

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. 2011110858
SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011090132 ORDER GRANTING DISTRICT'S MOTION FOR OBSERVATION

On September 6, 2011, the San Luis Coastal Unified School District (District) filed a Request for Due Process Hearing, OAH case number 2011090132 (District's complaint), against the Parent on behalf of Student (Student) as respondent. On November 28, 2011, Parent filed a Request for Due Process Hearing, OAH case number 2011110858 (Student's complaint), naming the District as respondent. On November 28, 2011, Student also filed a motion to consolidate the two cases. On December 1, 2011, the Office of Administrative Hearings granted the Student's motion to consolidate.

On April 16, 2012, the District filed a Motion to Compel Observation. The Motion seeks an order permitting the District to have two observers at Student's current educational placement at the Laureate School, a nonpublic school (NPS). The two observers designated by the District are Dean Johnson, a District school psychologist, and Dr. Byrna Siegel, an Autism expert retained by the District as a consultant in this matter. Johnson had previously observed Student at the NPS on May 9, 2012 as part of a psychoeducational assessment conducted on behalf of the District. On April 18, 2012, Student filed an opposition to the motion. Student, in the opposition, agreed to permit a one hour observation by Mr. Johnson at the NPS. In a supporting declaration, Student's father related that the Laureate School Head, Roz Reymers felt that two observers viewing a class consisting of five students would be too disruptive as would be a two hour observation.

APPLICABLE LAW

Education Code section 56329, subdivision (d) provides¹, 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.

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.²

In *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875, 884, the Court construed Education Code section 56329, subdivision (c), as permitting an independent expert to observe a proposed placement not only as part of a parent-funded independent education evaluation, but also as part of an expert’s preparation for a due process hearing. *Benjamin G.* also provides for a pre-hearing order to compel a school district to permit the observation. The reasoning by the *Benjamin G.* court should apply to the expert for a District as to the appropriateness of the Parent selected placement. Here, the District seeks to have its expert, Dr. Siegel and Mr. Johnson, observe Student’s current placement as part of the expert’s preparation for a due process hearing.

DISCUSSION

Here, Student does not oppose the District expert to observe Student at the NPS. Student desires to choose which expert can conduct the observation and to shorten the observation so as not to be disruptive to the NPS class. Student points out in his opposition

¹ All subsequent statutory references are to the Education Code, unless otherwise indicated.

² (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).)

that the District has a policy to restrict outside observers to a 30 minute time period so as to not be disruptive to the class. Likewise, the NPS head consented to a period of observation of one hour so as to not be disruptive to the class.

Based upon the evidence produced, the District's motion is granted with the following limitations so as to not be disruptive to the small classroom environment: the District shall designate one observer to observe the NPS class for no longer 30 minutes at a time for a total of one hour on a single day. The District may designate either Dr. Siegel or Mr. Johnson conduct the 30 minute observations. Student may designate his own observer to view the class at the same time as the District observers.

IT IS SO ORDERED.

Dated: April 27, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings