

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

HEMET UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012090499

ORDER GRANTING DISTRICT'S
MOTION TO COMPEL
OBSERVATION

Hemet Unified School District (District) filed a request for due process hearing on September 14, 2012, (OAH # 2012090499) to determine whether an April 13, 2012 individualized education program (IEP) provided Student a free appropriate public education (FAPE). District filed a second request for due process on November 6, 2012, (OAH # 2012110300) to determine whether Student was entitled to independent educational evaluations at public expense. District's motion to consolidate these two matters was granted on November 14, 2012, (District's case). District filed this Motion to Compel Observation on November 21, 2012. Student did not file an opposition. District's case is set for hearing on January 21 and 22, 2012.

APPLICABLE LAW AND DISCUSSION

District's moving papers aver: District funded 40 hours of service per week from the Center for Autism and Related Disorders (CARD) and related services including speech and language and occupational therapy through the end of the 2007-2008 regular school year.¹ District has been and continues to provide CARD and related services to Student in a private school and at home as "stay put" because Parents refused to consent to subsequent IEPs. District offered Student an IEP on April 13, 2012. Parents did not consent to the IEP. District sent Parents a letter on November 13, 2012, requesting Parents voluntarily permit District consultant Dr. Laura Schreibman to observe Student at his private school and at home. Parents have not responded to the letter.

District seeks an order permitting Dr. Schreibman to observe Student receiving CARD services at his private school and in his home. District contends Education Code sections 56329(d) and *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal.App.4th 875 (*Benjamin G.*) entitle District to this prehearing observation. For the reasons set forth below, the motion is granted.

Education Code section 56329, subdivision (d), provides in pertinent part:

¹ See OAH decisions in case numbers 2007090 175 and 2007100997.

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.

The emphasis of section 56329, subdivision (d) is on a parent seeking public funding for a unilateral educational placement of parent's choosing. OAH has held, where parents seek funding for a unilateral placement of parents' choosing that is not part of a district school, Education Code section 56329 subdivision (d) permits districts to observe the pupil in the placement. (See OAH Case Nos. 2011070615; 2009031275, 2009020316 & 2008110557 (consolidated); 2009031335.)

In *Benjamin G.* the court of appeal considered parents' right to have their expert observe district's proposed placement before a due process hearing so that student would be in a position to challenge district's proposed placement at hearing. The court interpreted Education Code section 56329 subsection (b). Subsection (b) establishes the right of parents to demand an independent educational assessment and, if a district has observed a student's placement as part of its own assessment, the right of parents to have an equivalent opportunity for their assessor to observe "an educational placement and setting ... proposed by the [District]." The court held "Because the parents have a statutory right to have their expert testify at their administrative hearing, they *ipso facto* are entitled to have their expert observe the proposed placement *before* they participate in the administrative hearing at which the propriety of the proposed placement will be determined." (*Benjamin G., supra*, 131 Cal.App.4th at p. 879 [emphasis in original].)

Common principles of statutory interpretation include: 1) that "words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible"; 2) "statutes should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect"; and 3) when interpreting several statutes, they "must be read together and so construed as to give effect, when possible, to all the provisions thereof." (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 54 [citations and internal quotation marks omitted].) "The provisions of the Education Code are to be liberally construed with a view to effect its objects and to promote justice." (*Benjamin G, supra*, at p. 884; see also *Katz v. Los Gatos-Saratoga Joint Union High School Dist., supra*, at p. 55.)

District funds CARD services for Student. These services are provided both in Student's private school and in Student's home. OAH determined District was required to fund these services for the 2007-2008 school year. Thereafter, Parents did not consent to any IEP offered by District. Thus, the continuation of Student's CARD services in his private school and at home constitutes a unilateral private placement by Parents. Moreover, in a separate pending due process complaint filed by Student, Parents seek reimbursement for

Student's private school placement and CARD services, among other things.² Although Education Code section 56329, subdivision (d) is phrased to apply when Student proposes publicly funded placement, in this case District has been funding CARD services, Student has not opposed District's motion, and in a separate concurrent matter, Parents have requested funding for this placement.

Benjamin G. holds that subsection (b) permits student's expert to observe a district's proposed placement where the propriety of the proposed placement is at issue in the due process hearing. Education Code section 56329 subdivision (d) permits District to observe Student's placement where Parent's seek public funding for Student's unilateral placement. Reading Education Code section 56329 as a whole, applying the principles of statutory instruction, subsection (b) and subsection (d) must be read in harmony and liberally construed to further the purpose of the Education Code and promote justice. Therefore, District must be permitted to observe Student's CARD services at Student's private school and at home because District presently funds these services, both parties have a right to present experts at the due process at hearing, and Parents seek ongoing public funding for these services.

For the reasons set forth above, District's motion is granted. Within 20 days of the date of this order, Student shall permit Dr. Laura Schreiber to observe Student receiving CARD services in his private school placement and at home for a total period of up to two hours in each setting.

Dated: December 26, 2012

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings

² Student filed a request for due process hearing on November 21, 2012. Student moved to consolidate Student's complaint with District's case on November 26, 2012. District filed a Notice of Insufficiency on November 27, 2012, which was granted on November 28, 2012. On December 6, 2012, OAH denied Student's motion to consolidate without prejudice to renew the motion if and when Student filed a sufficient complaint. Student filed an amended complaint on December 12, 2012. Student's amended complaint seeks placement in a private school program, CARD services 40 hours per week, 52 weeks per year, other related services, compensatory education, reimbursement for the costs of assessments obtained by Parents, and other remedies. District filed a notice of insufficiency as to Student's amended complaint on December 21, 2012. On December 26, 2012, OAH issued an Order determining Student's amended complaint sufficient.