BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

RIALTO UNIFIED SCHOOL DISTRICT AND FONTANA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023090141

ORDER DENYING MOTION TO COMPEL AND REQUEST FOR CONTINUANCE

FEBRUARY 9, 2024

On September 1, 2023, Parents on behalf of Student filed with the Office of Administrative Hearings, called OAH, a request for due process hearing, naming Rialto Unified School District. On September 25, 2023, Student filed an amended compliant to name Fontana Unified School District as an additional party. The amended complaint was deemed filed October 4, 2023.

Student filed a second amended complaint on January 2, 2024, which OAH deemed filed January 5, 2024. On January 5, 2024, OAH issued a scheduling order, scheduling the case for hearing on February 21, and 22, 2024.

On February 6, 2023, Student filed a Motion to Compel and Request for One Week Continuance. The motion was supported by a declaration from Student's attorney. The Motion to Compel seeks an order from OAH compelling Rialto Unified employees to comply with the requests of Student's private assessor. The private assessor seeks assessment rating scales to be completed by Rialto Unified's staff, interviews with staff members, and Student's educational records maintained by Rialto Unified. Student requests Rialto Unified provide the requested information by February 13, 2024. Student also requests to continue the hearing to February 27, 2024, to give the private assessor time to complete a written assessment report to be relied on at hearing. OAH did not receive a response from Rialto Unified or Fontana Unified.

MOTION TO COMPEL

A parent may rely on the expertise of an independent expert, who can evaluate all the materials that the school must make available to the expert, to obtain an independent opinion to challenge a school district's findings and recommendations. (*Schaffer v. Weast* (2005) 546 U.S. 49, 60-61 (*Schaffer*).) A parent may obtain the services of an independent expert at public expense through the procedural safeguards afforded to a parent and student under the Individuals with Disabilities Education Act, called the IDEA, which permits a parent to obtain independent educational evaluations, also called an assessment, under certain circumstances if the parent disagrees with a school district assessment. (20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.502(b)(1) and (b)(2); Ed. Code, §§ 56329, subd. (b), 56506, subd. (c).)

If a 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. (Ed. Code § 56329,

subd. (c).) The privately obtained independent educational assessment may also be presented as evidence at a due process hearing. (*Ibid.*)

A student has the right to have their 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.) 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.). Neither the IDEA, nor California special education laws, mandate a school district to comply with the requests of a student's private assessor beyond a request to observe the school district's proposed placement.

Student contends Rialto Unified is obligated to assist in the independent assessment as requested by the private assessor to enable Student to present evidence at hearing from an expert to support his due process claims. Student's attorney declared that their office first contacted Rialto Unified's attorney on January 10, 2024, advising that Parents hired a private assessor to assess Student. Rialto Unified agreed to allow the private assessor an opportunity to observe Student at school. Parents signed a release on January 23, 2024, allowing communications and exchange of information between Student's private assessor and Rialto Unified.

Student's attorney declared that as of February 1, 2024, the assessor had yet to receive from Rialto Unified's staff, ratings scales of two measurement tools, an assessment checklist, and a questionnaire. The assessor had also not had the

opportunity to interview Student's case manager or a school district administrator. Further, the assessor had not received some of Student's educational records such as middle school report cards and records involving discipline. On February 4, 2024, the private assessor informed Student's attorney the assessor interviewed Student's school principal and that teachers were in the process of completing rating scales. The motion and supporting documents do not establish when the private assessor provided Rialto Unified's staff the rating scales and questionnaires to complete, or when the private assessor first contacted the staff to be interviewed.

Rialto Unified has provided Student's private assessor an opportunity to observe Student at school. Student fails to offer any authority to compel Rialto Unified to comply with the assessor's other requests to complete an assessment and prepare a written report for the purpose of assisting Student as an expert at the due process hearing.

Student's assessor may administer testing of Student, and interview Parents and other individuals not employed by Rialto Unified to gather relevant information without the need to compel Rialto Unified. Parents also have access to Student's educational records such as report cards and discipline records maintained by Rialto Unified, which Parents can provide to the assessor.

In addition, the assessor, if qualified to testify as an expert at hearing, may offer an opinion at the hearing based on matters perceived by or personally known to the expert, or made know to the expert at or before the hearing that is the type that reasonably may be relied upon by the expert in forming an opinion. (Evid. Code, § 801, subd. (b).) Therefore, Student's assessor, if qualified as an expert, may offer an opinion at the hearing based on documentary evidence and testimony received at the hearing, including documents exchanged between the parties pursuant to Education Code

section 56505, subdivision (e)(7), and testimony from Rialto Unified's teachers, administrators, and related services providers related to Student's skills, behaviors, and classroom performance. This permits Student, through his expert, access to necessary evidence to match the firepower of the school districts at the hearing, without the need to compel Rialto Unified's staff to complete interviews, rating scales and questionnaires. (*Schaffer,* 546 U.S. 49, 60-61.) IDEA hearings are deliberately informal and hearing officers have the flexibility to conduct the hearing in a manner to ensure that each side can fairly present evidence. (*Id.* at p. 61.) Accordingly, Student's motion to compel is denied.

MOTION TO CONTINUE

Student failed to establish good cause to continue the hearing. A due process hearing must be conducted, and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

Student offered no explanation as to why the independent assessment was not initiated prior to January 10, 2024, more than four months after Student filed his initial due process hearing request against Rialto Unified. Furthermore, as discussed above, the absence of interviews with, and completed rating scales and questionnaires from, Rialto Unified's staff, nor the absence of a written report by Student's assessor, does not deny Student a realistic opportunity to access necessary evidence, or deny Student an expert with the firepower to match Rialto Unified or Fontana Unified at the hearing. (*Schaffer*, 546 U.S. 49, 60-61.) Accordingly, a continuance to allow Student's assessor to

complete an assessment and prepare a written report is denied. The matter will proceed as scheduled.

ORDER

1. Student's motion to compel is denied.
2. Student's request for continuance is denied.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings