BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

BEVERLY HILLS UNIFIED SCHOOL DISTRICT,

V.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2022020444

ORDER GRANTING AND DENYING IN PARTS MOTION TO COMPEL OBSERVATION BY INDEPENDENT EVALUATORS; AND REQUEST FOR SANCTIONS

MARCH 3, 2022

On February 28, 2022, Student filed a motion to compel Beverly Hills Unified School District, called Beverly Hills, to allow his independent transition assessor, observe Student at school on March 4, 2022, from 9:00 AM to 12:00 PM, and order the same observation access of Student in all educational settings by all future independent assessors. Student also requested sanctions in the amount of $3,164.75 for attorneys' fees incurred in filing the motion to compel, and time spent in scheduling the observation. Student also requests relief as the administrative law judge, called ALJ, of

the Office of Administrative Hearings, called OAH, deem necessary. The motion to compel was supported by declarations and exhibits.

On March 3, 2022, Beverly Hills filed an opposition to the motion to compel arguing that it was moot, as Beverly Hills agreed in its opposition to arrange for a one day 9:00 AM to 12:00 PM school observation, including two breaks, for Student's independent transition assessor. Beverly Hills also argued that sanctions were not warranted because Student never communicated to Beverly Hills that Student's independent transition assessor wished to observe Student at school on March 4, 2022, from 9:00 AM to 12:00 PM. Beverly Hills became aware for the first time that Student's independent transition assessor wished to observe Student for three hours when Student specified his request in the motion to compel. The opposition was supported by declarations and exhibits.

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 School District* (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

Beverly Hills agreed to arrange for a 9:00 AM to 12:00 PM, three-hour, school observation of Student by an independent transition assessor. Therefore, Student's request in the motion to compel for a 9:00 AM to 12:00 PM, three-hour, school observation of Student by his independent transition assessor is moot because Beverly Hills agreed to provide this access. Student also requested that the observation be on March 4, 2022. Because the date of this Order is close to the March 4, 2022 date requested by Student, the parties are ordered to meet and confer as to a mutually agreeable date for the 9:00 AM to 12:00 PM, three-hour, school observation of Student by his independent transition assessor if the assessor does not observe on March 4, 2022. Student's request for sanctions is denied because Student did not specifically articulate the parameters of his request for observation by Student's independent transition assessor to Beverly Hills.

Student's request for OAH to order the same observation access of three-hours in all educational settings by all of Student's future independent assessors is denied. The request is non-specific to the type of assessment Student is requesting, thus making it impossible for the ALJ to determine if Beverly Hills is preventing future independent assessors from observing Student using the equivalent opportunity standard required under Education Code section 56329. The question of whether Beverly Hills is

preventing an independent assessor from observing Student in an educational setting, or placing impermissible limitations, needs to be decided on a case-by-case basis specific to the type of evaluation.

The parties' attorneys are ordered to meet and confer by telephone, or videoconference, before filing any motion with OAH in this matter. All future motions shall also include a declaration under the penalty of perjury that the attorneys for each party have met and conferred, specifying whether by telephone, or videoconference, and the time spent meeting and conferring by either of these methods.

ORDER

1. If the independent transition assessor does not observe Student on March 4, 2022, the parties are ordered to meet and confer within three business days of this Order as to a mutually agreeable date for the 9:00 AM to 12:00 PM, three-hour, school observation of Student by his independent transition assessor.
2. Student's request for OAH to order three-hours of observation access in all educational settings by all of Student's future independent assessors is denied.
3. Student's request for sanctions is denied.

4. The parties' attorneys are ordered to meet and confer by telephone, or videoconference, before filing any motion with OAH in this matter. All future motions shall also include a declaration under the penalty of perjury that the attorneys for each party have met and conferred, specifying whether by telephone, or videoconference, and the time spent meeting and conferring by either of these methods.

IT IS SO ORDERED.

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings