

**DOCKET NO. 030-SE-0919**

<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**

**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 conduct an evaluation of Student without parental consent.

The hearing officer concludes a reevaluation in the areas of speech/language and assistive technology is necessary for the District to propose an appropriate special education program for Student. Therefore, the District may proceed with the proposed reevaluation without parental consent.

**II. LEGAL REPRESENTATIVES**

The District was represented throughout the litigation by Amy Tucker of the Rogers, Morris & Grover, L.L.P. Respondent was represented by Student's mother, \*\*\*.

### 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.

### IV. ISSUES

#### A. Petitioner's Issue

Petitioner raised the following issue for decision:

1. EVALUATION: Whether the District may conduct a speech/language and assistive technology (AT) evaluation of Student without parental consent.

#### B. Respondent's Legal Position

Respondent continues to deny consent for the proposed evaluation and asserts:

- The prior evaluations of Student were appropriate and sufficient, making the proposed evaluation unnecessary;
- The scope of the proposed evaluation is too narrow; and
- Petitioner failed to present a need for the proposed evaluation during Student's regular team meetings.

## 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 \*\*. <sup>1</sup>
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. <sup>2</sup>
3. Student is eligible for special education services under the categories of intellectual disability, other health impairment (OHI) for \*\*, speech impairment, \*\*, and multiple disabilities. <sup>3</sup>
4. Student has a \*\* disorder. Student can \*\*, but \*\* is an ineffective way for Student to communicate \*\*. <sup>4</sup>
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. <sup>5</sup>
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

---

<sup>1</sup> Petitioner's Exhibit (PE) 7, at 1.

<sup>2</sup> PE 7.

<sup>3</sup> PE 1, at 1.

<sup>4</sup> Respondent's Exhibit (RE) 5, at 1.

<sup>5</sup> Transcript (TR) at 16.

- environment. Student can follow routine directions and conversations of interest to Student.<sup>6</sup> Student has difficulty attending to task; following two-step directions; and \*\*\*.<sup>7</sup>
7. Student has limited comprehension of language at the \*\*\* level. Student can \*\*\*.<sup>8</sup> Student can \*\*\*. Student also \*\*\*.<sup>9</sup>
  8. The District provides Student thirty minutes per day of speech therapy services.<sup>10</sup> 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.<sup>11</sup>
  9. Student has limitations in Student's fine motor abilities. \*\*\*.<sup>12</sup> \*\*\*.<sup>13</sup>
  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.<sup>14</sup>
  11. The \*\*\*. \*\*\*.<sup>15</sup>
  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.<sup>16</sup>
  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.<sup>17</sup> The committee, including Student's parent, agreed Student required no evaluation in the areas of physical therapy, emotional/behavioral,

---

<sup>6</sup> RE 1, at 1.

<sup>7</sup> RE 5, at 2.

<sup>8</sup> PE 7, at 19.

<sup>9</sup> PE 7, at 20.

<sup>10</sup> TR at 18.

<sup>11</sup> PE 2, at 2.

<sup>12</sup> PE 7, at 16.

<sup>13</sup> PE 7, at 17.

<sup>14</sup> RE 1, at 1.

<sup>15</sup> RE 1, at 4-5.

<sup>16</sup> RE 5, at 1-2.

<sup>17</sup> PE 1.

- cognitive/intellectual, adaptive behavior, and achievement.<sup>18</sup> The District members of the committee recommended additional evaluation in the areas of AT and speech/language.
14. Student's parent refused give consent for the AT and speech/language evaluations, instead conditioning consent for both evaluations on an advanced stipulation by the District that the evaluation would not result in removal of Student's \*\*\*.<sup>19</sup> The District members of the committee would not agree to that stipulation. The meeting ended without consensus.
  15. Because the September \*\*\*, 2019 meeting ended in disagreement, the District reconvened the ARD committee on September \*\*\*, 2019. The District continued to seek consent to evaluate Student and gather updated information related to Student's speech/language and AT needs. Student's Mother again refused to consent, insisting, as a precondition to consent, that the evaluations not result in the removal of Student's \*\*\*.<sup>20</sup>
  16. The speech/language and AT evaluations are necessary to determine Student's present levels of functioning in these areas and the educational impact of Student's speech/language impairment and current AT use.<sup>21</sup> The District must evaluate Student to determine Student's communication needs, the effectiveness of Student's current communication methods, and the most appropriate means for Student to communicate moving forward.<sup>22</sup>
  17. The District last evaluated Student's speech/language and AT needs in October of 2016.<sup>23</sup>
  18. As part of the September \*\*\*, 2019 ARD committee meeting, the District conducted a Review of Existing Evaluation Data (REED). The District's REED included Student's 2004 initial evaluation and eligibility materials from \*\*\*, a 2006 FIE from \*\*\*, and the District's 2016 FIE.<sup>24</sup>
  19. The District provided Student's parent with prior written notice of its request to evaluate Student in the areas of speech/language and AT on September \*\*\*, 2019.<sup>25</sup>

---

<sup>18</sup> PE 1, at 6.

<sup>19</sup> PE 1, at 6.

<sup>20</sup> PE 1, at 6.

<sup>21</sup> PE 4, at 3.

<sup>22</sup> TR 29-30.

<sup>23</sup> PE 7.

<sup>24</sup> PE 2, at 1.

<sup>25</sup> PE 3.

## VII. DISCUSSION

### A. Burden of Proof

The burden of proof in a due process hearing is on the party seeking relief.<sup>26</sup> *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). In this case, the District seeks an order allowing it to conduct an evaluation of Student without Student's parent's consent. Therefore, as the party seeking relief, the District has the burden of proof. *Id.*

### B. Reevaluations Under the IDEA

A school district must ensure a reevaluation of a student with a disability occurs when it determines the student's educational needs warrant such a reevaluation. 20 U.S.C. §1414(a)(2)(A)(i); 34 C.F.R. Section 300.303(a)(1). A school district must also conduct a reevaluation at least once every three years, unless the school district and the student's parent agree it is unnecessary. 34 C.F.R. §300.303(b)(2).

In this case, the District has determined Student needs to be reevaluated in the areas of speech/language and AT. The District's most recent evaluation in these areas occurred more than three years ago. The District and Student's parent did agree Student required no reevaluation in other areas.

Student has \*\*\* complex communication needs. Student utilizes AT to communicate in the form of \*\*\*. Student has made progress on Student's speech goals, but continues to require prompting to use Student's communication device. The District needs to reevaluate Student in the areas of speech/language and AT to measure Student's current communication abilities and needs, and to determine the most appropriate AT to meet Student's complex communication needs.

---

<sup>26</sup> There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n. 4 (5th Cir. 2009).

### 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 these areas to provide an appropriate special education program. The District also presented a reasonable proposal for reevaluating Student in only the areas of speech/language and AT.

A parent may not assert a student is entitled to special education services while simultaneously refusing to allow a school district to evaluate the student to determine what those services may be. *Andress S. v. Cleveland Indep. Sch. Dist.*, 64 F. 3d 176, 178 (5th Cir. 1995), cert. denied, 519 U.S. 812 (1996). A parent who desires for her child to receive special education services must allow a school district to reevaluate her child using school district personnel. *Id.* at 179. Student's Parent wants Student to continue to receive special education services, including

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 at 178.

**IX. ORDERS**

1. Based upon the foregoing findings of fact and conclusions of law, Petitioner's request for an Order permitting a reevaluation of Student in the areas of speech/language and AT without parental consent is **GRANTED**.

**SIGNED December 5, 2019.**



---

**Steve Elliot**  
**Special Education Hearing Officer**  
**For the State of Texas**

**X. NOTICE TO THE PARTIES**

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions 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. 19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code § 2001.144(a-b).