

DOCKET NO. 030-SE-0919

**SPRING BRANCH INDEPENDENT
SCHOOL DISTRICT,
Petitioner**

v.

**STUDENT, B/N/F PARENT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

The Spring Branch Independent School District (Petitioner or District) brought this action against Student, ***, by next friend Parent, (Respondent) under the Individuals with Disabilities Education Act, 20 U.S.C. §§1400-1482 (IDEA) and its implementing state and federal regulations. The issue presented is whether the District may

III. DUE PROCESS HEARING

The due process hearing was held in the District on October 30, 2019. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by its legal counsel, Amy Tucker. ***, Director of Special Education for the District, attended as party representative. Respondent was represented by Student's mother.

Both parties filed written closing briefs in a timely manner. The hearing officer's Decision is due December 6, 2019.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following item of requested relief:

1. An order permitting it to conduct a speech/language and AT evaluation of Student without parental consent.

VI. FINDINGS OF FACT

1. Student is a *** student in the District. Student has a medical diagnosis **. As a result, Student has a cognitive impairment, developmental delays, **, minimally expressive speech, **, a short attention span, and **. ¹
2. Student began attending school in the District at the beginning of the 2016-17 school year after moving to Texas **. The District conducted a Full Individual Evaluation (FIE) when Student enrolled in the District, issuing its FIE report on October **, 2016. ²
3. Student is eligible for special education services under the categories of intellectual disability, other health impairment (OHI) for **, speech impairment, **, and multiple disabilities. ³
4. Student has a ** disorder. Student can **, but ** is an ineffective way for Student to communicate **. ⁴
5. Student has complex communication needs. **. ** tools for communicating **. Student's expressive use ** is still developing, making it difficult to evaluate Student's comprehension of language. ⁵
6. Student's receptive language skills greatly exceed Student's expressive language skills. Student can comprehend a wide range of labels for items, actions, and people in Student's

¹ Petitioner's Exhibit (PE) 7, at 1.

² PE 7.

³ PE 1, at 1.

⁴ Respondent's Exhibit (RE) 5, at 1.

⁵ Transcript (TR) at 16.

- environment. Student can follow routine directions and conversations of interest to Student.⁶ Student has difficulty attending to task; following two-step directions; and ***.⁷
7. Student has limited comprehension of language at the *** level. Student can ***.⁸ Student can ***. Student also ***.⁹
 8. The District provides Student thirty minutes per day of speech therapy services.¹⁰ Student requires *** prompts to successfully communicate Student's wants and needs. Student has made progress on Student's speech goals, but continues to require prompting to use *** to communicate.¹¹
 9. Student has limitations in Student's fine motor abilities. ***.¹² ***.¹³
 10. Student's current *** consist of a ***. Student first began using the *** in the Spring of 2016. Student accesses the ***, meaning Student ***. Student struggles at times with the *** due to Student's fine motor limitations.¹⁴
 11. The ***. ***.¹⁵
 12. Student demonstrates an understanding of the ***. Student utilizes the ***. Student can navigate *** with minimal difficulty ***. Student requires maximum prompts and cues to navigate *** for pragmatic functions, such as negating, asking questions, and social interactions with a robust vocabulary.¹⁶
 13. The District convened an Admission, Review, and Dismissal (ARD) committee meeting on September ***, 2019, to discuss Student's placement, review existing evaluation data, and consider additional evaluations.¹⁷ The committee, including Student's parent, agreed Student required no evaluatio

C. Parental Consent For Reevaluation

Before conducting a reevaluation, a school district must obtain informed consent from the parent of the student with a disability. 20 U.S.C. §1414(c)(3); 34 C.F.R. §300.300(c)(1)(i). The District convened two ARD committee meetings in September 2019 in an attempt to obtain parental consent for the proposed reevaluations. However, Student’s Parent withheld consent due to concerns the evaluations may result in removal of Student’s ***.

D. Override of Parental Consent

If the parent of a student with a disability refuses to consent to a reevaluation, the school district may pursue the reevaluation by filing a due process hearing request to override lack of parental consent. 34 C.F.R. § 300.300(c)(1)(ii). Here, the District initiated this proceeding for that purpose. To obtain an order overriding lack of parental consent, a school district must show it is essential to override lack of parental consent and demonstrate reasonable grounds exist to do so. *Shelby S. ex rel. Kathleen T v. Conroe Indep. Sch. Dist.*, 454 F. 3d 450 (5th Cir. 2006). A school district that demonstrates the evaluation is essential for formulating a student’s special education plan meets its burden for overriding the lack of parental consent. *Id.*

Student’s speech/language needs and use of AT are at the center of Student’s educational program. The District must have an accurate, current picture of Student’s needs and abilities in

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speech services and AT. As such, Student's parent must allow the District to reevaluate Student as requested.

E. Conclusion

The District met its burden to obtain an order permitting an evaluation of Student in the areas of speech/language and AT without parental consent.

VIII. CONCLUSIONS OF LAW

1. Petitioner met its burden of proof and is entitled to an order overriding lack of parental consent. *Schaffer* 546 U.S. at 62; *Andress* S.64 F. 3d 478.

IX. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law, Petitioner's request for an Order permitting a reental consentnN.84 Tm3(B)7(a)4(s)-witas ef (g)10(f)3u10(g)g4(s)-wndge an