency experienced in working with autistic children, reimbursement for privately funded behavior services and the funding of compensatory behavior services.

On January 31, 2017, Irvine filed a motion to compel observation of Student by Irvine's District Behavior Specialist. District requested that Irvine's specialist, Christine Reinartz, observe Student for two hours during the time Student is attending a local private school, as Student's amended complaint seeks reimbursement of the cost of Student's placement at St. Cecilia, including the cost of behavior services provide to Student at St. Cecilia. On February 2, 2017, Student filed his opposition to District's motion. District filed a reply to the opposition on February 3, 2017.

APPLICABLE LAW

Education Code section 56329, subdivision (d), provides in pertinent part:

> If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian.

In general, the plain meaning of a statute controls and courts will not resort to extrinsic sources to determine the Legislature's intent unless its application leads to unreasonable or impracticable results. (*Nuclear Info. & Res. Serv. v. DOT Research* (9th Cir.

2006) 457 F.3d 956, 960; *In re Jennings* (2004) 34 Cal. 4th 254, 263.) The Education Code expressly states that "the definitions prescribed by this article apply unless the context otherwise requires."

DISCUSSION

Student is a nine year old boy who previously attended Irvine's Beacon Park Elementary School. Parents placed Student in St. Cecilia's when District refused to allow Student to continue to have a full-time one-on-one non-public agency behavior aide. Parents have filed a complaint alleging that Irvine's offer of 5 hours of behavioral aide support in a general education classroom was insufficient in addition to two procedural violations pertaining to the September 15, 2016 IEP. The resolutions sought for the FAPE violations alleged are:

1) reimbursement to Student's parents for his placement in a private school;

2) District funded year-round, intensive behavior therapy provided and supervised by a nonpublic agency experienced in working with autistic children;

3) parental reimbursement for privately funded behavior services; and

4) District funded compensatory education services.

Student argues that District should not be entitled to an observation because Irvine observed Student in his public school general education classroom prior to issuing their offer of FAPE. Although not clearly stated, Student also implies that Irvine should be denied the opportunity to observe because the behavior services for which Student seeks payment are "ancillary" and further because Student is not seeking a prospective private school placement.

Student's opposition brief analogizes his case to an earlier issued OAH order involving a student who was seeking only reimbursement for past placement in a private school.[1] This Student's situation appears to be significantly different to the case cited. Student's attorney states in his declaration that Student's amended complaint does not seek continued private school placement. However, a reading of the amended complaint does not support that conclusion. As the above-described resolutions indicate, Student appears to clearly be seeking payment for at least some services during his continued placement in a private school. Nowhere in the amended complaint is a resolution proposing a return to public school mentioned. Furthermore, regardless of whether Student is seeking

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[1] California Code of Regulations Title 5, section 3085 states orders and decisions rendered in special education due process hearing proceedings may be cited as persuasive but not binding authority by parties and hearing officers in subsequent proceedings.

reimbursement for past or prospective placement, he is seeking public funding of the placement.

Student's assertion that the behavior services at issue are "ancillary" is also not supported. The declaration of Student's attorney states that Student moved from the public to the private school because Irvine refused to fund a full-time, one-to-one aide to assist Student in the general education classroom daily. This is a core related service and the fundamental element in dispute in this case. It simply cannot be described as "ancillary".

In this case, Student is asking that the Irvine pay for the private school placement and behavioral supports that Student alleges are essential in order to access his education. The clear language of Ed. Code section 56329, subdivision (d) applies and District is entitled to an order allowing the observation.

ORDER

Irvine's motion for an order compelling Student's parents to allow an observation of student at St. Cecilia's Elementary School for up to two hours is GRANTED.

Student's parents shall cooperate to arrange for this observation to take place within 20 calendar days of the date of this order.

DATE: February 3, 2017

DocuSigned by:
Penelope S. Pahl
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PENELOPE S. PAHL
Administrative Law Judge
Office of Administrative Hearings