

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT(S) ON BEHALF OF  
STUDENT,

v.

ALHAMBRA SCHOOL DISTRICT.

OAH CASE NO. 2011010298

ORDER GRANTING MOTION FOR  
OBSERVATION

On May 4, 2011, Edwin Egelsee, attorney for Student, filed a motion to allow observation of Student's classroom by Student's expert prior to testifying at the due process hearing. On May 5, 2011, Cole Dalton, attorney for District, filed an opposition to Student's motion.

APPLICABLE LAW

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, subds. (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.) .

Education Code section 56329, subdivisions (b) and (c), are essentially identical in their relevant parts and provide as to assessments at public or private expense that, "if [the public education agency's] 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."

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 his expert should be allowed to observe Student's general education classroom placement and that District has refused to permit the observation. District contends that the observation would constitute impermissible pretrial discovery. While it is true that the IDEA does not contemplate pretrial discovery for a due process hearing, California law does specifically provide for a student's expert witness to observe the placement proposed for a student in preparation for a due process hearing. As the *Benjamin G.* court noted, to prevent the expert from observing an offered placement that was the subject of the dispute, would have resulted in a "partially prepared expert." Accordingly, Student is entitled to have his expert observe Student's classroom as it is District's proposed placement.

#### ORDER

Student's request to have his expert observe Student's classroom is granted.

Dated: May 12, 2011

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GLYNDA B. GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings