BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

URBAN DISCOVERY ACADEMY.

OAH CASE NUMBER 2021040345

ORDER DENYING MOTION TO COMPEL OBSERVATION

MAY 5, 2021

On April 9, 2021, Student filed a request for due process hearing with the Office of Administrative Hearings, called OAH, naming Urban Discovery Academy as respondent. On April 29, 2021, Student filed a motion to compel observation by an independent evaluator. On May 3, 2021, Urban filed an opposition to the motion. Later on, May 3, 2021, Student filed a reply to Urban's opposition.

APPLICABLE LAW

California law provides for Student's assessor to have an equivalent opportunity to observe a pupil in class, in the pupil's current educational placement, if a public education agency observed the pupil in conducting its assessment; or if the educational agency's assessment procedures made it permissible to have in-class observation of a

pupil. Student's expert is also allowed to observe an educational placement and setting, if any, being offered as FAPE by the public education agency. (Ed C. § 56329, subd. (b).) Both of these observation opportunities are available to Student's assessor regardless of whether the independent educational assessment was initiated before or after the filing of a due process hearing proceeding and either for purposes of an assessment to be considered by an Individualized Educational Program or IEP Team or as evidence during a due process hearing. (Ed. Code § 56329, subds. (b) and (c).).

The purpose of allowing Student's assessor these observation opportunities is to "level the playing field" by permitting students to present evidence at a due process hearing, be advised by experts and have the experts testify at hearing. (Benjamin G. v. Special Education Hearing Office (2005) 131 Cal. App. 4th 875 (Benjamin G.); L.M. v. Capistrano Unified Sch. Dist. (9th Cir. 2009) 556 F.3d 900, 909.) Opportunities to have an expert observe a school program permit the student's expert to observe a district's proposed placement whether or not the student is attending school there and regardless of whether the expert is conducting an ongoing independent educational evaluation. (Benjamin G., 131 Cal. App 4th at p. 883-884.)

While Student does have certain rights to have an expert witness observe a current placement or a proposed placement, this motion fails to clearly identify what Student is requesting be observed. To be awarded an order allowing an observation, Student has the burden of establishing the basis for the order. The motion refers to several exhibits, asserting they will provide additional information; however, none of them were attached. Student has failed to establish that he is currently enrolled in the Charter school or that a proposed IEP offer of placement is currently pending. Student's motion fails to identify his current school of attendance. Neither the credentials or area of expertise of the assessor who would be conducting the observation are identified in

the motion. Student has failed to specify what class or classes the assessor needs to observe. Perhaps most importantly, Student has failed to establish that he made a specific request to have an assessor observe a currently pending offered placement that was denied by Urban. Nor has Student established that the Charter has any authority to provide an observation at Student's current placement.

Student has failed to meet his burden of establishing a right to an observation. Accordingly, Student's motion is denied without prejudice.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings