BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017070485
v.	ORDER GRANTING DISTRICT'S MOTION TO COMEPL OBSERVATION OF STUDENT'S PRIVATE PLACEMENT
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	

On September 28, 2017, District filed a Motion to Compel Observation, and Student opposed. As discussed below, District may observe Student's placement in a residential treatment center, where he has been parentally placed, using the personnel District has designated.[1]

Relying on Education Code, section 56329, subdivision (d), District seeks an order that Director of Special Education, Pamela Kazee, and "a District contracted consultant," Dr. Ronald Leaf, may observe Student's RTC placement. Education Code, section 56329, subdivision (d), states:

> (d) If a parent or guardian proposes a publicly financed placement of the pupil in a nonpublic school, the public education agency shall have an opportunity to observe the proposed placement and the pupil in the proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by the parent or guardian. An observation conducted pursuant to this subdivision shall only be of the pupil who is the subject of the observation and shall not include the observation or assessment of any other pupil in the proposed placement. The observation or assessment by a public education agency of a pupil other than the pupil who is the subject of the observation pursuant to this subdivision may be conducted, if at all, only with the consent of the parent or guardian pursuant to this article. The results of an observation or assessment of any other pupil in violation of this subdivision shall be

[1] Communications between counsel regarding parental objection to the observation, or lack thereof, led to District's Motion being filed on September 27, 2017, at 5:12 p.m.(which was deemed filed the following day, September 28, 2017). District requested a virtually immediate ruling, in time for District's observers to travel, as previously planned, to the RTC on September 28, 2017, for an observation planned for today, September 29, 2017. This ruling is, however, issued in due course, as soon as possible, after reviewing the Motion and Student's Opposition. This Order declines to address counsel's communication concerning the observation, that may have led to the papers being filed when they were.

inadmissible in a due process or judicial proceeding regarding the free appropriate public education of that other pupil.

Student concedes that such an observation is specifically permitted by Education Code, section 56329, subdivision (d). Student does not object to the observation if conducted by Special Education Director Ms. Kazee.

Rather, Student argues that Dr. Ronald Leaf is District's *outside expert*, that observation by such a person is not specifically authorized by the statute, is tantamount to prehearing discovery, is tantamount to an assessment of Student without parental consent, and that, as an assessment, was required to be disclosed in District's prior written notice letter dated September 18, 2017.

Student cites Education Code, section 56329, subdivision (b) and other authorities in support of the argument. Subdivision (b) establishes the right of parents to demand an independent educational assessment, and establishes certain rights and conditions to the independent assessment. Since subdivision (b) explicitly permits observations by independent assessors, and subdivision (d) does not, Student argues that subdivision (d) should be read to limit District's observations to its own employees unless District establishes good cause for other persons to conduct them.

Student's argument is not persuasive. Subdivision (b) specifically governs independent assessments, thus it must mention that they are independent. Subdivision (d) is silent on the matter of the personnel who may conduct the District's observations. Nothing may be read into this silence in the way of guidance. It is also not persuasive that the observation proposed here, which will not involve testing instruments or interviews, constitutes an "assessment" requiring parental consent or prior written notice. The authorities Student cites are all factually distinguishable or rely on dictum that is not applicable here.[2]

[2] Student relies on OAH Orders in *Student v. Bakersfield School Dist.*, Order Denying Motion to Compel Observation of in Home Program (February 23, 2011) Cal.Offc.Admin.Hrngs. Case No. 2010120162, and *Student v. Acalantes Union High School Dist.*, Order Denying Motion in Limine (November 9, 2012) Cal.Offc.Admin.Hrngs. Case No. 2012080073. Both Orders are distinguishable on their facts or contain dictum on which Student relies, out of context. As further support, citing Education Code section 56515, subdivision (c), Student also argues that the privacy protections of FERPA and state law require parental consent before certain information is disclosed to parties "other than officials of participating agencies." This authority is simply not persuasive that, in the absence of facts establishing prejudice or burdensomeness, the observations prescribed by Education Code, section 56329, subdivision (d) should be limited to District personnel and should exclude contracted experts or consultants.

Here, there appears to be no burden or prejudice from District's consultant participating in the observation. And it is so ordered that he may do so.

IT IS SO ORDERED.

DATE: September 29, 2017

DocuSigned by:
June Lehrman
JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings