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. 2013090293 ORDER PERMITTING OBSERVATION BY STUDENT'S EXPERT

On December 27, 2013, Student filed a Motion to Permit Expert to Observe District's Current and Recommended Placements. Student argued that District had previously granted one of Student's expert witnesses, a psychologist, one 90 minute in-school observation. Student had retained an additional expert with a different area of expertise, who also required an observation to inform her opinion. Specifically, Student requested that the second expert, Sharon Grandinette, be permitted to observe Student in his special day class science and history classes, as well as at least two of the District proposed "STEPS" science, history and/or health classes. Student argued that multiple District personnel had apparently observed and assessed Student, and that therefore his two experts should each be permitted a separate observation opportunity.

On January 9, 2014, District opposed. District argued that Student's first expert had sufficient information to testify on Student's behalf, and that Student's second expert was not qualified. District further argued that numerous District witnesses who would be called to testify to assessments and/or observations of Student had not, in fact, recently observed him, since there had been no District assessment observations conducted since Student had been in high school. As discussed below, the Motion is granted.

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]

In *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal.App.4th 875, 884, the court 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 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. v. Special Education Hearing Office, supra,* 131 Cal.App.4th at pp. 883-884.) Recently, the United States District Court for the Central District of California found that a school District's failure to provide a parent's expert with adequate observation time pursuant to Education Code section 56329, subdivision (b), denied the parents their right to meaningfully participate in the IEP process. (*L.M. v. Capistrano Unified School District, supra,* 107 LRP 52369.)

DISCUSSION

The law specifically allows Student to conduct observations by independent assessors. It also places limits on that right, specifically restricting Student's observational rights to an "equivalent opportunity" to that afforded to District's assessors per District's assessment procedures. Here, District seeks to limit Student to a single observation, but it does not prove that its own assessors would be so limited.

District's argument that it has not recently conducted its own assessments is unpersuasive. District has not cited any statute, regulation or case law that makes a student's right to an observation of a school district placement under Education Code section 56329 contingent upon a "reciprocal observation." The law permits Student an equivalent opportunity to what District affords itself, whether or not District has utilized that opportunity.

District's secondary arguments about Student's experts are also unpersuasive, as the qualifications of Student's expert are not relevant to the right to conduct the observation, and District cannot dictate to Student how many expert witnesses to call.

Thus, Student's Motion to Compel Observation is granted. District may impose limitations consistent with providing Student's expert an "equivalent opportunity" to that afforded to each of District's assessors pursuant to District's assessment procedures.

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

ORDER

Within 30 calendar days of the date of this Order, the District shall permit Student's expert, Sharon Grandinette, to observe Student in his special day class science and history classes, as well as at least two of the District proposed "STEPS" science, history and/or health classes. District may impose equivalent restrictions on the time, place and manner of Ms. Grandinette's observations as must be followed by District's assessors, pursuant to District's assessment procedures.

Dated: January 21, 2014

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings