

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

LOS ANGELES UNIFIED SCHOOL  
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2010080196

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010050623

ORDER GRANTING DISTRICT'S  
REQUEST FOR OBSERVATION

On April 14, 2010, Student filed a Request for Due Process Hearing, OAH case number 2010050623 (Student's complaint), against the Los Angeles Unified School District (District). On August 4, 2010, the District filed a Request for Due Process Hearing, OAH case number 2010080196 (District's complaint), naming Student. On August 9, 2010, the Office of Administrative Hearings granted the District's motion to consolidate, and the consolidate case is presently set for hearing, commencing on September 29, 2010.

On September 14, 2010, the District filed a Motion to Compel Observation. The Motion seeks an order permitting the District to observe Student's educational placement. Student did not file a response.

APPLICABLE LAW

Education Code section 56329, subdivision (d) provides<sup>1</sup>, in relevant part:

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<sup>1</sup> All subsequent statutory references are to the Education Code, unless otherwise indicated.

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.

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.<sup>2</sup>

## DISCUSSION

The District requests an order pursuant to section 56329, subdivision (d), to observe Student, before hearing, at the non-public school (NPS) she presently attends. The District specified that it wanted District school psychologist Nirit Levy to conduct a two-hour observation of Student. Student’s complaint requests reimbursement for educational expenses at an NPS due to the District’s purported failure to provide Student with a free appropriate public education, and prospective placement at an NPS. On August 27, 2010, District’s counsel, Peter Sansom, wrote Student’s counsel, Mark Woodsmall, requesting that the District observe Student in her present placement, and to be provided the name and address of Student’s present placement. Mr. Woodsmall did not reply to the District’s letter.

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.” In this matter, Parents unilaterally placed Student in an NPS operated by the HELP Group, and have not specified at which of the HELP Group schools they placed Student. Section 56329, subdivision (d), applies to the circumstances presented here as Parents unilaterally placed Student at an NPS and are seeking public funding through a due process hearing. Accordingly, the District’s motion is granted.

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<sup>2</sup> (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).)

ORDER

1. During the September 22, 2010 Prehearing Conference, Student shall inform the District of the name and physical location of Student's present educational placement.

2. Within 10 calendar days of this order, Student shall permit Nirit Levy to observe Student in the unilateral educational placement for a period of up to two hours, during academic instruction and non-academic social interactions with other students, such as recess and lunch.

Dated: September 21, 2010

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings