BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. IRVINE UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015100813
IRVINE UNIFIED SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2015120606 ORDER DENYING MOTION TO COMPEL OBSERVATION OF STUDENT AT PRIVATE SCHOOL

On October 23, 2015, Parents on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, naming Irvine Unified School District. Student's complaint alleges that District failed to offer Student a free appropriate public education on various grounds. To remedy this violation, Student's complaint requests placement in a general education classroom, reimbursement for past tuition at a private school, and related services.

On February 19, 2016, District filed a Motion to Compel Observation by District of Student at Saint John the Baptist, a private school. On February 23, 2016, Student filed an opposition to District's motion.

DISCUSSION AND APPLICABLE LAW

Student is an eleven year old boy who is presently placed at a private school by his parents. District last observed Student at the private school as part of a triennial assessment it conducted in September 2015. District's school psychologist and speech and language pathologist observed Student at the private school as part of District's assessments.

In his complaint, Student alleges that District's individualized education programs of September 4 and 30, 2015, denied him a free appropriate public education in the least restrictive environment. As a remedy, Student proposes placement at a public school in a general education classroom; reimbursement for past tuition incurred at the private school; and behavior, speech and language, and occupational therapy services provided by a non-public agency.

In its motion, District asserts that it wishes to observe Student at the private school and that Student's parents have refused to allow such an observation. District seeks an order compelling Parents to allow an observation by District's education specialist, program specialist, and school psychologist, for one hour each, of Student at the private school. District argues that because Student is proposing reimbursement for a private school placement and services provided by a nonpublic agency, that it is entitled to observe Student at the private school.

In support of its motion, District cites Education Code section 56329, subdivision (d), which provides in pertinent part:

> 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.

That statutory provision does not apply to the facts described in this case. The private school is not a placement proposed by Student. Rather, Student's complaint proposes a general education classroom, not a private school placement. Additionally, the related services Student requests are only ancillary to that placement and do not constitute a publicly funded placement in a nonpublic school.

Moreover, Student's complaint alleges only claims that arose on or before September 2015. District observed Student during that period of time at the private school. District failed to explain why a second observation of Student at the private school is necessary for District to prepare for the upcoming due process hearing. Regardless, the statute relied upon by District is not applicable to the facts described in this matter. District is therefore not entitled to an order compelling Student's parents to permit its observation of Student at the private school.

ORDER

District's motion for an order compelling Student's parents to allow it to observe Student at the private school is denied.

DATE: February 29, 2016

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings