

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT on behalf of STUDENT, v. SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2009031275
SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT, v. PARENT on behalf of STUDENT.	OAH CASE NOS. 2008110557 & 2009020316 ORDER GRANTING DISTRICT'S REQUEST FOR OBSERVATION

In these consolidated due process matters, Student is seeking, in part, reimbursement for Parent's unilateral placement of Student in a private school, applied behavior analysis services delivered in the home and private school setting, and occupational therapy services.

On March 27, 2009, San Luis Coastal Unified School District (District) filed a "Motion for Observation" (Motion). The Motion seeks an order permitting the District to observe Student's educational placement over parent objection. In particular, the District contends that Education Code section 56329, subdivision (d)¹ 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 56034.² The District did not specify who it wanted to conduct the observation

¹ Education Code section 56329, subdivision (d) provides, in relevant 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. 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.

All subsequent statutory references are to the Education Code, unless otherwise indicated.

² 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

and for how long. Student opposed the Motion. Student contends that section 56329, subdivision (d) does not apply because: 1) the statute only applies where a parent proposes that a district place a child in a nonpublic school and that the statute does not apply when parents have unilaterally placed a child in a nonpublic school and seek reimbursement; and 2) the term “nonpublic school” as used in the statute should be given the technical meaning of “nonpublic, nonsectarian school” as set forth in section 56034, which would not include private schools, like the one Student has been placed in, that do not meet state standards and accept children pursuant to IEPs. For the reasons set forth below, the District’s motion is granted.

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.” (§ 56020; see also Cal. Code. Regs., tit. 2, § 60010, subd. (a) (“Words shall have their usual meaning unless the context or a definition of a word or phrase indicates a different meaning.”).)

Here, section 56329, subdivision (d) expressly states that a school district has a right to observe a “proposed placement, if the pupil has already been unilaterally placed in the nonpublic school by a parent or guardian.” Thus, contrary to Student’s interpretation of the statute, it is only after there is a unilateral placement that a school district may seek an observation. Accordingly, because unilateral placement is a prerequisite to a district observation, the word “proposed” in section 56329, subdivision (d) does not limit a district’s right to observe a placement only if a parent is prospectively requesting a placement in the IEP process. Instead, section 56329, subdivision (d) on its face applies to the circumstance presented here, i.e., a parent has unilaterally placed a student and is seeking public funding through a due process hearing.

Finally, in context, the word “nonpublic” in section 56329, subdivision (d) must be given its usual meaning and not the technical definition set forth in section 56034. First, neither the Education Code, nor the regulations associated with it, contain a separate definition of “nonpublic school” as used in section 56329, subdivision (d). Instead, the only definition provided is for the phrase, “nonpublic, nonsectarian school.” (See § 56034 & Cal. Code Regs., tit. 2, § 60010, subd. (o).) Thus, lacking a specific definition of “nonpublic placement,” the context of section 56329, subdivision (d) controls. (See § 56020.) In context, the emphasis of section 56329, subdivision (d) is on a parent seeking public funding for a unilateral educational placement of parent’s choosing that is not part of existing school district facilities. In this context, it does not makes sense that “nonpublic school” would

department. . . . A nonpublic, nonsectarian school also shall meet standards as prescribed by the Superintendent and board.
(See also Cal. Code Regs., tit. 2, § 60010, subd. (o) (setting forth the same definition with the added requirement of at least one certified special education teacher).)

share the technical definition of “nonpublic, nonsectarian school” set forth in section 56034, which is limited to schools enrolling students with IEPs that meet certain certification requirements. In sum, “nonpublic school” in section 56329, subdivision (d) means any unilateral school placement that is not operated by a public agency.

For the reasons set forth above, the District’s Motion is granted. Within 30 days of the date of this order, Student shall permit two (2) representatives of the District’s choosing to observe Student in the unilateral educational placement for a period of up to one hour for each District representative.

IT IS SO ORDERED.

Dated: April 9, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings