

**DOCKET NO. 229-SE-0415**

<b>SPRING BRANCH INDEPENDENT SCHOOL DISTRICT, Petitioner</b>	§	<b>BEFORE A SPECIAL EDUCATION</b>
	§	
	§	
<b>v.</b>	§	<b>HEARING OFFICER FOR</b>
	§	
<b>STUDENT, b/n/f/ PARENT, Respondent</b>	§	<b>THE STATE OF TEXAS</b>

**DECISION OF THE HEARING OFFICER**

**Statement of the Case**

Spring Branch Independent School District (“SBISD” or “Petitioner”) brings this due process complaint pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, against Respondent, STUDENT (“the Student”) and the Student’s parent, \*\*\*. The due process complaint raises a single issue:

Whether Petitioner should be allowed to conduct an initial evaluation of the Student, regardless of the Parent’s consent, 2



the \*\*\* chart used for all \*\*\* students in the \*\*\* class consisting of a one-page calendar format. Ms. \*\*\* added comments as needed on each school day. [Ex. 17 at 1].

6. Throughout the 2014-2015 school year, the Parent frequently communicated electronic mail (“email”) with \*\*\*

goals, broken down by \*\*\*. Each page had a space for comments and the Parent's signature. For \*\*\* and \*\*\*, a two-page system represented progress over four weeks. [Ex. 17 at 1-14].

13. The Student's behavior difficulties did not diminish through November 2014. The Student received a behavior report for misbehavior from \*\*\*:

[Ex. 2 at 4].

14. The Parent filed several complaints during the 2014-2015 school year concerning Principal \*\*\*'s decisions. Each time, the principal met with the Parent to discuss the concerns. On October 30, 2014, the Parent wrote the principal to request that the Student \*\*\*. In response, the principal held a Level One Conference with the Parent on November 13, 2014. Following the conference, the principal sent the Parent a written response granting "the remedy you seek for your complaint" as follows: 1) \*\*\*; 2) allow the Student to \*\*\*; 3) have the AP initiate the special education referral process; and, 4) have the school counselor obtain a new permission form from the Parent to be able to work with the Student. [Ex. 7 at 1, Ex. 15 at 8; Tr. at 29-30].

**Special Education Referral: November 2014**

17. On November 20, 2014, Ms. \*\*\* filled out an information form from the classroom teacher as part of the referral process





school year, the Student had increased violent behavior during \*\*\*, such as \*\*\* with the Student. Mr. \*\*\* found the Love and Logic interventions to be unsuccessful with the Student. [Tr. at 68-71].

30. On January \*\*\*, 2015, the Parent accompanied the Student to Mr. \*\*\*'s classroom. When the Student refused to participate in class, the Parent tried to force the Student join in the activities. In response, the Student became more defiant. Mr. \*\*\* recalled that the Parent's interventions became increasingly more violent "to the point of \*\*\* [the Student] \*\*\*. And that's simply not an intervention that I can utilize in the classroom." \*\*\*. [Ex. 12 at 1-2; Tr. at 72-73].

31. Mr. \*\*\* believes that the Student's behavior interferes with the Student's and the \*\*\* peers' educational progress. In the \*\*\* teacher's opinion, the Student needs to be referred for a special education evaluation. [Tr. at 74].

32. The \*\*\* ("\*\*\*\*") at \*\*\* consists of \*\*\* and includes \*\*\*. The purpose of the general education setting is to allow very active students who cannot sit still and control their behavior a space to expend physical energy \*\*\*. According to the principal, the Student is in the \*\*\* most of the time because the Student is "not able to go into the classroom setting at all." [Tr. at 27-28].

33. Between \*\*\*, the Student received four discipline reports and four days of suspension:

Date/Location	Student Behavior Description and Action Taken
*** CL, PO	*** ***ran around CL *** <b>Teacher/Admin:</b> ECL/CA/Principal/AP came to help *** Coach observed <b>Follow-up:</b> S (2 days)
*** ***, H,O	*** <b>Teacher/Admin:</b> 2 teachers took Student to O
*** CL	*** <b>Teacher/Admin:</b> CA <b>Follow-up:</b> S (1 day)
*** CL, H	*** <b>Teacher/Admin:</b> ECL/CA
*** CL, H, Counselor's Office	*** <b>Follow-up:</b> S (1 day)

[Exs. 2 at 2 and 3 at 3-4].



### **March – April 2015**

34. The \*\*\* convened for behavior support and review of the Student's progress report on March 12, 2015. The Parent attended this meeting. At this point in the school year, the Student had made limited academic progress and showed average fine motor skills with the ability to \*\*\*. The Student continued to display off-task and disruptive behavior with the ability to be compliant and well-behaved for short time periods with preferred activities, especially in the \*\*\* setting with \*\*\* other students. When the Student did not want to transition to a new activity, or sometimes without any identifiable trigger, the Student became agitated and defiant, \*\*\*. [Ex.1 at 3 and Ex. 13 at 2].

35. The \*\*\* teacher, \*\*\*, gave input into the March 2015 \*\*\* meeting as the Student's \*\*\* and \*\*\* instructor. Coach \*\*\* has five years of teaching experience and is certified as a classroom teacher and health fitness instructor. When working with the Student, Coach \*\*\* used sticker charts, interventions of one-on-one interactions, showing positive outcomes and behaviors, and applied techniques gleaned through trainings and observation of other school's behavior programs, but nothing has worked with the Student. At hearing, Mr. \*\*\* found the Student's behavior to be interfering with the educational progress of both the Student and other students and believed that special education testing of the Student would be helpful. [Ex. 1 at 3 and Ex. 13 at 1; Tr. at 64-66].

36. The March 2015 \*\*\* minutes state, "A referral to special education and \*\*\* have been discussed several times and the parent has not given permission. The parent states that a private assessment has been conducted by a doctor and [the Student] is fine." [Ex. 1 at 3 and Ex. 13 at 1].

37. The March 2015 \*\*\* continued the Student's \*\*\* and developed a plan of action to address the Student's behaviors through: 1) offer a quiet place to work and regroup when agitated or in need of cool-down; 2) use of \*\*\* to limit distractions; 3) reinforcement of positive behavior strategies at home each morning and evening; 4) frequent positive reinforcement; 5) daily time in \*\*\* for exercise, movement, taking turns, and following directions; and, 6) letter identification and beginning \*\*\*. [Ex. 1 at 3 and Ex. 13 at 1].

38. After the March 2015 meeting, the Student received weekly chart in the form of a behavior checklist broken down by tasks. [Ex. 17 at 15-21].

39. The \*\*\* program at SBISD includes work with general education teachers and students to

[Exs. 2 at 1 and 3 at 4-5].

believe SBISD staff reports about the comments and does not believe that the Student \*\*\*.  
[Tr. at 82].

45. The Student's \*\*\* teacher, Ms. \*\*\*, does not believe that the Student has met end-of-year State of Texas \*\*\* goals. At hearing, Ms. \*\*\* described the Student's lack of progress on the \*\*\*. By 0 17

## Discussion

This dispute concerns an approximate nine-month period of a \*\*\* student's \*\*\*. In the unusual fact scenario before me, the school district elected to file this due process request seeking an order overriding the lack of parental consent for an initial special education evaluation of this Student as the SBISD educators have serious safety and educational concerns for the Student and the Student's \*\*\* peers.

It is undisputed that the Student is a general education student in SBISD's \*\*\* and that the Student received numerous discipline referrals and disciplinary consequences spanning the Student's \*\*\*. The Student's educators began efforts to obtain parental consent for a special education evaluation from the Parent during the fall semester of the 2014-2015 school year and continued those efforts to no avail until the filing of this dispute in April 2015. By stark contrast, the Parent never returned multiple parental consent forms supplied by SBISD and vigorously denies that the need for such evaluation by the school district exists, maintaining instead that the Student exhibits no behavior problems at all, exhibits no need for special education testing, and is, in fact, a gifted student in need of proper stimulation and education SBISD. Although the Parent purports to have completed private evaluation of the Student that affirmed no special needs exist for the Student, the Parent chose to produce no documentary evidence in this proceeding and has never produced any private evaluation report to SBISD.

### **Child Find**

School districts have an affirmative duty referred to under the IDEA and its implementing regulations as the "Child Find" obligation to identify, locate, and evaluate students whom they suspect may be disabled and provide them with special education services.<sup>3</sup> The evidence before conclusively established that Petitioner SBISD took this duty seriously and quickly began efforts to first consider more formal general education interventions leading to a special education referral. In October 2014, SBISD assembled the first \*\*\* meeting to gather information and input of educators, to discuss the escalation of

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<sup>3</sup> 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a).

behaviors exhibited by the Student, and to try multiple general education interventions. The \*\*\* and changed the behavior charts to track the two goals set by \*\*\*. Only *after* implementation of these interventions into November 2014, did SBISD educators begin to suspect that these general education interventions were not successful for the Student. At this point on November 20, 2014, SBISD began the formal special education referral process for a Full and Individual Evaluation to include evaluation in the areas of speech and language and a psychological evaluation.

### **Special Education Referral Process and Parental Consent Efforts**

The IDEA and its implementing regulations specify that a school district *must* obtain parental consent before evaluating, providing special education services, and reevaluating a student.<sup>4</sup> Parental consent is not required, however, for a school district to review existing data during the evaluation or reevaluation process.<sup>5</sup> Such existing data review includes evaluations and information provided by the parents, current classroom-based, local or state assessments, and classroom-based observations together with observations of teachers and other related-services providers.<sup>6</sup>

In the instant dispute, SBISD educators simultaneously gathered information from a variety of sources and actively sought parental consent to begin a formal Full and Individual Evaluation. The collected information from the classroom teacher described the nature of the Student's noncompliance, inability to stay in a designated area, and behavior of constantly \*\*\*. The \*\*\* teacher, Ms. \*\*\*, gathered information on the Student's present levels of performance, determining that the Student showed three performance levels in the below average range and four areas in the below average to average range. Ms. \*\*\* also found that the Student's behavior interfered in making these determinations. The referral information also included observation by the school counselor on November \*\*\*, 2014, with details about the observed behaviors during the observation.

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<sup>4</sup> See, 34 C.F.R. § 300.300(a-c).

<sup>5</sup> 34 C.F.R. § 300.305(a-b).

<sup>6</sup> 34 C.F.R. § 300.305(a)(1).

### **Continuing Efforts to Obtain Parental Consent**

The record in dispute conclusively established that SBISD sought the required parental consent necessary to begin a special education evaluation beginning November 2014. This process included formal meetings with the Parent as well as subsequent \*\*\* meetings on November 20, 2014, December 8, 2014, and March 12, 2015. Written communications from Principal \*\*\* regarding subsequent parental complaints during this period repeated the SBISD request for parental consent to perform an initial evaluation of the Student.

### **Disciplinary Reports**

The Student's disciplinary reports began to accumulate after November 20, 2014, providing additional meetings and telephone discussion with the Parent to discuss the behavior and the requested special education evaluation. By the \*\*\*, however, the Student's behavior escalated to \*\*\*. Principal \*\*\* imposed the first two days of out



repeated verbal assertions about alleged private testing of the Student are not supported in this record.

After careful review of the entire record before me, I note that Petitioner SBISD's testimony by trained and experienced educators is supported in the Student's school record documents by means of written correspondence, emails, meeting minutes, discipline records, attendance records, teacher notes, the Student's artwork samples, behavior charts and behavior checklists, progress notes, and State of Texas \*\*\* supporting documentation admitted in this record.

At the time of the due process hearing, the Student's assaultive and aggressive behaviors continue to disrupt the Student's and peer's educational experience with alarming intensity and frequency. The concerted efforts of SBISD educators have exhausted all available general education interventions and strategies available in the SBISD \*\*\* program yet without success with this Student. As a result, these experienced SBISD educators suspect the presence of an Emotional Disturbance or and Other Health Impairment.

The Parent never presented completed any private evaluation report for SBISD review and consideration. In the face of the Parent's persistent refusal to give consent for special education by SBISD, there is a dearth of information concerning this Student. Therefore, I conclude that SBISD should proceed with a Full and Individual Evaluation of the Student, without parental consent.

### **Conclusions of Law**

1. Petitioner SBISD bears the burden of proof in this dispute. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).
2. The Student is an enrolled student in the \*\*\* program of SBISD, a legally constituted independent school district within the State of Texas that is responsible for the Student's educational program.
3. The Student's 2014-2015 multiple disciplinary referrals for assaultive behavior against other students gave Petitioner SBISD reason to believe that the Student may meet eligibility requirements for special education services under the eligibility category of Emotional Disturbance. 34 C.F.R. §§ 300.8(c)(4), 300.111(a).



4. The Student's extremely defiant behavior, including routinely running from SBISD staff,

