

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA**

In the Matter of:

STUDENT,

Petitioner,

v.

SANTA BARBARA SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N 2007050407

ORDER GRANTING MOTION TO
COMPEL

On November 9, 2007, petitioner, Student, filed a Motion to Compel the District to allow Student's educational expert, Dr. Thomas Goulder, to observe the placement proposed by the District at an IEP meeting on March 8, 2007. Student contends that he is entitled to such an observation under Education Code section 56329, subdivision (b), *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal.App.4th 875, 884 and *L.M. v. Capistrano Unified School District* (C.D. Cal. 2007) 107 LRP 52369. The Motion was supported by evidence that prior to filing the Motion, Student made numerous efforts to schedule the observation through the cooperation of the District and its counsel. Student requested that the Motion be granted and that attorney's fees be awarded as a sanction.

On November 14, 2007, the District filed an Opposition to the Motion. The District did not dispute that it had not complied with Student's requests, and instead contended, without citation to any legal authority, that the District did "not object to reciprocal observations." The District cited legal authority for its argument that sanctions should not be awarded because its actions had not been in bad faith. The Opposition was supported by evidence about the District's attempts to arrange for "reciprocal observations" and evidence that the District had made some efforts to schedule an observation by Student's expert.

Student is correct that Education Code section 56329, subdivision (b), provides an unequivocal, non-reciprocal right to have Student's expert observe the District's proposed placement. Education Code section 56329, subdivision (b), provides, in relevant part:

If a public education agency observed the pupil in conducting its assessment, or if its 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.

The court in *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.) Recently, the United States District Court for the Central District of California found that a school District's failure to provide a parent's expert with adequate observation time pursuant to Education Code section 56329, subdivision (b), denied the parents their right to meaningfully participate in the IEP process. (*L.M. v. Capistrano Unified School District, supra*, 107 LRP 52369.)

In light of the above, the District's explanation in its Opposition that it had attempted to arrange "reciprocal observations" is unavailing. The District has not cited any statute, regulation or case law that makes a student's right to an observation of a school district placement under Education Code section 56329 contingent upon a "reciprocal observation." Accordingly, the Motion is GRANTED.

ORDER

1. Within 10 business days of the date of this Order, the District shall permit Student's expert, Dr. Thomas Goulder, to observe the educational placement proposed by the District at the March 8, 2007 IEP.

2. The District's failure to comply with this order absent good cause outside of the District's control (e.g., unavailability of Dr. Goulder) shall result in an Order to Show Cause Re: Sanctions.

DATED: December 6, 2007

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings
Special Education Division