

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN LUIS COASTAL UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016050078

ORDER DENYING MOTION TO
COMPEL TEACHER INTERVIEWS
AND REQUEST FOR EXPEDITED
RULING

On May 4, 2016, Student filed a motion asking that the Office of Administrative Hearings compel San Luis Coastal Unified School District to permit Student's independent evaluator to interview and administer rating scales to Student's teachers as part of an independent assessment. On May 6, 2016, San Luis Coastal filed an opposition to the motion and Student filed a reply.

APPLICABLE LAW

Education Code section 56329, subdivisions (b) and (c), are essentially identical in their relevant parts and provide as to independent assessments that, "[i]f 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, and observation of an educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding."

A student has the right to have his or her expert observe a school district's proposed placement prior to testifying in a due process hearing. (Ed. Code, § 56329, subs. (b) and (c); *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875 (*Benjamin G.*); *L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2008) 538 F.3d 1261.) The court in *Benjamin G.* 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 school 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., supra*, 131 Cal.App.4th at pp. 883-884.)

DISCUSSION

Student contends that he is entitled to an informed expert at hearing and, therefore, his independent evaluator should be permitted to directly obtain information from Student's teachers as part of an independent educational evaluation. Student argues his evaluator should be afforded the same access to teaching staff as that afforded to San Luis Coastal's evaluator, and that this access is critical because there is no opportunity to observe Student in class due to his suspension.

San Luis Coastal opposes Student's motion on three grounds: (1) Student's motion impermissibly seeks prehearing discovery; (2) it is not legally required to make its employees available to Student's expert for interviews; and (3) denying the motion does not deprive Student of an informed expert.

Student has not established that OAH has the authority in this case to require Student's teachers to participate in an interview with Student's expert or to complete rating scales for the expert. Education Code section 56329 provides Student's expert the right to observe Student in the current placement, provided that San Luis Coastal observed Student in conducting its assessment or if its assessment procedures permit classroom observation of a student. San Luis Coastal did not observe Student in conducting its assessment, and no evidence has been submitted pertaining to its assessment procedures. Even assuming San Luis Coastal's assessment procedures permit classroom observation, which would entitle Student's expert to observation in Student's current placement, Student's argument that because he has been suspended from school, teacher interviews are equivalent to classroom observation is not persuasive. Student has not provided any legal authority that teacher interviews are equivalent to observation, as set forth in Education Code section 56329, subdivisions (b) and (c). The difference between permitting an independent observer to be present in a classroom and compelling teachers to answer questions is not insignificant. Student posits that an ALJ's authority to order independent educational evaluations includes the authority to compel districts to follow testing procedures, which includes teacher interviews. However, OAH has not ordered an independent evaluation of Student, and the ALJ declines to extend any such corresponding authority to the situation here. In addition, Education Code section 56329 provides the independent evaluator the right to observe in Student's "current educational placement and setting." Student's complaint states that Student sees a teacher for a few hours per week, and there is no indication that Student's expert is unable to observe Student during this instructional time. Accordingly, Student's request is denied.

Student's request for an expedited ruling is also denied. There are no procedures for expedited rulings, and Student offers no argument or support for this request. The time frame in which OAH rules on motions is based on multiple factors, such as the allowance of three business days for a response, the nature of the motion, and due process hearing dates.

Student states in his motion that his expert may need additional time to complete her report and, therefore, OAH should allow a brief continuance after the first day of the

expedited hearing. This statement is not treated as a motion to continue, and nothing in this Order precludes Student from filing such a motion.

ORDER

1. Student's Request for an Expedited Ruling on his Motion to Compel is denied.
2. Student's Motion to Compel Teacher Interviews is denied.

DATE: May 19, 2016

DocuSigned by:

Lisa Lunsford

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LISA LUNSFORD

Administrative Law Judge

Office of Administrative Hearings