



The Council of Parent Attorneys and Advocates, Inc.

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Reverse Letter to Mamas (2004) Artificially Limiting the Right to Observe in the Classroom

Parents of children with disabilities and their experts often need to observe the classroom to monitor provision of FAPE to their children or to enforce their children's rights. They may need to observe the child's educational services, a proposed placement, whether accommodations are provided, and other matters. For many years, they were welcome in the classroom. But in Letter to Mamas (2004), OSEP unilaterally damaged this right, by declaring that IDEA does not stop school districts from barring observations. Many parents and advocates increasingly report that they, or their expert witnesses, have been denied access to their child's classroom to observe, or their access is so limited as to be meaningless. Districts increasingly cite Letter to Mamas for this purpose.

Meaningful parental participation in the education of their children includes the right to observe. The right to observe is also implied by the Supreme Court decision in *Schaffer v. Weast*. In those rare cases that parents exercise their rights to due process observation is necessary to prepare their cases, especially in light of lower court decisions deferring to school district witnesses over parent's experts precisely because those witnesses have the ability to observe children. *See, e.g., J.H. v Henrico Co. Sch. Bd.*, 395 F.3d 185 (4th Cir. 2005). (While Letter to Mamas does allow IEE evaluators to observe, not all experts are conducting IEEs.) The letter places parents on a very unlevel playing field, unable to receive a fair hearing.

In a recent Georgia case, a parent was denied the ability to observe her child once she raised a concern about his placement. The district would only allow her to observe her child for 15 minutes on any day, through a window of his self-contained classroom, meaning that it takes weeks to observe a full day in 15 minute increments. Her son is nonverbal and self-injurious, and his records indicated that his IEP was not being implemented and he had made no progress. When she was denied the ability to observe the day, she sought a private evaluation and the district denied her psychologist the right to observe. The hearing officer upheld the district's actions, relying on Letter to Mamas. *G.J. v. Muscogee County School District*, No. OSAH-DOE-SE-0902167-106-Miller (Georgia OAH Nov. 5. 2008). This not atypical; many districts artificially restrict the ability to observe.

This issue is also critically important as an added means of protection against the misuse and abuse of restraints, seclusion and aversive treatments. Too often school personnel resort to inappropriate methods to exert control, as a matter of convenience or because they are not trained in positive behavior change and crisis de-escalation. In addition, many children with significant disabilities are unable to effectively communicate what has happened to them; or when they are able, often their efforts to communicate are dismissed or treated as trivial. Parental access to the classroom is essential to ensure transparency and oversight against abuse.

OSEP should adopt guidance rejecting the Mamas letter and stating to schools that reasonable observation periods of sufficient duration to effectively observe the program are permitted and encouraged by IDEA. Legislation similar to Massachusetts' H.B. 391, the Observation Access Act, should be adopted to effectuate this goal.