

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Board of Education v. Student

Appearing on behalf of the Board: Attorney Michelle Laubin
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, Connecticut

Appearing on behalf of the Student: Mother, *Pro Se*
Father, *Pro Se*

Appearing before: Attorney Jane Ford Shaw
Hearing Officer

FINAL DECISION AND ORDER

ISSUE:

Should an initial evaluation of the Student as proposed by the November 13, 2017 PPT meeting be conducted by the Board in the absence of parental consent?

PROCEDURAL HISTORY:

The Student initiated this special education due process case on December 13, 2017. This Impartial Hearing Officer was assigned to the case on December 14, 2017. A Prehearing Conference was convened on December 21, 2017. The Student's mother and father appeared on behalf of the Student and Attorney Michelle Laubin appeared on behalf of the Board of Education. It was established that the deadline for mailing the final decision in this case is February 23, 2018. Evidentiary hearings were scheduled for February 1, 2018 and February 8, 2018.

Evidentiary hearings were conducted on February 1, 2018 and February 8, 2018. In addition a third hearing was conducted on February 20, 2018. Upon motion by counsel, the mailing date of the final decision was extended to March 30, 2018.

The following witnesses testified:

Gail Dahling-Hench, Assistant Superintendent
Julie Phelps, Principal
Elizabeth Battaglia, Director of Special Education and Special Services
Valerie Alberti, School Nurse
Maria Hainer, School Psychologist
Eliza Hayes, School Counselor
Rachel Killian, School Counselor
Mother
Father

The Board's Due Process Complaint/Hearing Request was admitted as HO-1. The Board objected to the submission of untimely Exhibits filed by the Parents. The Board's objection was overruled as it relates to Parent Exhibits P-8, P-9, P-10, P-13, P-14, P-15, P-16, P-17, P-24, P-25, P-26, P-33, P-34, P-35 and P-36 which were admitted and marked as full exhibits. Parent Exhibits P-1, P-2, P-3 P-4, P-5, P-6, P-7, P-11, P-12, P-18, P-19, P-20, P-21, P-22, P-23, P-27, P-28, P-29, P-30, P-31, P-32, P-32 were not received as full exhibits of the hearing; the exhibits speak of events after the request for due process, are duplicative or are otherwise, irrelevant. Finally, Board Exhibits B-1 through B-125 were entered as full exhibits.

All motions and objections not previously ruled upon, if any, are hereby overruled.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F.Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn. 1985).

SUMMARY:

The Board of Education seeks an order allowing for the evaluation designed at the November 13, 2017 PPT meeting to be conducted in order to determine eligibility of the Student under the IDEA. Parents submit that an eligibility assessment of Student pursuant to the IDEA is unnecessary and inappropriate given the fact that the Student has a Section 504 plan in place which could be modified. The Parents maintain that the Board cannot provide a safe environment for the Student at Brown Middle School. The evidence demonstrated, however, that an assessment should be completed pursuant to 20 USC §1414(a)(1)(A); 34 C.F.R. §300.301; RCSA §76d-9(a).

STATEMENT OF JURISDICTION:

This matter was heard as a contested case pursuant to Connecticut General Statutes (C.G.S.) Section 10-76h and related regulations, the Individuals with Disabilities Education Act (IDEA), 20 United States Code (U.S.C.) Sections 1400 *et seq.*, and related regulations, and in accordance with the Uniform Administrative Procedure Act (U.A.P.A.), C.G.S. Sections 4-176e to 4-178 inclusive, Section 4-181a and Section 4-186.

FINDINGS OF FACT:

After considering all the evidence submitted by the parties, including documentary evidence and the testimony of witnesses, the following facts are hereby found:

1. The Student was born on November 29, 2006. She is now eleven years of age. She last attended school as part of a sixth grade at the Board's Brown Middle School. (Exhibit B-7, B-89)

2. Prior to attending Brown Middle School, the Student originally attended Ryerson School for the Third Grade. On March 24, 2015, while attending Ryerson School, the Parents submitted to the Board a notice to home school the Student. (Ex B-18).
3. Assistant Superintendent Dahling-Hench met with the Parents to discuss the notice to home school and their concerns regarding the Student and Ryerson School. In the course of that meeting, the Student was described as an “introvert” and “shy” and the parents conveyed concern that they had lost faith in the Ryerson school. (Testimony Dahling-Hench 2/ 1/18) As a result, the Board offered a plan to transition the student back to Ryerson School. However, said plan was rejected by the Parents and the Board ultimately agreed to reassign the Student to Island Avenue School. (Testimony Dahling-Hench 2/1/18)
4. The Student had a successful experience at the Island Avenue School prior to attending Brown Middle School. (Testimony Dahling-Hench 2/1/18)
5. The Student is a good student who enjoys learning and performs on grade level. (Ex. B-7) Student received early intervention math services from grade 2, but she exited in March 2017 while in Grade 5. (Testimony Hainer P. 2/8/18) (Ex. B-23)
6. The Student’s Father first contacted Ms. Phelps, Principal of Brown Middle School regarding concerns on January 5, 2017 and requested a meeting. (Testimony Phelps 2/1/18) (Ex B-13). Ms. Phelps was advised by the Father that the Student is an “introvert” and a plan to offer the Student an opportunity to work with the librarian during study halls was agreed upon. (Testimony Phelps 2/1/18)
7. Throughout her attendance at Brown Middle School, the Student frequently visited the Health Office. (Testimony Alberti 2/1/18) (Ex. B-83). The Health Office electronically records every time a Student visits. (Testimony Alberti 2/1/18) (Exhibit B-83).
8. The number of visits and the frequency of visits to the Health Office increased as the 2016-17 school year progressed. (Ex. B-83) The nature of the visits initially began as visits for physical complaints, i.e. use of the bathroom, in grown toe nail, vision screening. (Testimony Alberti 2/1/18) (Ex. B-83) Nurse Alberti also observed the Student on several visits presenting as “anxious” “physically shaking” or “dizzy” and/or reporting stomachaches or headaches. (Testimony Alberti 2/1/18, Ex. B-83, B-122) Nurse Alberti characterized the Student’s presentation as consistent with an anxiety disorder. (Testimony Alberti 2/1/18) Nurse Alberti discussed her concerns with Mother. (Testimony Alberti 2/1/18)(Ex. B-83, B-122)
9. The Nurse and the Student enjoyed a good rapport and a strong relationship. Nurse Alberti was very supportive of the Student. (Testimony Phelps 2/1/18)(Testimony Alberti 2/8/18) Testimony Battaglia 2/8/18))
10. In addition, the Student also sought out the School Counselor, Rachel Killian on December 5, 2016 when they met and the Student expressed her inclination to sit alone at lunch in the cafeteria despite being encouraged to sit with others by teachers. Student also referred to herself as an “introvert”. (Testimony Killian 2/1/18) (Ex B-12).

11. School counselor duties included helping students navigate social, emotional and academic arenas and to build and maintain positive rapport between students. (Testimony Killian, 2/1/18) Ms. Killian offered individual and group counseling to the Student. (Testimony Killian, 2/1/18).
12. The Student sought out Ms. Killian again on January 13, 2017. While participating in an afterschool activity designed to encourage social interaction and to promote peer relations, the Student felt offended by an interaction with another student. (Testimony Killian, 2/1/18, Ex B-12) Ms. Killian counselled the Student and notified the teachers via email who were monitoring the afterschool activity. (Testimony Killian 2/1/18, Ex B-12)
13. The Student sought out Ms. Killian again on February 13, 2017 regarding a social interaction with another student with whom she no longer wanted to be friends and Ms. Killian facilitated an interaction between the two students. (Testimony Killian 2/1/18)
14. On February 11, 2017, the Student sought out Ms. Killian to report receiving text messages from the other student after school which the Student considered to be bullying. (Testimony Killian 2/1/18) (Ex B-12) Ms. Killian met with the other student to support Student's position regarding ending their friendship. Ms. Killian did not view the texting to be an act of bullying. Student did not show text messages to Ms. Killian. (Testimony Killian, 2/1/18)
15. On February 27, 2017, the Student sought out Ms. Killian on February 27, 2017 and expressed that she did not need to have friends and that she characterized herself as an "introvert". (Testimony Killian 2/1/18)(Ex. B-12) Ms. Killian encourage the Student to continue to be open to the possibility of building friendships. Ms. Killian noted concern that the Student was almost rejecting friendships in general. (Testimony Killian 2/1/18)
16. Student also reported to Ms. Killian that another student slapped her on the bus. (Testimony Killian 2/1/18) (Ex. B.12) Ms. Killian reported what the Student shared with Administration. (Testimony Killian 2/1/18). Ms. Phelps interviewed the student but no consequence resulted. (Testimony Phelps 2/1/18)
17. The Student also reported to Ms. Killian that she was going to psychologist outside of school and reported having suicidal thoughts. (Testimony Killian 2/1/18) (Ex. B-12) Ms. Killian completed a suicide scale in order to "make sure [the student] wasn't feeling harmful towards herself." (Testimony Killian 2/1/18). Ms. Killian contacted Mother who confirmed what the student had shared. (Testimony Killian 2/1/18, Ex. B-12) Ms. Killian offered Mother additional support for Student through Madison Youth and Family Services, access to an inschool clinician as extra layer of support should Student need it, as well as information regarding academic and athletic intramurals offered by the Board. (Killian Testimony 2/1/18, Ex. B-12)
18. The Student sought out Ms. Killian on February 28, 2017 upset about an interaction with the classroom teacher which the student felt to be offensive and reported no longer feeling comfortable attending class. (Ex. B-12) Although she was encouraged to return to class, the

student was allowed to remain with Ms. Killian rather than returning to class. (Killian Testimony, 2/1/18).

19. On February 28, 2017, the Student also reported to the Health Office presenting as “teary” and reporting that she felt like the classroom treated her as a “nobody.” Nurse Alberti comforted the Student and referred the student to guidance. (Testimony Alberti 2/1/18) (Ex.B-83).
20. On February 29, 2017 Ms. Killian initiated a meeting with Student’s Mother where Ms. Killian shared her concern that the Student’s refusal to return to classroom was not a typical reaction given the reported interaction with the classroom teacher. Ms. Killian advised that she did not feel it was proportional to what was reported as having occurred. (Testimony Killian 2/1/18) A plan was put in place where the student would report to Ms. Killian each day after that particular teacher’s class to touch base so that if any issue arose it would be addressed. (Testimony Killian 2/1/18) The Student returned to the classroom on that day. Mother also met with Ms. Phelps regarding the interaction between the Student and teacher. Mother advised Ms. Phelps that the Student was “sensitive” and often “carried the weight of the world on her shoulders. (Testimony Phelps 2/1/18) Phelps was told that Mother was going to look into outside counselling and Ms. Phelps agreed to follow up with the teacher. (Testimony Phelps 2/1/18)
21. On March 2, 2017 Student was dismissed from school early for an appointment with psychologist. (Ex. B-83)
22. On March 5, 2017, Student sought out Ms. Killian to report feeling bullied when two other students asked if the Student was having issues at home. (Testimony Killian 2/1/18) Ms. Killian met with the other students and did not conclude bullying to have occurred. (Testimony Killian 2/1/18) Ms. Killian attempted to help the Student understand the other students’ perspective. Student was offered a bullying complaint. (Testimony Killian 2/1/18) The Student declined to file a bullying complaint. (Testimony Killian 2/1/18). Ms. Killian informed the Administration of the Student’s concerns. (Testimony Killian 2/1/18)
23. On March 8, 2017, the Student reported to the Health Office complaining of feeling “dizzy” and informed Nurse Alberti that she is seeing a psychologist outside of school. (Testimony Alberti 2/1/18)
24. On March 9, 2017, Student sought out Ms. Killian regarding a school sponsored theme day called ‘Mix Up Day.’ Student expressed concern over feeling forced to interact with others. (Testimony Killian 2/1/18)
25. On May 10, 2017, the Student went to the Health Office where Nurse Alberti observed the Student as “visibly upset” “shaking” and reported an exchange with another Student where the other student threatened “if you tell on me, I’ll kill you.” (Testimony Phelps 2/1/18, Ex. B-83) (Testimony Alberti 2/1/18) Nurse Alberti called the Student’s Mother and discussed the situation. (Testimony Alberti 2/1/18) Nurse Alberti contacted Ms. Phelps. The Student indicated she did not want to return to the classroom and she was dismissed to the Mother from Health Office. (Testimony Alberti 2/1/18).

26. On May 11, 2017, Student attended school but remains in the Health Office with Nurse Alberti . Student was dismissed early to Parents. (Testimony Alberti 2/1/18). Ms. Phelps interviewed the other student and begins an investigation. (Testimony Phelps 2/1/18) In the interim, an additional adult was assigned to the classroom. (Testimony Phelps 2/1/18)
27. After completing an investigation, Ms. Phelps concludes that while the statement is characterized as aggressive, there was not a true threat on the life of the Student. Ms. Phelps sends written notice to the Parents of the implementation of a safety plan which included: an additional adult to be provided to supervise the other student in any class the students have together; at the Parents' request, the Student's homeroom will be reassigned; at the parents' request, the student's school counselor Killian will be changed; putting in place a system of frequent check-ins throughout the day with school counselor for the purpose of assessing student's social, emotional and physical well-being and reassignment of the Student's locker to another location. (Testimony Phelps 2/1/18) (Ex B-24) Phelps offered a bullying complaint form to Parents of Student (Testimony Phelps 2/1/18) The parents did not complete the form. (Testimony Phelps 2/1/18)
28. On May 12, 2017, Parents met with Resource Officer DeGorzi and filed a criminal complaint regarding threat made by the other student. No police action resulted. (Testimony Phelps 2/1/18) The Parents felt the it was a death threat against the Student. (Testimony Parent 2/28/18)
29. Student returned to school on May18, 2018 but is dismissed early. Student was absent from school on May 12, 15, 16, 17, 24, 25, 26 and June 12, 2017. (Ex B-84)
30. On May 19, 2017, Student reports to the Health Office and is observed "breathing very hard, probably hyperventilating, shaking" and noted that it appeared the Student was having a panic attack. (Testimony Alberti 2/1/18)
31. The Student's schedule for 2017-18 school year was created to ensure that Student does not share any classes with other student and that lockers are not located in close proximity pursuant to the Safety Plan. (Testimony Phelps 2/1/18)
32. On August 28, 2017, the parents sent an email to Board requesting Section 504 accommodations as a result of a disability of depression and anxiety. (Testimony Hayes 2/8/18) (Ex B-27) In support of this request, the Parents submitted a letter from Dr. Dauser, a child psychologist who treats the Student outside of school. (Testimony Hayes 2/8/18) (Ex B-27) Dr. Dauser recommended accommodations to include: a staff member whom Student feels comfortable with be identified so that student may speak with the individual when experiencing distress; create discrete visual cues between student and teachers so Student may take needed breaks to Nurse's office or bathroom when feeling overwhelmed or anxious; preferential seating within the classroom; permit Student sit alone at lunch; permit Student to work individually on

school projects; and to allow Student to carry fidget items in order to manage anxiety in school. (Ex. B-27)¹

33. On September 1, 2017, a Section 504 meeting was held with parents and a Section 504 plan was created. (Testimony Hayes 2/8/18)(Ex B-26), (Testimony Phelps 2/8/18) Parents reported that they considered the “bullying event” of May 10, 2017 to be causing the Student distress. (Testimony Hayes P. 16)(Testimony Parent 2/8/18) Parents reported that Student had a very upsetting summer with Student feeling anxious, sad and crying a lot. (Hayes, 2/8/18)(Parent 2/28/18) The identified disability was noted as depression and anxiety which effected the major life activities of concentrating and learning. (Hayes 2/18/18) (Ex B-26)

34. Recommended accommodations from Dr. Dauser were incorporated in the Section 504 Plan including, preferential seating, check-in with school counsel as needed, discrete sign-out to nurse if Student needed a break during class for emotional or medical support, use of a fidget, opportunity for independent work versus group work when both options are available and allowing the Student to sit alone during lunch. (Testimony Hayes 2/8/18)(B-27) In addition, the safety plan from the prior school year remained in effect with input from Parents. (Hayes 2/18/18)

35. On September 5, 2017, Ms. Hayes communicated with the Mother regarding an additional accommodation of allowing the Student to carry a soothing item in her lunchbox throughout the school day. (Testimony Hayes 2/8/18)

36. In addition, when Student reported the classroom teacher was unaware that Student did not stand for the pledge of allegiance, Ms. Hayes interfaced with the classroom teacher and Student was allowed to not stand. (Testimony Hayes 2/8/18)

37. Student met Ms. Hayes frequently throughout September and October reporting feeling anxious or nervous. (Testimony Hayes 2/8/18) (Ex B-38).

38. Ms. Hayes attempted also use coping techniques with Student. (Testimony Hayes 2/8/18)

39. Student reported to Ms. Hayes upset from rainstorm and thunder. (Testimony Hayes 2/8/18) In addition, Ms. Hayes conferred with Mother about discouraging Student from discussing the other student who she had a problem with during the prior school year. Mother agreed. (Testimony Hayes 2/8/18)(Ex. B-38)

40. On September 6, 2017, Ms. Hayes spoke with Dr. Dauser regarding continuing to accommodate Student’s request to sit alone at lunch in the cafeteria. (Testimony Hayes 2/8/18)

41. Student reported to Ms. Hayes often during the month of September reporting generalized feelings of anxiety, sadness and being upset. (Testimony Hayes 2/8/18)

¹ Eliza Hayes was reassigned as school counselor for 2017-18 school year pursuant to the Safety Plan.

42. On September 19, 2017, the Student reported a group of boys making fun of her during lunch. (Testimony Phelps 2/1/18) After completing a bullying investigation, Ms. Phelps concluded the incident did not constitute bullying. Ms. Phelps sent correspondence to Parents outlining the conclusion of the investigation and measures which would be put in place as a result. (Ex. B-43)
43. In the event Ms. Hayes is unavailable, Student is advised she may seek out Nurse Alberti. (Testimony Hayes 2/8/18)
44. The frequency of visits to Ms. Hayes increased notably during the Month of September (Testimony Hayes P. 2/8/18) Ms. Hayes consulted with Dr. Dauser to determine if it would be appropriate to limit the time of each visit in order to encourage the Student to return to class. It was determined no time limit would be imposed. (Testimony Hayes 2/8/18)
45. On October 5, 2017, Student articulated to Ms. Hayes that she was thinking about telling the other student who was involved in the interaction from previous Spring semester that “she’s the whole reason I’m feeling bad and I’m depressed.” (Testimony Hayes 2/8/18)
46. Ms. Hayes advised Student that she did not think that speaking to the other student was a good idea knowing that the safety plan was in place. Ms. Hayes spoke with Student’s Mother who indicated that she was aware of Student’s intention and agreed with it. (Ms. Hayes 2/8/18) Ms. Hayes advised Ms. Phelps of her discussion with Student. (Ms. Hayes 2/8/18) Ms. Phelps sent an email to Parents advising that all measures of the Safety Plan were in effect and advised the Parents that the Student is not to engage with the other Student. (Ex. B-47) While in the cafeteria, Ms. Phelps observed the Student in close proximity of other Student and monitored the cafeteria to ensure that the safety plan remained in place. Student did not make contact with the other student. (Testimony Phelps 2/1/18)
47. Student returned to Ms. Hayes after lunch visible upset after lunch in the cafeteria. Student was dismissed early to her Parent. (Testimony Hayes 2/8/18)(Ex B-48)
48. Student attended school on October 6, 2017 but was dismissed early to Parent. (Ex. B-48) Thereafter, Student has been unable to attend school on a regular basis. (Testimony Hainer 2/8/18)
49. Ms. Hayes conferred with Dr. Dauser about the events. (Testimony Hayes 2/8/18)
50. Ms. Phelps sent an email advising Parents in addition to providing the accommodations under Section 504 and the additional supports, they will be invited to a PPT meeting to determine if additional measures not typically available through Section 504 are warranted. (Ex. B-54). On October 12, 2017, Board provide Parents with Referral to Determine Eligibility for Special Education and Related Services. (Ex. B-55-56).
51. On October 24, 2017 Parents met with Ms. Dahling-Hench serving as the Board’s Safe School Climate Specialist and Ms. Battaglia, Director of Pupil Services to discuss concerns regarding the Student. (Testimony Dahling Hench 2/1/18) (Testimony Battaglia 2/8/18) (Ex. B-

75) At Parents' request, Student is reassigned to Ms. Hainer for school counselling. (Testimony Battaglia 2/8/18) (Ex. B-75) The Board offered tutoring of the Student at either Brown Middle School while the PPT was pending or the Library and for the Student to re-enter school no later than Friday May 27, 2017 for two periods a day. (Ex. B-75) The Student was no longer attending school regularly due to anxiety and the Parents inquired as to modifying the Section 504 Plan. The Board advised Parents that it was their position the Student's needs may be beyond accommodations pursuant to Section 504 and advised Parents a PPT Meeting will be scheduled. (Testimony Battaglia 2/8/18) (Ex. B-75)

52. Parents rejected a re-entry plan proposed by Board but consented to interim tutoring at the library. (Ex. B-76) Upon request by the Parents, on October 27, 2017, Board advised the Parents that it does not have authority to transfer or enroll a student in Branford Public Schools. (Ex. B-78)

53. Parents withdrew their consent for the Board to confer with Dr. Dauser. (Testimony Battaglia, 2/8/18)

54. A PPT Meeting was held on November 13, 2017 to review a referral for special education. (Ex. B-89) The Parents attended. The team discussed concerns that despite meeting grade level expectations, the Student was demonstrating an inability to attend the general education setting due to the increased level of symptoms of anxiety and frequency of visits to the Health Office. (Testimony Hainer 2/8/18). The Team recommended an initial evaluation for special education services including cognitive and achievement testing (reading, writing and math) and social/emotional scales. (Testimony Hainer 2/8/18) (Ex. B-89) The Parents did not agree with PPT recommendations. (Hainer 2/8/18) A Notice and Consent to Conduct an Initial Evaluation was provided to the Parents by the Board on November 13, 2017. (Ex. B-91) The Parents refused to provide consent to conduct an initial evaluation. (Ex. B-91) Parents felt that the Student's disability did not adversely affect the Student's educational performance in the classroom; nor did the Student require a specifically designed instructional program to address her educational needs. (B-91) (Testimony Parent 2/28/18)

55. On December 1, 2017, a meeting was held to discuss a re-entry plan for the Student. (B-100) The plan incorporated the Parents concerns and called for a re-entry where the Student would return to the school building for short periods with the goal of gradually increasing the length of time. (Ex. B-99) Outside school tutoring would be offered for 10 hours per week at the library or Brown Middle School. Parents rejected the re-entry plan but requested the continued tutoring. (Ex. B 104-5) (Testimony Hainer 2/8/18)(Testimony Battaglia 2/8/18)

56. On December 5, 2017, the Board discontinued tutoring of the Student. (Testimony Battaglia 2/8/18)

CONCLUSIONS OF LAW AND DISCUSSION:

1. The overriding goal of the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 *et seq.* (IDEA) is to open the door of public education to students with disabilities by requiring school systems to offer them a free appropriate public education (FAPE). *Board of*

Education v. Rowley, 458 U.S. 176, 192 (1982).

2. The IDEA demands that public school systems actively and systematically seek out, identify, locate, and evaluate children suspected of having disabilities who may be in need of special education and related services. 20 U.S.C. §1412(a)(3)(A); 34 CFR §300.111; Regulations of Connecticut State Agencies (“RCSA”) §10-76d-6(a).
3. The “Child Find” obligation requires each State to have policies and procedures to ensure that all children with disabilities are identified and evaluated for special education and related services. 34 C.F.R. §300.111(a)(1)(i)-(ii). The obligation extends to all children suspected of having a disability requiring special education “even though they are advancing from grade to grade.” *Id.* §300-111(c)(1).
4. When a student is identified as potentially needing special education and related services, the school system must conduct an initial evaluation to confirm the child’s eligibility for special education as well as to provide the information necessary to develop and implement an appropriate individual program of instruction and services for the student, or Individual Education Program (“IEP”). 20 USC § 1414(a)(1)(A); 34 C.F.R. §300.301; RCSA §76d-9(a).
5. An evaluation under the IDEA serves the twin purpose of identifying students who need specialized instruction and related services because of an IDEA-eligible disability, and helping PPT teams identify the special education and related services the student requires. 34 C.F.R. §300.301(c)(2); RCSA§10-76a-1(6).
6. The Board must make reasonable efforts to obtain informed consent from the parent before conducting an initial evaluation. 20 U.S.C. §1414(a)(1)(D); 34 CFR §300.300(a)(1).
7. If a parent does not consent or fails to respond to a request for consent, the district may (but is not required) to use the IDEA’s mediation or due process procedures to demonstrate the need for an evaluation. 20 U.S.C. §1414(a)(1)(D)(ii)(I); 34 CFR §300.300(a)(3)(i); *Schaffer v. West*, 546 U.S. 49,52-53(2005)(school districts may seek a due process hearing “if parents refuse to allow their child to be evaluated”); *Monterey Peninsula Unified Sch. Dist.*, 114 LRP 53229 (SEA CA 11/06/14)(evaluation may be ordered despite lack of parental consent where necessary to confirm eligibility and/or develop program).
8. Child with a disability means a child evaluated in accordance with 34 CFR §§300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.
9. A student needs to exhibit only one of the five criteria under the definition of an emotional disturbance to qualify for special education and related services under the IDEA, but

the student must exhibit the criteria to "a marked degree" over "a long period of time." 34 CFR §300.8 (c)(4)(i)

10. The fact that a student with an emotional disturbance receives good grades will not in itself disqualify her from receiving IDEA services. The eligibility team also should consider factors such as the student's attendance record, her ability to earn required credits, and any changes in her grades. Furthermore, prolonged absences coupled with a student's failure to earn enough credits to move onto the next grade, should have prompted the district to find her eligible for special education. *M.M. and I.F. v. New York City of Dep't of Educ.*, 63 IDELR 156 (S.D.N.Y. 2014)

11. When educational performance is considered in the broader sense as a child's ability to adapt successfully to a school environment, students whose psychological conditions impede their ability to interact with others are more likely to be considered eligible as having emotional disturbance, even if their academic performance is acceptable. See, e.g. *Board of Educ of the Massapequa Union Free Sch. Dist.* 49 IDELR 89 (SEA NY 2007) (although a student received straight A's in her homebound placement, her inability to attend school due to fears of bullying qualified her as a child with an emotional disturbance.); *Dighton-Rehoboth Reg. 'l Sch. Dist.*, 45 IDELR 146 (SEA MA 2006); in re *Kristopher H.*, 507 IDELR 183 (SEA WA 1985); and *Oakland Unified Sch. Dist.*, 507 IDELR 191 (SEA CA 1985)

12. Parents are both loving and strong advocates for Student. Parents assert that an evaluation to determine eligibility of the Student under IDEA is unnecessary and inappropriate. Parents state that the Student is a good student and does not need special education. (Testimony Parent 2/28/18) The Parents point to the Section 504 plan and feel that the plan be modified. (Testimony Parent 2/28/18) The Parents further assert that the Student feels unsafe at Brown Middle School.

13. Regardless of the Parents' assertions, the Board has an obligation to "actively and systematically seek out, identify, locate, and evaluate children suspected of having disabilities who may be in need of special education and related services." 20.U.S.C. §1412(a)(3)(A); 34 CFR § 00.111; RCSA §10-76d-6(a). This is especially true where a Board has reason to believe a student has a disability and that special education services may be needed to address that disability.

14. The Board had reason to believe that the Student had a possible disability beginning in February 2017 when both the Student and Mother confirmed that the Student has had "suicidal thoughts" and was seeking outside intervention from a psychologist for anxiety and depression. The continued reports of anxiety, social discord and the inability to attend school gave the Board further notice of a possible disability. While the Board provided accommodations both under the Safety Plan of May 2017 and the Section 504 Plan, the instances of anxiety and distress increased to the point where the Student not been able to access the general curriculum since October 2017.

15. The Board has fully demonstrated that the evaluation as proposed by the November 13, 2017 PPT meeting is necessary and appropriate to determine whether the Student requires individualized instruction and/or related services under IDEA.

FINAL DECISION AND ORDER:

The Board shall proceed with the evaluation as proposed at the November 13, 2017 PPT meeting despite the absence of parental consent.