BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060358 ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL OBSERVATION

On August 13. 2013, Student filed a Motion to Compel Observation, requesting an order permitting Student's privately-funded independent behavioral assessor to observe Student in his District educational placement, on at least two different days for two-to-three hours each day. The Motion was supported by a declaration from Student's independent assessor stating that this amount of time was, in her judgment, necessary to obtain an accurate representation of Student's behaviors across multiple settings. On August 16, 2013, District filed an opposition, arguing that: (1) District was limited by its Collective Bargaining Agreement (CBA) with the Torrance Teachers Association, which permitted District to authorize a representative of a student to observe the student in the classroom with a limit of 30 minutes for each observation; and (2) District's assessor had conducted a behavioral assessment of Student based upon three 30-minute observations over the course of two separate days. Specifically, District's assessor had observed Student on the first day for 30 minutes during a discrete trial instruction session and 30 minutes in a special day class, and during the second day for 30 minutes in general education. On August 19, 2103, Student filed a Reply, arguing that it was unfair and illogical to permit District to restrict Student's independent assessor to the limitations imposed either by the CBA, or by the amount of time District's assessor had chosen for her observations of Student.

APPLICABLE LAW

Education Code, section 56329, subdivision (c) provides that if the parent or guardian obtains an independent educational assessment at private expense, the results of the assessment shall be considered by the public education agency with respect to the provision of free appropriate public education to the child, and may be presented as evidence at a due process hearing. It further provides that if a public education agency observed the student in conducting its own assessment, or if its assessment procedures make it permissible to have

in-class observation of a student, an "equivalent opportunity" shall apply to an independent educational assessment.[1]

DISCUSSION

The law specifically allows Student to conduct an observation by an independent assessor, but it also places limits on that right. Thus, the statute specifically restricts Student's observational rights to an "equivalent opportunity" to that afforded to District's assessor. Here, District's assessor observed Student in 30-minute increments. That limitation is in accordance with the CBA's restrictions on independent observations.

Student argues that its assessor's discretion should not be limited by District policies, nor by what District's assessor chose to do. However, Student's arguments are not supported by the statute, which specifically incorporates those limitations into the right to observe.

Thus, Student's Motion to Compel Observation is granted, but it is limited to an "equivalent opportunity" to that afforded to District's assessor, as specified below.

ORDER

1. Student's independent assessor shall be permitted to observe Student in his District educational settings, as follows: for 30 minutes during a discrete trial instruction session, 30 minutes in a special day class, and 30 minutes in general education, over the course of two separate days.

Dated: August 23, 2013

/s/
JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

[1] Education Code, section 56329, subdivision (b) imposes the same conditions on independent assessments that are obtained at public expense.