

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
PARENTS ON BEHALF OF STUDENT,

and

IRVINE UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2021080012
OAH CASE NUMBER 2021080052

ORDER GRANTING MOTION TO COMPEL OBSERVATION
AND REOPEN EVIDENTIARY RECORD; DENYING MOTION
FOR SANCTIONS

NOVEMBER 5, 2021

On October 27, 2021, OAH concluded the due process hearing in this consolidated matter and closed the evidentiary record. The parties' closing briefs are due on November 15, 2021. On November 1, 2021, Student filed a Motion to Compel Observation, a Motion to Reopen the Evidentiary Proceedings, and a Motion for Sanctions. On November 4, 2021, Irvine Unified School District filed a response to Student's motions.

Student argues that Irvine denied Student's expert the right to observe a classroom that Irvine offered Student called "Directed English Language Arts," claiming that the program no longer existed. Student argues that at hearing, Special Education Director Jennifer O'Malley testified the Directed English Language Arts classroom still exists but is now called "Practical English Language Arts." As a result, Student argues OAH should order Irvine to comply with OAH's September 23, 2021 Order Granting Motion to Compel Observation and allow Student's expert to observe the Practical English Language Arts classroom. Further, Student argues OAH should reopen the due process hearing to allow Student's expert to observe the Practical English Language Arts class and testify regarding its appropriateness for Student.

Irvine does not oppose Student's expert observing the Practical English Language Arts classroom or reopening the evidentiary record to allow the expert's testimony and any rebuttal testimony from an Irvine witness.

MOTION TO COMPEL AND MOTION TO REOPEN THE EVIDENTIARY RECORD

As stated in OAH's September 23, 2021 Order Granting Motion to Compel Observation, Education Code section 56329, subdivision (b), and relevant case law, allow independent assessors or experts to observe any educational placement proposed by a school district. (See *Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875; see also *E. C. v. Fullerton School District* (C.D.Cal. 2021) WL 2337630.) Accordingly, OAH ordered Irvine to allow Student's expert to observe placements Irvine offered to Student during the 2018-2019, through 2020-2021 school years, before the expert testified at the due process hearing in this case.

On September 27, 2021, Student's expert observed several classrooms at Sierra Vista Middle School that Irvine proposed as placements for Student. During the observation, Irvine personnel informed the expert that Directed English Language Arts no longer existed and there was not a comparable class for the expert to observe. As a result, the expert did not observe any English Language Arts classrooms. On October 27, 2021, the last day of hearing, O'Malley testified the classroom previously known as Directed English Language Arts, is now called Practical English Language Arts, and that Student possibly would have been placed in that classroom.

Pursuant to OAH's September 23, 2021 Order, Student's expert has a right to observe the Practical English Language Arts classroom. Whether Irvine offered Student an appropriate placement during the 2018-2019, through 2020-2021 school years, is at issue in this case and Student has a right to offer relevant evidence in support of its issues. Irvine's failure to allow Student's expert to observe the Practical English Language Arts class on September 27, 2021, interfered with the expert's ability to fully prepare before testifying at the due process hearing, and therefore, prejudiced Student's case.

MOTION FOR SANCTIONS

Student argues OAH should issue sanctions against Irvine for obstructing and delaying the hearing process. Irvine argues sanctions are not warranted because Irvine's actions were not in bad faith, frivolous, or intended solely to cause unnecessary delay.

Government code section 11455.30 of the Administrative Procedure Act, allows a presiding officer to order a party to pay reasonable expenses, including attorney's fees, as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

While Irvine did not fully comply with OAH's September 23, 2021 Order to allow Student's expert to observe all placements proposed for Student, there was no evidence that Irvine's actions were intentional, in bad faith, or solely intended to cause unnecessary delay. Accordingly, sanctions are not warranted.

ORDER

1. Student's Motion to Compel is granted. Within 10 school days of this Order, Irvine must allow Student's expert to observe a Practical English Language Arts class at Sierra Vista Middle School.
2. Student's Motion to Reopen the Evidentiary Record is granted. A Trial Setting Conference will be held on November 15, 2021, at 1:00 PM, via videoconference, to schedule one additional hearing date to allow testimony from Student's expert and one rebuttal witness, if necessary.
3. The November 15, 2021 due date for closing briefs is vacated.
4. Student's Motion for Sanctions is denied.

Tara Doss

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Administrative Law Judge

Office of Administrative Hearings