

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HERMOSA BEACH CITY ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2011081019

ORDER GRANTING MOTION FOR
OBSERVATION BY DISTRICT

On August 24, 2011, Student filed a request for due process hearing, against the Hermosa Beach City Elementary School District (District), and alleging that various deficiencies in the District's offered educational program for Student denied her a free appropriate public education (FAPE) and requesting retroactive and prospective reimbursement for the Bridges Academy, a non-certified non-public school.

On February 6, 2012, the District filed a Motion to Compel Observation by the District of Student at the Bridges Academy. On February 8, 2012, Student filed an opposition to the District's motion.

APPLICABLE LAW

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.

In general, the plain meaning of a statute controls and courts will not resort to extrinsic sources to determine the Legislature's intent unless its application leads to unreasonable or impracticable results. (*Nuclear Info. & Res. Serv. v. DOT Research* (9th Cir. 2006) 457 F.3d 956, 960; *In re Jennings* (2004) 34 Cal. 4th 254, 263.) Similarly, the Education Code expressly states the principle of statutory construction that "the definitions prescribed by this article apply unless the context otherwise requires." (Ed. Code, § 56020.)

DISCUSSION

In this case, Student requests that the District reimburse Parents for previously privately obtained educational services at the Bridges Academy, and that the District reimburse Parents for the remainder of the 2011-2012 school year. The District requests to observe Student at the Bridges Academy on February 16, 2012, for one hour, by Dr. Bryna Sigel. Student objects to the District's request because the District has previously observed Student at the Bridges Academy several times in 2010 and 2011 and that the District's request to observe Student is a prehearing discovery request, not permitted by Federal and California special education laws.

The District contends that Education Code section 56329, subdivision (d), permits such an observation because it applies to any request for public funding and the term "nonpublic school" in the statute is not limited to the technical meaning of "nonpublic, nonsectarian school" as set forth section 56034.¹ Student does not dispute the District's contention that Bridges Academy is nonpublic school covered by Education Code section 56329, subdivision (d), but contends that the District's observation request is merely a prehearing discovery request because the District has already observed Student in 2010 and 2011.

While Student is correct that parties to a special education administrative hearing are not entitled to prehearing discovery (*Student v. Placentia-Yorba Linda Unified School District* (December 23, 2011) Cal.Ofc.Admin.Hrngs. Case No. 2011090432), the District's observation request falls under the statutory provision that grants it the right to observe Student in a nonpublic school because Parents are seeking public funding, with no provision that the District cannot observe Student because the District might use the information obtained during the upcoming administrative hearing. Additionally, while Bridges Academy policy is to limit observations to 20 minutes, Mother's own declaration established that Bridges Academy has permitted observations that lasted two to three hours. Finally, the District's request is not overly burdensome or disruptive on Student because no one has observed Student on behalf of the District since May 2011, and the requested observation is only for an hour. Accordingly, the District's established its right to observe Student at Bridges Academy for one hour.

¹ Section 56034, provides, in relevant part:

"Nonpublic, nonsectarian school" means a private, nonsectarian school that enrolls individuals with exceptional needs pursuant to an individualized education program and is certified by the department. . . . A nonpublic, nonsectarian school also shall meet standards as prescribed by the Superintendent and board.

ORDER

The District's Motion for Observation is granted. On February 16, 2012, Student shall permit Dr. Bryna Sigel to observe Student at Bridges Academy, for a period of up to one hour.

Dated: February 10, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings