

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010090249

ORDER GRANTING MOTION TO
COMPEL OBSERVATION

On September 3, 2010, Parents, on behalf of Student, through counsel, filed with the Office of Administrative Hearings (OAH) a Due Process Complaint that named the Tustin Unified School District (District). The Due Process Complaint alleges, in part, that the District has denied Student a free appropriate public education by not providing her with a Full Inclusion Specialist and an appropriate educational placement.

On September 17, 2010, counsel for the District filed with OAH and served upon counsel for Student a Notice of Representation and Response to Complaint.

On November 10, 2010, counsel for Student filed with OAH a Motion to Compel Observation, with supporting declarations. The motion seeks an order compelling the District to permit Dr. Jan Weiner, a Full Inclusion Specialist, to observe Student in her current educational placement.

On November 16, 2010, counsel for the District filed with OAH an Opposition to Motion to Compel Observation, with supporting declarations. In the Opposition, the District represents that it has agreed to permit the requested observation by Dr. Weiner on November 18, 2010, and that the Opposition is intended “to establish that the District has been entirely cooperative and responsive with respect to Petitioner’s on-going requests to facilitate multiple classroom observations of Student.” (Opposition, p. 3.)

Currently, in this case, there is a prehearing conference set for January 31, 2011, and a due process hearing set for February 7 to 10, 2011.

DISCUSSION

In special education matters, the parents of a child with a disability have the right to an independent observation under the following conditions: “If a public education agency observed the pupil in conducting its assessment, or if its 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. . . regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing procedure.” (Ed. Code, § 56329, subd. (b).) In a related vein, parents also have a right to have their expert observe the proposed placement before participating in an administrative hearing at which the propriety of the proposed placement will be determined. (*Benjamin G. v. California Special Ed. Hearing Office* (2005) 131 Cal.App.4th 875, 879.)

Here, Student wants Dr. Weiner to further observe her classroom placement in preparation for expert testimony at the upcoming due process hearing. The District does not oppose this request. In fact, on October 25, 2010, District representatives arranged for an observation and Dr. Weiner made an initial viewing of Student in class. Shortly thereafter, counsel for Student notified the District’s Special Education Coordinator that Dr. Weiner wanted to conduct a further observation of Student. The pending Motion to Compel Observation is a result of mistimings and disagreements related to the second request to observe. Notably, Student’s counsel did not contact the District’s attorney regarding this matter, even though the stated reason for making the request related to the due process hearing and Student’s counsel knew that the District was represented. In this regard, it appears that the parties have expended considerable time and expense by not meeting and conferring regarding the subject of the pending motion.

ORDER

1. Student’s Motion to Compel Observation as regards an observation by Dr. Jan Weiner is granted.
2. If the observation of Dr. Weiner did not occur on November 18, 2010, the parties shall meet and confer regarding a mutually agreeable date and time for such observation.

IT IS SO ORDERED.

Dated: November 24, 2010

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings