

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2008120811

ORDER GRANTING STUDENT'S  
MOTION TO COMPEL  
OBSERVATION; AND, CONTINUING  
STUDENT'S MOTION FOR  
SANCTIONS

On December 24, 2008, Parent, on behalf of Student, filed a request for due process hearing (DPH Complaint) by which Student has challenged the placement proposed for Student by District at an IEP meeting held December 2, 2008. District allegedly inappropriately seeks to change Student's placement from a publicly-funded, non-public school (NPS) to a public special day class (SDC) at Inglewood High School (IHS). On February 16, 2009, Student filed Petitioner's Motion to Compel Observation and Motion for Sanctions to allow Student's independent expert assessor, Dr. Donald Hoagland (Hoagland), to observe the proposed placement and to recover fees and costs associated with District's alleged bad faith failure to allow Hoagland to make necessary the observations. District has not responded to either of Student's motions.

*Motion to Compel Observation:*

Student contends that he is entitled to have Hoagland observe the District's proposed placement in order to prepare Hoagland to assist Student to meet Student's burden of proof in the upcoming DPH, primarily pursuant to Education Code, section 56329, subdivisions (b) and (c), and *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4<sup>th</sup> 875. Student also contends that District initially agreed to allow Hoagland to observe the proposed SDC placement; then, on the morning of the agreed observation, turned Hoagland away from Inglewood HS stating that, because District had not been allowed the opportunity to observe Student, Hoagland could not observe the proposed SDC. In other words, District implied that any observation by Hoagland was a reciprocal right conditioned upon Student allowing District to observe Student.

Student's unopposed evidence amply supports his contention that Hoagland was turned away as alleged.

Student is correct that Education Code, section 56329, subdivisions (b) and (c), and *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4<sup>th</sup> 875 provide

Student with the right to have his expert observe the District’s proposed SDC placement. Further, Student’s observation right is not conditioned on reciprocity.

Ed.Code, § 56329, subdivisions (b) and (c), are essentially identical in their relevant parts and provide both 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.”

*Benjamin G.* examined the legislative history of Education Code section 56329, subdivision (b) and held that the statute mandated exactly what Student has asked for, an opportunity for Student’s hired expert to observe the 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. v. Special Education Hearing Office, supra*, 131 Cal.App.4th at pp. 883-884.) Education Code, section 56329, subdivision (c) was drafted in accord with subdivision (b), so whether the observation is approached as one related to public funding (Student is at a publicly-funded NPS) or private funding (Student’s Parent has retained Hoagland), the outcome is the same. Student is entitled to have his expert observe the placement that District proposes, without regard to reciprocity. Student’s Motion to Compel Observation is granted.

*Motion for Sanctions:*

Student argues in substance that, given the clear language of the Education Code discussed above, and certain remarks by District personnel and representatives, that District’s conduct was in bad faith and intended to impede Student’s preparation for the DPH. Pursuant to Government Code, §11455.30, Student seeks approximately \$9,300.00 in reimbursement sanctions for the alleged bad faith conduct and provides significant support for his argument through several unopposed declarations. Sanctions in special education cases are awarded sparingly and only after ample opportunity for the parties to be heard. Unless otherwise ordered, Student’s Motion for Sanctions shall be continued to, and heard, based on appropriate evidence, during the DPH.

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ORDER

1. Before March 16, 2009, the date of the PHC, District shall permit Student's expert, Dr. Donald Hoagland, to observe the educational placement proposed by the District at the December 2, 2008 IEP.

2. Student's Motion for Sanctions is continued to, and shall be heard at, the DPH, based on appropriate evidence.

Dated: March 10, 2009

/s/

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STEVEN CHARLES SMITH  
Administrative Law Judge  
Office of Administrative Hearings