COMMONWEALTH OF MASSACHUSETTS DIVISION OF ADMINISTRATIVE LAW APPEALS BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Mansfield Public Schools BSEA # 1307030

RULING ON PARENTS' MOTION TO COMPEL

This Ruling addresses the question of whether Parents are entitled to have their expert observe Student's educational program for a full, continuous day and whether this observation may occur on May 6, 2013. Mansfield Public Schools (Mansfield) is not opposed to the expert observing part of the school day on May 6th. Mansfield also does not oppose the expert observing the entire day's educational services and activities, provided that the observation occurs over the course of several days. Mansfield believes this is necessary in order to accommodate the schedules of those who would accompany the expert during the observation. Thus, Mansfield takes the position that part, but not all, of the observation may occur on May 6th.1

The United State Supreme Court has explained that through an evaluation by their expert, parents are to be provided the opportunity to match the school district's expertise and understanding of the student.² The only way that this can occur in most cases is through an assessment by parents' expert that includes an observation of student at school. It is not unusual for a decision by a BSEA Hearing Officer to hinge on the question of whether an expert's observations of a student were sufficient to allow the expert to adequately understand how the student functions during the school day and how the school district's proposed services are addressing the student's special education needs at school.

In order to address the nature and scope of a parent's expert's observation, Massachusetts has statutory standards,³ together with guidance from the Massachusetts Department of Elementary and Secondary Education (DESE).⁴ Through this statute and guidance, the following general standards apply.

¹ Parents are represented by attorney Laura Gillis. Mansfield is represented by attorney Tami Fay. Both attorneys filed substantive written arguments, and a conference call was held on May 1, 2013 with the attorneys and the Hearing Officer to discuss the dispute.

² See Schaffer v. Weast, 546 U.S. 49, 60-61 (2005).

³ MGL c. 71B, s. 3.

⁴ Technical Assistance Advisory SPED 2009-2: Observation of Education Programs by Parents and Their Designees for Evaluation Purposes (hereinafter, "Advisory SPED 2009-2").

A school district is to provide a parent with an opportunity to evaluate fully the student's educational program, including student's performance in that program.⁵ An observation may include evaluation of both academic and nonacademic aspects of the student's educational program,⁶ and a school district may not impose arbitrary limitations—for example, limiting the observation to certain, specific classes or activities—that would preclude a full evaluation.⁷ The complexity of the student's needs, as well as the programs to be observed determine the scope of the observation.⁸ The end result must be that the observation will be sufficient for the purpose of the parent's being able to participate fully and effectively with school personnel in determining the student's appropriate educational program.⁹

In the instant dispute, Parents seek a continuous, full school day observation of their son for several reasons. An important part of the parties' dispute is the nature of Student's social skills deficits, the impact, if any, of these deficits on his education and how those deficits, if any, should be addressed by Mansfield. Specifically, Parents believe that Student likely has social skills deficits that result in anxiety that interferes with his learning. Parents also think that it is likely that Student's social skills deficits fluctuate over the course of the school day, depending on the particular activity and time of day. Thus, Parents seek to have their expert observe a continuous, full school day so that the expert can see how Student's emotional presentation or anxiety may change over the course of a particular day. ¹⁰

I am persuaded that Parents have a legitimate interest in having an observation that continues throughout a single school day, as compared to having the observation broken up over the course of two or more days. Parents' expert needs to determine whether, and to what extent, Student's social skills deficits and anxiety manifest themselves at different times and during different activities and under different circumstances—in other words, how these deficits and anxieties manifest themselves over the course of a school day. I find that it is likely that this information can be obtained only through a single, day-long observation during which the expert is able to understand what he is observing within the context of a particular school day that the expert has observed from beginning to end. I therefore further find that a day-long observation is the only way for the expert to be assured that he adequately understands Student's social skills deficits (and anxiety) at school and their impact on his education, and

_

⁵ MGL c. 71B, s. 3 ("Parents and/or their designees shall be afforded access of sufficient duration and extent to enable them to evaluate the child's performance in a current program and/or the ability of a proposed program to enable the child to make effective progress."); *Advisory SPED 2009-2* ("The law is clear that a district may not arbitrarily limit observations to certain academic classes if such limitations would not allow an observer to evaluate fully whether a program is or would be appropriate for the identified student with disabilities.").

⁶ MGL c. 71B, s. 3 (school committee must allow "observations of a child's current program ..., including both academic and nonacademic aspects of any such program").

⁷ See footnote 4, above.

⁸ Advisory SPED 2009-2. ("The complexities of the child's needs, as well as the program or programs to be observed, should determine what the observation will entail and what amount of time is needed to complete it.").

⁹ MGL c. 71B, s. 3 ("To insure that parents can participate fully and effectively with school personnel in the consideration and development of appropriate educational programs for their child, a school committee shall ..."); Advisory SPED 2009-2 ("The purpose of the law is to ensure that parents can participate fully and effectively in determining the child's appropriate educational program.").

¹⁰ There are additional reasons for the observation (for example, to observe quality of instruction and Student's peers), but they do not pertain to the question of whether the observation needs to be on a single day.

for the expert's knowledge to at least approximate the information readily available to Mansfield regarding Student's social skills deficits and anxiety.¹¹

Mansfield does not object to the expert observing all parts of Student's school day but asserts that it is unreasonable for this to occur during a single school day. Mansfield proposes that the observation occur over the course of two or more visits. In support of this position, Mansfield argues that it is entitled (if not required) to assign a Mansfield employee to accompany Parents' expert at all times during the observation, that it has designated a particular school psychologist to accompany the expert, and that the school psychologist cannot make herself available for a full school day given her other responsibilities.

Mansfield further argues that it has no other employee who could spend the entire school day accompanying the expert. In response to Parents' suggestion that the school psychologist could accompany the expert for part of the day and another Mansfield employee could accompany the expert for the other parts of the same day, Mansfield responds that it does not have other employees who are free during the time periods that would need to be covered.

As a general rule, under the statutory standards (together with DESE guidance) discussed above, a school district may impose limitations on a parent's otherwise appropriate observation in only the following three respects: (1) to ensure the safety of students in the program, (2) to ensure the integrity of the program while under observation, and (3) to protect the students in the program from disclosure of confidential and personally identifiable information.¹²

None of these three limitations is relevant to Mansfield's stated reasons for declining to schedule a continuous observation over the course of a single school day.

I do not question Mansfield's desire and need to assign one of its employees to accompany Parents' expert at all times during the observation. But, I am not persuaded that Mansfield is unable to do so over the course of single, full-day observation. There are various options open to Mansfield, including assigning different staff to accompany the expert at different times, as Parents suggest. If Mansfield does not have an employee who is free of other responsibilities during a particular part of the observation day, Mansfield may have to shift responsibilities of an employee or make other arrangements to free up the time of a Mansfield employee so that an employee will be able to accompany the expert at all times.

¹¹ Parents have also argued that the observation should be on a single day in order to avoid the expense of their expert's additional travel time in the event he were to have to conduct the evaluation over multiple days. Although I am sympathetic to Parents' concern, I am not persuaded that it is relevant to the instant Ruling.

¹² MGL c. 71B, s. 3 ("School committees shall impose no conditions or restrictions on such observations that are not necessary to ensure the safety of children in a program or the integrity of the program while under observation or to protect children in the program from disclosure by an observer of confidential and personally identifiable information in the event such information is obtained in the course of an observation."); *Advisory SPED 2009-2* ("The observation law states that districts may not condition or restrict program observations except when necessary to protect: 1. the **safety** of the children in the program during the observation; 2. the **integrity** of the program during the observation; and 3. children in the program from **disclosure** by an observer of confidential or personally identifiable information he or she may obtain while observing the program.") (emphasis in original).

For these reasons, Parent	s' Motion to Compel is	ALLOWED, with t	the result that Mansfield
shall allow Parents' expe	rt to observe for the full	l school day on May	6, 2013.

By the Hearing Officer,

William Crane

Date: May 2, 2013