

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. FULLERTON SCHOOL DISTRICT.	OAH CASE NO. 2011061318
FULLERTON SCHOOL DISTRICT v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2011061012 ORDER GRANTING MOTION TO COMPEL WITHOUT PREJUDICE

On June 22, 2011, the Fullerton School District (District), filed a Request for Due Process Hearing in OAH case number 2011061012, naming Student. District sought an order allowing it to conduct a re-assessment pursuant to a proposed May 20, 2011, assessment plan.

On June 28, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011061318, naming the District, seeking an independent educational evaluation (IEE).

On July 7, 2011, Student filed a “Motion to Compel District to Allow Observation of Student (First Motion).” On July 12, 2011, District opposed the Motion. On July 13, 2011, Student replied to the opposition. District’s and Student’s cases were consolidated on July 13, 2011. On July 14, 2011, OAH denied without prejudice Student’s motion as moot given the undisputed fact that Student is not currently attending school and therefore cannot be observed. The order permitted Student to re-file the Motion to permit an observation of the District’s proposed educational placement, rather than Student’s actual placement.

On July 19, 2011, Student filed a second motion to compel the District to permit Student’s expert, Dr. Mitchel Perlman, to conduct a 90 minute observation of the District’s proposed placement to include the observation of whole group instruction, small group instruction, and social or free time.

The District has not filed an opposition. In the District's opposition to the First Motion, it stated that it was not opposing 90 minutes of total observation time. The District policy is to limit observations to 30 minutes so as to prevent disruption and distraction to the class being observed.

APPLICABLE LAW DISCUSSION

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.

Here, the District does not oppose parent's expert to conduct 90 minutes of observation. The District seeks to minimize the disruption and distractions caused by such observations. Student has failed to demonstrate the need for a single 90 minute observation. Student's expert seeks to observe the class during times of whole group instruction, small group instruction and social and/or free time. This can easily be accomplished within the District's 30 minute observation periods. Student's motion is hereby granted, and the District shall make available three 30 minute observation periods which include the opportunity for Student's expert to observe whole group instruction, small group instruction, and free time.

IT IS SO ORDERED.

Dated: July 26, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings