

DOCKET NO. 229-SE-0415

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

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, to determine whether the Student is a Student with a disability?

As relief, Petitioner seeks an Order permitting SBISD to conduct an initial evaluation of the Student to determine special education eligibility.

Petitioner filed the due process complaint and the Hearing Officer received the assignment on April 17, 2015. Petitioner was represented by Amy Tucker, Rogers, Morris & Grover, L.L.P. in Houston, Texas. Respondent appeared *pro se* at all times during this dispute. The initial scheduling order set the matter for hearing on April 12, 2015, and the Decision Due Date as May 25, 2015.

The due process hearing took place on May 12, 2015. Petitioner presented 21 exhibits, admitted into the record, and the testimony of six SBISD witnesses:

- *** – *** (“****”) Principal
- *** – *** Teacher
- *** – *** Assistant
- *** – *** Teacher
- *** – SBISD *** Coach
- *** – SBISD Director of Special Education.

Respondent presented three witnesses at the due process hearing – the Parent, the stepparent, and telephone testimony from the Student’s grandparent. Respondent did not disclose any exhibits.

Prior to the conclusion of the in-person due process hearing, Petitioner sought a one-day continuance of the Decision Due Date due to the Memorial Day postal holiday.¹ The Decision of the Hearing Officer timely issued on May 26, 2015.

Based upon the evidence and argument admitted into the record of this proceeding, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact²

Background

1. The Student enrolled in SBISD's general education *** ("****") program for the 2014-2015 school year. ***. [Pleading file; Exs. 3, 6, and 19; Tr. at 16].

2. The Student initially attended a ***, but exhibited behavior issues from the outset of the school year. Because the Student had difficulty staying in the classroom and remaining in designated areas, *** in the Student's classroom many times. On August 28, 2014, the Parent sent written communication asking that the Student "not be seen by any staff unless I am contacted first." [Ex. 8; Tr. at 17].

Early School Year: August – September 2014

3. The Student's *** teacher, ***, is an experienced teacher with 13 years of teaching experience. Ms. *** is certified by the State of Texas in self-contained grades *** English as a Second Language, ***, and Reading grades ***. From the beginning of the school year, Ms. *** saw that the Student had trouble ***. Frequently, the Student exhibited aggression in the classroom by: 1) ***; 2) ***; 3) ***; 4) ***; and, 5) ***. In ***, the Student *** into the campus courtyard away from the group and other teachers. [Tr. at 46-48].

4. Ms. *** tried many general education interventions with the Student including contacting the Parent, time-away from the group, redirection, visuals, behavior charts for written communication with the Parent, and verbal communication. On numerous occasions, the Student ***. Ms. *** had to *** classroom and call for assistance of the principal, the assistant principal ("AP"), the counselor, and other staff members to help the Student cool down and regroup as well as supervise Ms. ***'s other students. [Tr. at 48-49].

5. Ms. *** kept a behavior chart for the Student that went back and forth between school and home beginning in September 2014. For the first month of September, the chart was

¹ The unopposed continuance request was granted for good cause shown. [Pleading File, Order No. 2 (May 20, 2015)].

² References to the hearing transcript of this proceeding appear as "Tr." followed by page number (example: "Tr. at ___"). References to the exhibits filed by Petitioner list the exhibit number and the page number (example: "Ex. 1 at 1").

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 *** teaching staff and administrators regarding concerns about the Student’s program and staff responded to these concerns. In September 2014, emails from the Parent included: 1) request to Principal *** for a different *** teacher (September 1, 2014); and, 2) email to Ms. *** expressing disbelief that the Student had behavior issues in the *** and expressing need to observe the Student in the *** classroom. [Ex. 15 at 1-2].

October – November 2014

7. *** uses the *** (“****”) to help students who show an increased need for formal intervention. The *** includes parents, teachers, counselors, caseworkers, and other individuals who meet together regarding a specific student’s needs. At hearing, Principal *** described how the *** meets to “help us brainstorm so we can talk about what the concerns are, what the celebrations are and then make a plan for moving forward.” [Tr. at 17-18].

8. On October 8, 2014, the Parent sent an email to Ms. *** asking to sit with the Student during class to observe behavior and interactions with other students. On the same day, Ms. *** replied with plans to discuss the visit during a scheduled meeting with the Parent on the following day. [Ex. 15 at 4].

9. On October 9, 2014, the *** convened for the first formal meeting concerning the Student with the Parent, the Student’s grandparent, Ms. ***, the school counselor, and the Communities in Schools (“CIS”) Program Manager. Participants identified two areas of concern for the Student: 1) staying in [designated] area with appropriate body control; and, 2) following directions right away. The Parent gave input to the October *** meeting that the Student exhibited no behavioral issues at home. [Ex. 4].

10. The October *** members discussed the Student’s areas of strength including enjoyment of classroom jobs, helping the teacher, reading books, and building with math manipulatives. SBISD participants identified safety as their priority concern for the Student’s behavior deficits. The CIS Project Manager discussed community services available to the family for the Student *** and options through ***. The Parent did not agree to a referral to an outside agency and refused to allow the Student to work with the school counselor. At the conclusion of the meeting, *** participants agreed to *** with demonstrated success by the Student. [Ex. 4].

11. SBISD educators began an Individual Accommodation Plan in all subject areas to address the Student’s needs on October 9, 2014. The plan included preferential seating close to instruction, checking for understanding of directions, reminders to stay on task, frequent verbal praise, classroom reinforcement, and frequent small group instruction. [Ex. 6 at 4-5].

12. Beginning October 14, 2014, Ms. *** used a revised behavior chart with a separate page for each school day. The chart detailed progress on the Student’s two behavior

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 ***:

Date/Location	Student Behavior Description and Action Taken
*** Classroom (“CL”)	Struggle: following directions, body control, CL routines Walked around CL and refused to join activities *** Teacher/Admin: Evacuate CL (“ECL”) and call for assistance (“CA”) Follow-up: Parent conference (“CP”)

[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

15. On November 20, 2014, the *** met with the Parent and stepparent in attendance. The *** began a special education referral based on the input of SBISD personnel for a Full and Individual Evaluation, to include evaluation in the areas of speech and language and a psychological evaluation. After this meeting, the Parent did not return the paperwork to go forward with the referral process after this meeting. [Ex. 1 at 1-2; Tr. at 23-25].

16. The Student received two additional behavior reports based on school incidents on ***:

Date/Location	Student Behavior Description and Action Taken
*** CL, Hallway (“H”)	Unable to follow directions in the *** CL *** *** Follow-up: CP
*** CL, H, School Office (“O”)	Refused to line up for lunch After eating, *** Refused to line up in H and ran down H *** Attempted to enter O Inside O, *** *** as instructed inside O while waiting for Parent Follow-up: CP

[Ex. 2 at 3-4].

17. On November 20, 2014, Ms. *** filled out an information form from the classroom teacher as part of the referral process. She noted the same two areas of concern discussed in *** 2014 – staying in assigned area with hands and feet to self and following directions right away. Ms. *** reported that the Student’s behavior interrupted the Student’s learning opportunities and rated the Student’s present levels of performance between Below Average and Average as follows:

Skill Area	Below Average (Grade Level= GL)	Average
Receptive Language	All Areas	(None)
Expressive Language	Oral Vocabulary Appropriate Sentence Structure (Usage) Appropriate Sentence Structure (Conversational)	Speaking Fluency Normal Voice Quality Normal articulation
Communication	All Areas	(None)
Academic Performance	Materials Comprehension (GL) (Read/Oral Presentation) Math Computation Performance (GL) Writing Sentence/Paragraphs (GL) Timely Completion of Tasks Retains Instruction Over Time	Exhibits Organization in Task Accomplishment
Motor Coordination	Handwriting Speed Gross Motor Coordination School Environment Mobility Mastery of GL in Health/Fitness	Writing Student’s Name Fine Motor Coordination
Adjustment (Emotional, Behavioral, and Social)	Cooperation with Teacher Requests Accepts Responsibility (Own Actions) Displays Appropriate Reactions Appropriate Responses (Praise and Correction)	Adapts to New Situations Develops Friendships Works with Peers Cooperatively Pleased with Good Work Initiates Activities
Self-Help Skills	*Independent Location (Room/Area) (*- Rated as range: of Below Average to Average)	*Independent Location (Room/Area) Cares for Personal Needs (GL) Skills During Meals (GL) Takes Care of Personal Belongings (GL)

Ms. *** could not determine if the Student was unable to perform tasks or if the Student chose to avoid or not perform the tasks in this teacher assessment form because the Student’s behavior “interrupts most of [the Student’s] time in the classroom.” [Ex. 5; Tr. at 50].

18. On November 20, 2014, Ms. *** additionally filled out a Referral Information form that expressed the *** teacher’s concerns over the Student’s noncompliance, inability to stay in a designated area, ***, and that the noncompliant behaviors interfered with the learning of the Student and others in the *** class. In skill areas, the Student experienced difficulty in phonics/decoding, vocabulary, math concepts with limited numeracy, and oral expression. At this point in time, Ms. *** believed that other educators needed to come together as the teacher

[Ex. 2 at 3].

23. The *** convened again on December 8, 2014, with the Student's Parent and stepparent present. SBISD staff presented ongoing concerns about the Student's defiant and off-task behavior. After short periods of compliant behavior, the Student quickly escalated to defiant behaviors such as ***. The *** concluded, based on the referral information and input, that no academic progress had been documented because the Student's behavior interfered with the teacher's ability to assess progress. The *** formulated a goal for the Student – to follow directions given by an adult – and stated that the Student would be allowed to go to a “cool down area” without disrupting instruction when the Student became frustrated or upset. [Ex. 1 at 2 and Ex. 10].

24. Meeting notes of the *** meeting on December 8, 2014, state that the Parent “asked for a special ed evaluation at our last meeting on 11-13-14 but parents have not returned the parent input because they were trying to decide whether or not they wanted [the Student] tested. The parents have stated that [the Student] will be evaluated privately.” [Ex. 1 at 2 and Ex. 10; Tr. at 24].

25. At the due process hearing, the Parent denied ever giving consent to SBISD for special education evaluation of the Student. [Tr. at 81].

26. In late fall 2014, the stepparent planned to come and demonstrate ideas for transitioning the Student at ***. The stepparent was not able to come prior to the December 2014 *** meeting. At hearing, the principal recalled that when the stepparent subsequently spent two or three days at *** helping with the Student, the Student was more compliant. [Ex. 1 at 2 and Ex. 10; Tr. 42-43].

27. On ***, the Student received another discipline report:

Date/Location	Student Behavior Description and Action Taken
*** CL	*** Unable to remain in CL over 10 minutes Follow-up: Principal notified staff, made plans for the Parent/stepparent to come to school with Student the next day as support/increased supervision

[Ex. 2 at 3].

January – February 2015

28. Ms. *** kept a detailed behavior log about the Student's classroom behavior beginning in January 2015. This log also tracks the total amount of time spent in the *** classroom each day. The log entries show that the Parent was present with the Student on January ***, 2015. [Ex. 16].

29. The *** grade *** teacher at ***, ***, has four years of teaching experience and extensive training in Love and Logic, an empathetic approach to behavior management. Love and Logic interventions attempt to change rather than punish behavior. Over the course of the

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 *** Teacher/Admin: ECL/CA/Principal/AP came to help *** Coach observed Follow-up: S (2 days)
*** ***, H,O	*** Teacher/Admin: 2 teachers took Student to O
*** CL	*** Teacher/Admin: CA Follow-up: S (1 day)
*** CL, H	*** Teacher/Admin: ECL/CA
*** CL, H, Counselor’s Office	*** Follow-up: 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 help with behavior supports and classroom management. The *** Coach at ***, ***, has nine years of teaching experience and is ***. Ms. *** worked with teaching staff to put interventions in place for the Student's behavior including setting up a "cool-down area" in Ms. ***'s *** classroom. Ms. *** also worked with Coach *** and Ms. *** to develop three behavior charts for the Student, one for each classroom and a third chart to address behavior in the hallway during transitions. [Ex. 1 at 3 and Ex. 13 at 1; Tr. at 86-88].

40. Between ***, the Student received four discipline reports and six days of suspension:

Date/Location	Student Behavior Description and Action Taken
<p>*** CL</p>	<p>*** Teacher/Admin: CA/Principal, counselor, *** Coach *** came to help Follow-up: S (3 days) ***</p>
<p>*** H, Counselor’s Office</p>	<p>*** Teacher/Admin: CA *** Follow-up: CP Principal had telephone discussions of incidents with stepparent</p>
<p>*** Counselor’s Office</p>	<p>***</p>
<p>*** CL, ***</p>	<p>*** Follow-up: S (3 days)</p>

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

41. *** worked with and observed the Student in the classroom from February through the end of April 2015. During that period, Ms. *** observed many off-task behaviors in the ***, including one incident of extreme assaultive misbehavior on ***. Ms. *** used breathing strategies, limited talking to help the Student get through this crisis, and assisted removing the Student safely to the counselor’s office. Based on her experience working with the Student, Ms. *** believes that the Student should be referred for a special education evaluation. [Ex. 2 at 1; Tr. at 87-90].

42. On ***, the Student made disturbing comments about *** staff and another student while laughing in the ***. At hearing, Principal *** recalled that the Student *** with Coach *** and another staff member regarding these topics. Only *** students were in the *** at the time – the Student ***. At the end of Student’s *** time that day, Coach *** showed *** to Principal ***, reported the Student’s comments ***, and Principal *** wrote down the comments ***. The *** comment states, “***.” Principal *** does not believe that the Student’s *** comments about *** is typical and remains very concerned about these comments. [Ex. 18 at 1-5; Tr. at 31-40].

43. The Student’s *** 2015 behavior checklist entries for the *** and *** include teacher documentation of the Student’s comments about ***. [Ex. 17 at 17-19].

44. On the day of the due process hearing, the Parent asked the Student about the *** and comments from Principal ***. Based on the Student’s response, the Parent does not

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 contrast, *** peers in the same classroom mastered all 18 goals. [Tr. at 50-55].

46. The Parent, when presenting the testimony of the stepparent at hearing, asked, "Do you believe that [the Student] really behaves this way at school?" In response, the stepparent stated, "I think [the Student] does it because it's a woman teaching Student, to be honest with you. Mama's the pushover; Daddy's the strict one." The stepparent believes that the Student listens ninety-eight percent of the time "as long as Mama ain't around or babying" the Student. The stepparent reports that the family home has "****" and the Student does not act violently or talk about ***. [Tr. at 60-61].

47. The Student's grandparent testified by telephone during the due process hearing. The grandparent reported no violent home behavior, no violent *** by the Student, no usage of violent language, and does not believe that the Student has behavior problems. The grandparent does not believe that the Student should be tested for special education eligibility. [Tr. at 94-96].

48. The Parent does not believe that the Student has "any behavior problems at all." Instead, the Parent believes that the Student is aware of the Student's actions and makes wrong choices to get more attention or to go home sooner. The Parent also believes that the Student is a gifted student and is not challenged by the SBISD educational program. As a result, the Student becomes defiant due to boredom. [Tr. at 80-84].

49. At hearing, the Parent reported having the Student tested by ***, as suggested by SBISD. The Parent further stated intent "not to keep cooperating with the school when I don't believe [testing] is needed." [Tr. at 83].

50. The Parent did not provide a private evaluation of the Student to SBISD; Respondent did not offer any documentary evidence in this dispute and there are no private evaluation reports in the record. [Tr. at 25].

51. ***, SBISD Director of Special Education, is a licensed specialist in school psychology with 40 years of teaching experience. In her professional opinion, the Student should be referred for special education testing to explore eligibility categories of Emotional Disturbance and Other Health Impairment, due to possible attention deficit problems. [Tr. at 92].

52. Petitioner needs evaluation information in order to determine whether Respondent qualifies for special education under suspected eligibility classifications of Emotional Disturbance and Other Health Impairment.

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.³ 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

³ 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.⁴ Parental consent is not required, however, for a school district to review existing data during the evaluation or reevaluation process.⁵ 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.⁶

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.

⁴ See, 34 C.F.R. § 300.300(a-c).

⁵ 34 C.F.R. § 300.305(a-b).

⁶ 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-of-school suspension consequences for these outbursts. At the subsequent *** meeting on December 8, 2014, the Parent announced the intention to seek private evaluation and again withheld consent for evaluation by SBISD.

The Student's conduct continued to escalate in the spring semester with additional *** that impacted the learning of the Student and *** peers. Frequently SBISD teaching staff had to call for assistance with the continuing outbursts from the Student, resulting in an undeniable impact to the educational environment for the Student and other *** students when ***.

Of particular concern, I note that the Parent and stepparent individually observed and assisted in the *** classroom with the Student, yet the Parent's direct testimony at hearing specifically denied that there were behavior problems taking place with the Student at school.⁷ I do not find this testimony convincing. By contrast, the hearing testimony from the Student's *** teacher, Mr. ***, described how the Parent *** to get the Student to pay attention in the *** class while the Parent attended class with the Student in *** January 2015.⁸ I found the

⁷ Tr. at 80-84.

⁸ Tr. at 72-73.

*** teacher's rendition of this event credible; I am not persuaded by the Parent's denial of this event. I also note that the record evidence and testimony overwhelming support escalation of the Student's *** in January 2015. By the end of February 2015, the Student received six out-of-school suspension days, underscoring the dramatic increase of such behavior during this time period.

In the face of increased behavior reports and out-of-school suspensions, the Parent persisted in unwillingness to consent for evaluation of the Student at the *** meeting on March 12, 2015. At this point, the Parent asserted that the private evaluation had now been completed by a doctor, told the *** that the Student was fine, yet never produced such a report to SBISD.

Request for Consent Override

When parents refuse consent for initial testing, IDEA's implementing regulations provide that a school district *may* – but is not required to – seek an override of the lack of parental consent through a due process complaint.⁹

As of April 17, 2015, the filing the date of this dispute, the Student received a total of 12 out-of-school suspension days without any change in *** school day. Between that date and the due process hearing on May 12, 2015, there was no change in the Parent's persistent refusal to consent for testing.

Conclusion

The Parent in this dispute chose not to present any documentary evidence and instead relied on the testimony of Respondent's three family witnesses – the Student's Parent, stepparent, and grandparent. The testimony of these individuals was in lockstep – the Student has no behavioral incidents at home or school, is never violent or aggressive, and does not need to be tested for special education eligibility by SBISD. This personal testimony of the Student's family has no independent verification in the record before me. Further, the Parent's

⁹ 34 C.F.R. § 300.300(a)(3)(i).

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, gave Petitioner SBISD reason to believe that the Student may meet eligibility requirements for special education services under the eligibility category of Other Health Impairment. 34 C.F.R. §§ 300.8(c)(9), 300.111(a).
5. Petitioner SBISD met its Child Find obligations to seek consent for an initial evaluation of the Student through multiple efforts to obtain that consent from Respondent. 34 C.F.R. § 300.300(a)(1).
6. The failure of Respondent to give written consent for the Student's initial evaluation gave Petitioner SBISD the option of requesting a due process hearing to conduct an initial evaluation regardless of parental consent. 34 C.F.R. § 300.300(a)(3)(i).
7. Petitioner SBISD established the need to conduct a Full and Individual Evaluation of the Student, including psychological evaluation and speech/language evaluation, to determine whether the Student meets eligibility criteria for Emotional Disturbance and Other Health Impairment.

ORDERS

After consideration of the record, and the foregoing Findings of Fact and Conclusions of Law, this Hearing Officer hereby **ORDERS** that all relief requested by Petitioner SBISD is **GRANTED**. Petitioner SBISD is authorized to conduct an initial Full and Individual Evaluation of the Student without parental consent in compliance with 34 C.F.R. §§ 300.304 – 300.311.

It is further **ORDERED** that the Parent shall cooperate with SBISD in the conduct the Full and Individual Evaluation and shall present the Student for such evaluation.

It is further **ORDERED** that any and all additional or different relief not specifically ordered herein is **DENIED**.

SIGNED this 26th day of May 2015.

/s/ Mary Carolyn Carmichael

Mary Carolyn Carmichael
Special Education Hearing Officer

NOTICE TO THE PARTIES

This Decision of the Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decision made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 34 C.F.R. § 300.516; and 19 TEX. ADMIN. CODE § 89.1185(n).

DOCKET NO. 229-SE-0415

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

SYNOPSIS OF DECISION

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

HELD: For the District

34 C.F.R. §§ 300.8(c)(4), (9), 300.111(a), and 300.300(a)(1),(3).