

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. 2011070615

ORDER GRANTING MOTION FOR  
OBSERVATION BY DISTRICT

On July 18, 2011, Parent filed, on behalf of Student, a request for due process hearing, against the San Luis Coastal Unified 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 a 40 hour a week applied behavior analysis (ABA) program.

On October 14, 2011, the District filed a Motion to Compel Observation by the District of the delivery of certain services to Student in her home. On October 17, 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."

## DISCUSSION

In this case, Student requests that the District reimburse Parent for privately obtained in-home ABA services and that the District fund a 40 hour a week ABA program. Although not stated in the complaint, Student's proposed resolution implies that the 40 hour a week ABA program would include a preschool and home component. The District requests to observe Student's home ABA program for two hours by Dr. Bryna Sigel. Student objects to the District's request because the District should have requested a home observation as part of its recent Multidisciplinary Assessment and that Education Code section 56329, subdivision (d), does not allow the District to observe Student at home because Student is not requesting placement at a nonpublic school.

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.<sup>1</sup> District further argues that the legislature's use of the phrase "nonpublic school" rather than the statutorily defined phrase "nonpublic, nonsectarian school" demonstrates a legislative intent that school districts should be afforded an opportunity to observe a student in a nonpublic placement, i.e., a placement not operated by a public agency, regardless of whether the placement is a nonpublic, nonsectarian school, if parents are seeking or proposing that District publicly finance the placement. District further asserts that due to Student's young age and the nature of the educational services his parents seek, it would be inappropriate for Student to enroll in a nonpublic, nonsectarian school. Student's parents have contracted with CARD to provide services to Student in his home and are requesting public funding for that placement. District asserts that an interpretation of section 56329, subdivision (d) as only permitting observations of a student in a "nonpublic, nonsectarian school" would be contrary to the plain language of the statute, and likely lead to an absurd result.

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, contains 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

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<sup>1</sup> 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.

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 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.

Accordingly, the statute must be constructed to give a reasonable and commonsense construction that is practical, rather than technical, and avoids an absurd result. In this context "nonpublic school" in section 56329, subdivision (d), means any unilateral school placement that is not operated by a public agency, including Student's request for a 40 hour a week ABA placement, which include home based services. Student's reliance on *Student v. Bakersfield City School District* (2011) Cal.Ofc.Admin.Hrngs. Case No. 2010120162 is misplaced. In that case, the student was not requesting reimbursement or continuation of the present in-home ABA program that the Regional Center was funding. The present case is more similar to *Student v. Temecula Valley Unified School District* (2009) Cal.Ofc.Admin.Hrngs. Case Nos. 2009040514, 2009050048, and 2009031335, in which the district was allowed to observe the student in the home ABA program because of the student's request for reimbursement and future in-home ABA services. Finally, Student presented no authority that the District waived its rights under Education Code section 56329, subdivision (d), to observe Student by not doing so during its Multidisciplinary Assessment. Accordingly, the District's established its right to observe Student at home in her home based ABA program.

#### ORDER

The District's Motion for Observation is granted. Within 20 days of the date of this order, Student shall permit Dr. Bryna Sigel to observe Student in her home ABA placement, receiving services, for a period of up to two hours.

Dated: October 26, 2011

/s/  
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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings