

Special Education Law
Final Examination
Fall 2011
Massachusetts School of Law
Professor Michelle Griffin
December 17, 2011 - 9:00 a.m. - 12:00 p.m.

This is an open book and written materials examination. You are permitted to use any of the assigned readings from the semester, and any outlines or notes prepared by you and/or your classmates. No computers or other electronic devices will be allowed to be used in the examination room. The examination is to be taken in longhand. Please ensure that your cellular phones and other such devices are turned OFF.

Please write legibly and leave a margin on the left hand side of the page. Use only your student identification number to identify yourself in the blue books, make sure that this number is on all blue books, and number the blue books (e.g., "1 of 2," "2 of 2," "notes/outline"). Please double-space your responses, leaving one line between each of your written lines.

The examination is a three hour examination and is worth a total of 50% of the final grade for the semester. The values of the questions are as follows:

QUESTION 1 will be worth 60% of the final exam grade.

QUESTION 2 will be worth 25% of the final exam grade.

QUESTION 3 will be worth 15% of the final exam grade.

Please plan your time accordingly.

The examination consists of seven pages, and four attachments (five pages). Please be certain that you have all pages and attachments.

QUESTION 1

You are an intern at the Law Offices of Alberta and Howe, working for Attorney Allie Alberta, who hired you to assist her in education law matters. She told you that she hired you because you are a former special educator and because you are fluent in Spanish (she sometimes needs help with oral interpretation and written translations for her clients). Today is December 16, 2011, and you have just been visited by Antonio (Tony) Morelos. Tony is a 19 year old 10th grade student at Suburbia High School, in Massachusetts. Attorney Alberta is not in the office, but has given you the authority to interview clients on her behalf.

Tony's guidance counselor, Mr. Castaneda sent him to your office. Tony tells you he cannot speak much English but that he speaks Spanish, so you interview him in Spanish. Tony explains that he came to Massachusetts from Colombia in 2007 with his uncle, who has since returned to Colombia. Tony's parents both died in a car accident in 2001, when Tony was nine years old. After his parents died, Tony says he lived with his uncle, who was working two jobs, so he pretty much "raised himself on the streets." When Tony arrived in Massachusetts in August 2007, at the age of 14, his uncle enrolled him in Suburbia Public Schools. At the time, Tony did not speak English well, and, although he had been scheduled to begin 9th grade in Colombia, the district placed him in 8th grade.

Tony explains the following to you: He has always struggled in school. He repeated a couple of grades here, and though he had some ESL classes in 8th grade, since high school, he has only had classes in English, with English-speaking peers. While he says he learned a little bit of English in 8th grade and from his classmates and neighbors, the only person he can communicate with well at school is Mr. Castaneda, who is fluent in Spanish. He visited Mr. Castaneda last year around this time, and told him that when he was in school in Colombia, he struggled with academic and emotional issues. Because of these issues, he was placed in smaller classes there that had both a teacher and a

therapist; his classmates were other students who had similar issues. If he was having a hard time in class, he could go meet with the therapist in a private office off the classroom.

This year, Tony has spent almost every school day in "the cave," which is the in-house suspension room. He says that his teachers get upset with him and send him to the cave because he does not raise his hand in class, because he does not complete his work, and because he sometimes whispers to the students who sit near him. Tony says that though he does whisper to other students, it is because he doesn't understand the work (all written in English) and he often asks the other students for help. He says he has also fallen asleep a few times in classes, which has also resulted in him being sent to the cave. Tony also shared that he currently works at a local fast food restaurant in a neighboring city from 4 p.m. to midnight, in order to pay his rent. When he gets out of work at midnight, he feels unsafe walking to the bus and taking the bus back to his apartment, so he carries a small knife. He also shares that he was mugged and beaten up a few times in Colombia and here, and he fears that this may happen again. While Tony usually leaves the knife at home during the school day, he says he forgot to remove it from his coat pocket Wednesday morning when he went to school. It fell out of his pocket when he was looking for a pen in class, and his teacher sent him to the principal's office. The police came, but after they left, Mr. Castaneda explained to him that the knife was not big enough to result in him being charged with a crime. However, the principal told him to leave, that he was being kicked out of school because he had a knife and that this was a violation of state law, and that he could not come back. The principal suggested he go get a GED. The principal did not give him anything in writing; all of this was interpreted orally through Mr. Castaneda.

Tony wants to stay in school and get a high school diploma. Tony says Mr. Castaneda gave him copies of some papers to give you because he thought they might be

important. (These copies are attached as Attachments A, B and C.)

Write a memo to Attorney Alberta, describing the following:

- The pertinent information from your interview and review of the documents Tony gave you.
- The federal and state education laws that are implicated.
- The action you would propose to ensure that Tony can return to school, does not spend anymore time in "the cave," and receives appropriate services. Include any potential remedies for any identified violations of law.

Cite all relevant state and federal education law, including statutes, regulations and case law.

QUESTION 2:

You are an attorney at the law firm of Bale and China, a law firm that is known for representing school districts and parents in education matters. You have received phone call from Mr. Super, a client who is a superintendent from a town in a state in the United States, with weather that permits year-round baseball. Mr. Super seeks a written opinion on a particular matter that has arisen in one of the district's high schools.

Steve Student is a sophomore, and has a Section 504 Accommodation Plan, for the identified disability of attention deficit disorder. The Plan provides for preferential seating, frequent breaks, the provision of outlines and study guides, and extended time on tests. Steve does not have an IEP; the district proposed a formal special education evaluation, but his parents refused to provide consent for the evaluation. Steve is a straight A student.

Until recently, Steve was also on the baseball team; he is a talented pitcher and the team was undefeated when he pitched. However, in November, Steve was removed from the team. The town's baseball team is very competitive, and practices every day after school. Academic requirements must be met in order to remain on the team, and academic excusals from practice are permitted where the high school dean determines a student-athlete requires academic assistance after school. The school athletic code permits students to be removed from varsity athletic teams if they miss more than four practices without academic excusal or a medical excusal (essentially, a doctor's note).

In September, Steve got his driver's license, and his parents got him a car. Soon after that, he began skipping baseball practices; at times he was seen honking his horn at his practicing teammates and waving goodbye out his car window. According to the coach, he has missed twelve practices since September (eight in the last three weeks); no academic or medical excusals were provided. Accordingly, the coach consulted with the

athletic director, and the athletic director sent Steve and his parents a letter notifying them that Steve had been removed from the varsity baseball team. The letter from the athletic director suggested that Steve might wish to join the junior varsity baseball team, which has a less stringent practice schedule. Steve's parents appealed the removal to Mr. Super, and he upheld the removal from the baseball team, citing the district's athletic code.

Steve's parents have sent a letter to Mr. Super asking for a meeting with Mr. Super to attempt to resolve the matter, and stating that if it is not resolved, they intend to file a discrimination complaint with the Office for Civil Rights under Section 504 of the Rehabilitation Act of 1973. Their letter is attached. (Attachment D)

Mr. Super would like your opinion about the likelihood of success of such a complaint, and has asked for your analysis of the matter. Write a letter to Mr. Super, containing your analysis of the matter based on the facts before you. Include citations to all relevant federal law, regulations and case law.

QUESTION 3:

You are a legislative aide to Senator Jones, who is a state Senator representing the community of Historia, Massachusetts. Senator Jones is scheduled to meet with an advocacy group that seeks to change the Massachusetts law and regulations related to special education evaluation. The group states that these laws are “excessive in comparison to federal requirements.” He is very unfamiliar with these laws in Massachusetts and at the federal level.

Senator Jones has asked you to research the state and federal legal requirements concerning special education evaluation, and explain them to him in a brief memo, with bullet points, so that may quickly prepare for this meeting. He would like you to provide him with:

- An overview of the laws under both the state and federal system; and
- A list of any policy considerations that the current Massachusetts laws and regulations implicate, including those of the advocacy group as well as those that might be raised by his constituents who are parents of students with disabilities.

You should be sure that your memo cites all relevant state and federal statutes and regulations, so that Senator Jones is prepared adequately for this meeting.

ATTACHMENT A

SUBURBIA HIGH SCHOOL
57 MAIN STREET
SUBURBIA, MA 99999

GUIDANCE DEPARTMENT

November 15, 2010

Sally Smith
Special Education and Student Services Director
Suburbia Public Schools
590 South Street
Suburbia, MA 99999

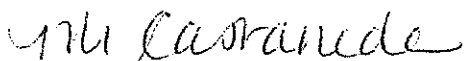
Dear Sally,

I am writing because I have concerns about Tony Morelos, who is a ninth grade student here at the high school.

Tony came to Massachusetts from Colombia in 2007. Have we received any records from his school in Colombia? Tony comes to see me almost daily, and seems to suffer from some emotional issues. He lost his parents when he was nine, and though he lived with his uncle when he first moved here, he is alone. He also indicated that he has always struggled in school, and it sounds like he had special education services there. I think he needs to be tested for special education. Please consider this a formal referral.

In addition, Tony is not receiving any ESL classes. It seems to me that he needs them, as he cannot communicate very well in English, and I think he should be formally identified as an English learner. I know we do not have any other English learners at the high school, but we need to help this student. Please let me know what else we can do to help.

Thank you.



Mr. Castaneda, Guidance Counselor

School District Name

EVALUATION CONSENT FORM
Attachment to N 1

Rec'd 1-5-11
Student Services Office

TYPE OF ASSESSMENTS: A variety of assessment tools and strategies should be used to gather information that determines the educational needs of this student. [Check yes or no for each assessment.]	RECOMMENDED	
	YES	NO
Assessment in All Areas Related to the Suspected Disability(ies) – describes the student’s performance in any area related to the child’s suspected disability(ies). List recommended assessment(s): <u>Kaufman Test of Educational Achievement (by American Guidance Service)</u>	X	
Educational Assessment – includes the history of the student’s educational progress in the general curriculum and includes current information on the student’s performance.		
Observation of the Student – includes the student’s interaction in the student’s classroom environment or in a child’s natural environment or an early intervention program.		
Health Assessment – details any medical problems or constraints that may affect the student’s education.		
Psychological Assessment – describes the student’s learning capacity and learning style in relationship to social/emotional development and skills.		
Home Assessment – details any pertinent family history and home situations that may affect the student’s education and, with written consent, may include a home visit.		

PARENT RESPONSE SECTION

Please indicate your response by checking at least one (1) box and returning a signed copy to the school district. Please keep one copy for your records. Thank you.

→ I accept the proposed evaluation in full. I reject the proposed evaluation in full.

I accept the proposed evaluation in part and request that only the listed assessments be completed:

I additionally request the following assessment(s): assessment(s) listed above: _____ other assessments: (specify) _____

Tony Morelos Signature of Parent, Guardian, Educational Surrogate Parent, Student 18 and Over* JAN. 4 2011 Date
*Required signature once a student reaches 18 unless there is a court appointed guardian.

PARENT INPUT

We strongly encourage you to share your knowledge of this student with us. If you choose, please provide a written statement (use back of form) or call the indicated contact person. Thank you.

SUBURBIA PUBLIC SCHOOLS

590 SOUTH STREET
SUBURBIA, MA 99999

To: Mr + Mrs. Morelos

Re: Tony Morelos

Subject: The school district does not intend to act: [Check all that apply.]

- Finding of No Eligibility
 Refusal of Requested Services
 Other: _____

[Please specify.]

Notice Date: June 1, 2011

The school district has recently discussed this student with you. We now write to tell you of our intention not to act on a request. We have described our reasons for refusing on page two of this memo.

As you know, special education regulations provide protection to you and your child. You will find specific information about your legal rights in the *Interim Notice of Procedural Safeguards*, including sources that you may contact for help in understanding your rights. You should have received this brochure prior to the initial evaluation. If you would like another copy, please contact the school district staff. You should carefully review this brochure and the enclosed material.

The school district staff is available to speak to you or meet with you about your rights and the school district's refusal to act. We strongly encourage you to call us if you have any questions. Please contact us through the district contact person listed below. Thank you.

District Contact Person:

Sally Smith

Contact Information: [Address, Telephone Number, Fax Number and Email Address (if not on letterhead)]

Enclosures:

Other: [specify]

Re: [Name of Student and other necessary identifying information]

Notice Date: [Date from page 1]

Directions to School Staff:

This notice must be sent to parents in their native language or other mode of communication used by the parent. School districts must ensure that parents understand the content of this notice. (Federal Regulation §300.503)

Describe any refusal to initiate or change the identification, evaluation, educational placement or the provision of special education services by answering the following questions:

1. What action is the school district refusing to take?
2. Why is the school district refusing to act?
3. What rejected options were considered and why was each option rejected?
4. What evaluation procedure, test, record or report was used as a basis for the refusal to act?
5. What other factors were relevant to the school district's decision?
6. What next steps, if any, are recommended?

Narrative Description of School District Refusal To Act

1. No special needs; student's an English language learner.
2. N/A
3. N/A
4. See N/A; KTEA could not be completed; student speaks Spanish.
5. N/A
6. N/A - Principal should hire an ESL teacher.

ATTACHMENT D

December 12, 2011

Dear Mr. Super,

We are writing on behalf of our son, Steve Student. As you know, Steve was removed from the varsity baseball team recently, by the athletic director. The letter from the athletic director indicates that this was due to excessive absences from baseball practice. As you also know, you upheld this removal.

We assume that you are aware that Steve is a student with a disability, specifically, attention deficit disorder, and that he has a Section 504 Accommodation Plan. We believe that removal from the baseball team constitutes discrimination under Section 504 of the Rehabilitation Act of 1973; we believe that his disability requires accommodations in baseball that were not provided. We would like to meet with you as soon as possible to discuss this further. As you may know, our son is a very talented pitcher. Every day that Steve misses baseball will affect his future, and his ability to play ball post-high school. If we cannot resolve this matter at the school district level, we will file a complaint at the U.S. Department of Education's Office for Civil Rights.

Thank you for your consideration.

Sincerely,

Mr Student & Mrs Student

Mr. and Mrs. Student

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Fall 2009
Massachusetts School of Law
Professor Michelle Griffin
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QUESTION 3 will be worth 15% of the final exam grade.

If there are sub-parts within the question, the individual question will tell you how each of the sub-parts will be weighted.

Please plan your time accordingly.

The examination consists of five pages, and three attachments, totaling four pages. Please be certain that you have all pages and attachments.

QUESTION 1

You are an intern working for the law firm of School Law, PC, in Andover, Massachusetts. Today is December 11, 2009. Your supervising attorney, Attorney Superstar, assigns you an initial intake interview with a potential client.

The potential client's name is Robby Brown, and he comes to the meeting with his mother, Ms. Houston. Ms. Houston is clearly frustrated with Robby and states that she only brought him to see you because the DCF social worker who works with her family encouraged her to do it. She tells you that she has had it with Robby and with the school district, and that she is ready to give up and send him to get a GED or to Job Corps. After obtaining consent from Ms. Houston to speak alone with Robby, Ms. Houston gladly leaves the room, but leaves you with some paperwork. Copies of the papers she gives you are attached as Attachments A, B and C.

Robby tells you that he is 16 years old, and he recently was kicked out of school, because he did something "really stupid." Robby explains to you that over the summer, he and his family moved to a new town, so that his mother could escape domestic violence perpetrated by her partner of six years. Rather than stay in western Massachusetts, Robby's mother moved her family to Robby's grandmother's home in Suburbia, a town just outside of Boston. Robby explains that he has had a difficult adjustment to the new school, where the other students are all "preppies" and tease him for being a "hick." He says it has been the hardest four months of his life, and that he has dropped in on the school guidance counselor at least once a week to talk about "problems with other students and a few teachers." Robby tells you that he is sad or angry most of the time, has a hard time waking up in the morning, has a hard time focusing on his work (which he says gets him in trouble with his teachers), and rarely speaks to anyone at school, except the guidance counselor. He says that he has been given detention a number of times and that he has been suspended eleven or twelve times since school started in August. When

you ask why he had been suspended, Robby tells you that suspensions were imposed for being late to school, for not coming after school to make up work, and for wearing his hood in class or in the hallway (and refusing to take it off). Robby is on the basketball team, though he tells you that he mostly warms the bench. He loves the sport, though, and finds it provides him with a good release from the anger he still feels about the way his mother's partner treated her - and him.

Robby tells you that last Saturday night, the "wrong girl" spoke to him after the basketball game. It was a girl who he had met in the guidance office lobby, where they both dropped in one day to speak to their guidance counselors. He only spoke to her for a minute, but, because of it, four students from the basketball team followed him to his locker after school on Monday, and threatened to "kick his butt back to the Berkshires" if he went to another basketball game. The next game was on Wednesday night, and Robby was not sure if he should go. He said it took him a long time to decide that night but that he eventually decided to go, arriving at the gym just as the other players were starting to warm up. Robby also put an unloaded antique revolver in his gym bag - "just in case." He tells you that his grandmother had it locked away in a cabinet in their home with some other possessions of his late grandfather, but that he easily picked the lock. Robby tells you that he ran into the other players, who were leaving the locker room to warm up just as he was arriving. The players in the locker room began threatening him as soon as they saw him, so Robby pulled the revolver out of his gym bag and waved it at them in warning - and said, "You don't wanna mess with me!" The other players left the locker room, leaving Robby alone to change for the game. Robby locked the gun and his clothes in his locker. Shortly before the game started, police arrived to the basketball court, and arrested Robby for a felony delinquency charge of possession of a dangerous weapon, and assault with a dangerous weapon.

Thursday morning, Robby went to court, was given a free attorney, and told the court that he was not guilty. Robby's mother and DCF worker came to court, and someone bailed

him out. He was not really sure what else happened in court, but he knows he has to come back for a trial. When Robby went to school Thursday afternoon, Mrs. Principal verbally told him to empty out his locker and not to come back. Robby says that Mrs. Principal said that he was not even supposed to be in that school, anyway, as he was not a resident of Suburbia, and that even if he was, she had the right to kick him out since he had a weapon in school. Mrs. Principal gave Robby a list of GED programs in the Boston area as she escorted him out of the building, and told him that if he returned, she would call the police.

When you ask Robby if he had any type of special services in school, he tells you that he did not, but that when his DSS worker enrolled him in August, she met with the principal and explained that she thought you might have suffered some “emotional damage” due to the years of witnessing, and being subjected to, the violence of her partner. The worker gave the principal some kind of letter, which Robby thinks his mother has given you. Robby tells you that he took some kind of vocabulary test with one of the English teachers in September, but that nothing else has happened. When you ask if there has been any kind of meeting about his school needs, he says no, and that his mother kept asking him to speak to his guidance counselor about that, but that he kept forgetting.

You thank Robby, and when you go to ask his mother to join you, you are told by the firm secretary that she had to leave to attend to another of her children at school. She did, however, leave Robby bus fare to get home. You tell Robby that you will consult with your supervising attorney, and direct him to the bus stop outside the office.

Write a memo to your Attorney Superstar summarizing the pertinent points from the interview and listing potential claims under state education law and regulation, federal education regulations, and related state and federal case law, including all substantive and procedural claims. In addition, provide Attorney Superstar with your recommendations for next steps.

QUESTION 2

You represent the Tiny-Town School District, which is located on the north shore of Massachusetts. Yesterday, you received a phone call from the principal of Tiny-Town Elementary School, requesting written advice concerning an issue that has arisen his school. A parent approached the principal at the beginning of the school year, requesting that the school be designated “peanut-free.” Evidently, the parent’s daughter, Phoebe, has a severe peanut allergy, and the parent told the principal that even the smell of a peanuts or the presence of peanut shells or dust could cause her to go into anaphylactic shock (anaphylactic shock can prove fatal, although there are some medical treatments for such reactions, including epinephrine shots, which can be administered by a trained adult.) When the principal discussed the request with the vice-principal, she reminded him of another student, Albie, who has Asperger’s syndrome, and eats only six foods - and peanut butter is one of them. Albie and Phoebe are the first grade, in adjoining classrooms. Their classes eat lunch at the same time in the school’s small cafeteria. The vice-principal suggested that the principal arrange for Phoebe to eat lunch with an aide in the classroom, rather than in the cafeteria with her classmates, and that you designate Phoebe’s classroom “peanut-free,” rather than designating the entire school “peanut-free.” The principal, however, is concerned about the rights of both students, as well as the rights of other students and staff in the school, and is seeking advice from you.

Write a memo to the principal with your analysis of the rights of Phoebe, Albie and any other students or staff in the school. Be sure that you cite applicable federal law and regulation and state law and regulation, as well as any case law that supports your analysis. (20 of 25 points.)

After your analysis, give the principal advice based on the information that you currently have. Include a request for any additional information you would like the principal to obtain in order to fully analyze the situation. (5 of 25 points.)

QUESTION 3

You are a Team chairperson for the Rural School District's Agricultural High School. You were hired for this position because of your background as a special education lawyer. You will be chairing an IEP Team meeting for Lilly Leapfrog on Monday, December 15, 2009. Lilly is a junior at the school, and is identified as a child with a disability due to an emotional impairment. She is currently having a difficult time getting to school, and is therefore failing most of her classes. You have been told that the student's advocate and mother are seeking therapeutic horseback riding as a related service in her IEP. The advocate has provided you with a prescription for therapeutic horseback riding written by Lilly's psychiatrist. While there is a horse farm at the school, the school does not currently offer therapeutic horseback riding.

You have discussed the request with your superintendent. Before the meeting Monday, the superintendent would like you to write him a memo with an analysis of whether therapeutic horseback riding could be an appropriate IEP service. The superintendent will attend the meeting on Monday, as he, too, is concerned about Lilly's education. The superintendent has asked you to cite relevant federal and state education law and regulations, as well as any relevant case law.

Write the memo.

Att. A

Rec'd -
Suburbia
P.S. - 8/27/09

August 27, 2009

Dear Special Education Director / Principal.

I am a DCF worker assigned to work with Robby Brown, who is the son of Miss Maria Houston. Ms. Houston sought services from our office after she left the western part of the state, due to domestic violence. I am worried that Robby might have been a victim as well. He definitely witnessed violence. He is very withdrawn, and at times, gets angry quickly. Please evaluate him to see if he has an emotional disability and needs an IEP. Specifically, please complete:

- achievement tests;
- IQ test;
- psychological tests;
including projectives,
- health assessment; and
- home assessment.

Thank you.

Sally S. Worker
Mass. Dept. of
Children & Families

School District Letterhead

To: Ms. Houston
Re: Bobby Brown

Att. B
p. 1 of 2

Subject: The school district proposes the following:

- An Evaluation
- An IEP/Amendment
- A Placement
- Other: _____
(please specify)

Notice Date: 9/15/09

The school district has recently discussed this student and, with your input, has developed a proposal. We have described our actions and our reasons for these actions on page two of this memo.

As you know, special education regulations provide protection to you and your child. You will find specific information about your legal rights within the *Interim Notice of Procedural Safeguards*, including sources that you may contact for help in understanding your rights. This notice is enclosed for initial evaluations. You should have received your *Interim Notice of Procedural Safeguards* on _____ if you will be attending an IEP/Amendment or Placement meeting during this school year. We will also disseminate the notice at your request and upon disciplinary removal to an interim alternative education setting. You should carefully review this brochure and the enclosed material before making any decisions.

The school district staff is available to speak to you or meet with you about your rights and the school district's proposal. We strongly encourage you to call us if you have any questions. Please contact us through the district contact person listed below. Thank you.

An Evaluation Consent Form, an IEP or an IEP Amendment must be signed and returned, as we are required by law to have a signed copy on file regardless of your decision. Please return a copy as soon as possible but no later than the date listed below. Thank you.

Document Return Date: 10/15/09

District Contact Person: Chairperson Cathy Preston

Contact Information: 555-5555

Enclosures:

- Interim Notice of Procedural Safeguards* [
- Other: [

Att. B
p. 2 of 2

Re: I. Robby Brown

Notice Date: 9/15/09

Directions to School Staff:

This notice must be sent to parents in their native language or other mode of communication used by the parent. School district must ensure that parents understand the content of this notice. (Federal Regulation §300.503)

Describe one or more of the following actions: Initial Evaluation, Reevaluation, Emergency Evaluation, Extended Evaluation Period, IEP, IEP Amendment, Placement (include the specific placement location and transportation requirements, if any), Graduation or any other proposal used to initiate or change the identification, evaluation, educational placement or the provision of special education services by answering the following questions:

1. *What action is the school district proposing to take?*
2. *Why is the school district proposing to act?*
3. *What rejected options were considered and why was each option rejected?*
4. *What evaluation procedure, test, record or report was used as a basis for the proposed action?*
5. *What other factors were relevant to the school district's decision*
6. *What next steps, if any, are recommended?*

Narrative Description of School District Proposal

Your D.S.S. social worker requested an evaluation of Robby.

Fill out the Parent Response Section of the attached document, where the "X" is.

Re: Robby Brown

Notice Date: 9/15/09

School District Name

Att. C

EVALUATION CONSENT FORM
Attachment to N 1

Table with columns for assessment types and recommended status (Yes/No). Rows include: Assessment in All Areas Related to the Suspected Disability(ies), Educational Assessment, Observation of the Student, Health Assessment, Psychological Assessment, and Home Assessment.

PARENT RESPONSE SECTION

Please indicate your response by checking at least one (1) box and returning a signed copy to the school district. Please keep one copy for your records. Thank you.

[X] I accept the proposed evaluation in full. [] I reject the proposed evaluation in full.

[] I accept the proposed evaluation in part and request that only the listed assessments be completed:

I additionally request the following assessment(s): [] assessment(s) listed above:

[X] other assessments: (specify) whatever our social worker asked for.

Ms. Houston

Signature of Parent, Guardian, Educational Surrogate Parent, Student 18 and Over*
*Required signature once a student reaches 18 unless there is a court appointed guardian.

September 18, 2009
Date
Delivered in hand

PARENT INPUT

We strongly encourage you to share your knowledge of this student with us. If you choose, please provide a written statement (use back of form) or call the indicated contact person. Thank you.

Rec'd 9/18/09
Page 1 of 1
Suburbia Public Schools

Special Education Law
Final Examination
Fall, 2006
Massachusetts School of Law
Professor Griffin
December 16, 2006 - 9:00 a.m. - 12:00 p.m.

my copy

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If there are sub-parts within questions, the individual question will tell you how the sub-parts will be weighted.

Please plan your time accordingly.

The exam consists of 6 pages, and six attachments (totaling 9 pages). Please be certain that you have all pages and attachments.

1. It is November 15, 2006, and you are an attorney at the Whotown Office of Legal Assistance, an agency which represents low-income members of the community. You were contacted by the mother of Jesse James, to represent her son with regard to school disciplinary matters. Jesse and his mother came in to see you last week. Jesse is a 14 year old freshman in the Whotown High School of the Whotown Public School District. Jesse and two of his friends were charged in Massachusetts juvenile court with a felony delinquency, possession of a dangerous weapon. Jesse's delinquency attorney referred him to your office, as she does not handle education matters.

Allegedly, Jesse and his friends were stopped by a police officer in the mall parking lot on the evening of June 14, 2006, when Jesse's friend, who was driving erratically, caught the attention of a local police officer. The officer suspected that Jesse's friend was under the influence of alcohol or drugs, and searched the car. An unloaded handgun was found in the car, under the passenger seat. Jesse was seated in the passenger seat and a third friend was seated directly behind Jesse. All three boys denied knowledge of the handgun. The officer arrested all three boys, for possession of the handgun. Jesse and his friends were arraigned in juvenile court on June 19, 2006, and Jesse pleaded not guilty to the charge. His case has been scheduled for a trial in May 2007.

According to Jesse, he had no idea that the handgun was in the car. Jesse says his friend, who was driving, had borrowed his older brother's car; his older brother is currently serving a sentence in the County House of Correction. Jesse suspects that the gun belonged to the older brother, as, according to Jesse, he is in jail for gang-related activity.

Jesse also explains to you that he has never had any problems in school, but that he gets extra help in reading and math in the back of his regular English and math classes. He says all of his classes are "pretty big," and he often has trouble paying attention. When you ask his mother if the family has ever considered evaluating him for special education, she indicates that Jesse's English teacher last year, Troy Teacher, discussed this with her, and she thought the school was looking into it. Jesse scoffs at your question, and states that he does not want to "be one of *those* kids."

Jesse's mother and Jesse want to know if Jesse has a right to go to school,

and if the district's actions were appropriate and lawful.

You seek and obtain consent from Jesse's mother, and request Jesse's student records. Among other things in his records is a copy of an May 11, 2006 e-mail exchange between Jesse's English teacher and the principal and a copy of a letter expelling Jesse from school, dated June 15, 2006. These documents are attached.

A. Describe how you would counsel Jesse in this matter. (20% of the question.)

B. Develop a memo to Jesse and his mother answering their question and evaluating their legal options under Massachusetts and federal statutory law, case law, and regulations. (80% of the question.)

2. You are an attorney for Diamond Middle School. Today is June 2, 2006. Your client is the new special education director for Diamond Public School district. Yesterday, she received a copy of a hearing request from the parents of Sally Spelling. The Spellings have requested a due process hearing at the Bureau of Special Education Appeals. The hearing request is attached (Attachment 6). Relevant facts as described to you by your client are as follows:

Sally Spelling is a 7th grade student in Diamond Middle School. Sally has been a “straight-A” student for her entire educational career. This year, however, her grades have slipped a bit, although she is not failing any classes. Her middle school grades for the last two years are as follows:

6th grade - Final report card with cumulative grades, June 2005:

<u>Course</u>	<u>Grade</u>	<u>Comments</u>
English	A	A pleasure to have in class.
Mathematics	A-	Sally works very hard. Have a good summer!
Social Studies	A-	Great job on project on Japan.
Science	A	
Gym	P	Sally is always willing to volunteer in class.
Art	A	
Music	A-	

7th grade - 1st trimester report card, November 2005:

<u>Course</u>	<u>Grade</u>	<u>Comments</u>
English	B-	
Mathematics	C	Sally must work harder to achieve her potential.
Social Studies	C	Must pay more attention in class.
Science	C+	Sally has not completed class experiments.
Gym	P	
Art	B-	Must complete class projects.
Music	C	Participation is sporadic.

7th grade - 2nd trimester report card, March 2006:

<u>Course</u>	<u>Grade</u>	<u>Comments</u>
English	C+	Sally can do better!
Mathematics	C-	Must work harder to achieve her potential.
Social Studies	C	Still not paying attention. Not participating in class.

Science	C-	Sally has not completed class experiments.
Gym	P	
Art	C	Incomplete projects.
Music	C	Participation is sporadic.

Sally told her parents and teachers at the beginning of the school year that she was getting headaches. Several of her teachers have sent her to the nurse's office when she has experienced them in class, and the nurse's records indicate that she has accumulated 27 visits to the nurse since the beginning of this school year, all for headaches. The nurse's notes indicate that Sally has complained that the headaches interfere with her ability to concentrate in class. The nurse has given her aspirin, with the parents' permission, when Sally has requested it. According to your client, Sally's parents brought her to the family's pediatrician in October 2005, and again in January 2006. The pediatrician referred Sally to a neurologist. Sally's parents have made an appointment with a neurologist, however, the only neurologist who accepts her parents' health insurance policy has a six-month waiting list for an appointment.

On Monday, February 13, 2006, Sally's parents requested a special education evaluation in writing, hand delivering a letter to the special education director. The letter is attached (Attachment 3). The next week was February vacation, and Sally's headaches continued. The family returned from school vacation and, on Wednesday, March 1, 2006, Mrs. Spelling called Sally's guidance counselor. The guidance counselor contacted the special education director, and on March 20, 2006, the district sent a letter to the parents, seeking consent to conduct an evaluation. The special education director's cover letter and the consent form are attached (Attachments 4 and 5).

A. Advise your client as to how you think she should proceed in this matter. (40 % of this question.)

B. Advise your client as to how you think the BSEA will rule on this matter and why, including any and all substantive and procedural violations under federal and state education law suggested in the facts as presented to you by your client and the attachments. (60% of this question.)

3. You are a legislative aide to a state legislator in Massachusetts, who is a member of the legislative body's Education Committee. You have been asked by your employer to research and report back on the advisability of drafting and proposing a piece of legislation that an advocacy group has asked him to consider. Specifically, the group wishes to pass a state law which will make attorneys' fees available to parents who prevail in Bureau of Special Education matters through settlement agreements. The group wishes to amend Chapter 71B of the General Laws to permit parents to be awarded attorney's fees in cases where the parents' filing of a Bureau of Special Education Appeals hearing request or other lawsuit is found to be a catalyst for settlement or some other voluntary response on the part of a school district.

A. Please write an essay on the legal, moral, political and policy concerns that the proposal raises (including those that favor and oppose the proposal). Please reference materials from this course. (80% of this question.)

B. In the event the legislator decides to support the proposal, please draft a proposed amendment to Mass. General Laws Chapter 71B to address this concern. (20 % of this question.)

Attachment 1

Pat Principal
Whotown High School
78 North Street
Whotown, Massachusetts 00000

June 16, 2006

Mrs. James
123 Main Street
Whotown, MA 00000

Dear Mrs. James:

It has come to my attention that your son, Jesse James, was among several students who were in a car in the mall parking lot yesterday, and that he was arrested for possession of a handgun. We in the Whotown School District view this as a very serious offense. Jesse was given an opportunity to speak to me about this offense today in school. It is my understanding that he will be going to court to face charges next week.

Under Massachusetts General Laws, Jesse can be expelled for this offense by me. Pursuant to this law, I am expelling Jesse from school, effective immediately.

If you have any questions, please call me.

Sincerely,

Pat Principal

Attachment 2

Troy Teacher

-----Original Message-----

From: SpedChair, Sally
To: Teacher, Troy
Cc: Principal, Pat
Sent: 05/12/2006 10:57 AM
Subject: Jesse James

I agree with Pat. Let's wait until next year.

-----Original Message-----

From: Principal, Pat
To: Teacher, Troy
Cc: SpedChair, Sally
Sent: 05/11/2006 3:28 PM
Subject: Jesse James

Troy:

We have not given the instructional supports enough time to work. Let's wait another couple of months and see what happens.

Pat

-----Original Message-----

From: Teacher, Troy
To: Principal, Pat
Cc: SpedChair, Sally
Sent: 05/11/2006 3:04 PM
Subject: Jesse James

Dear Mr. Principal:

I do not feel that the instructional support in math and reading that the school has been providing to Jesse since November 2005 is working. He continues to get frustrated with the special education teacher who is running the reading groups in my classroom, and he is not making progress. I suspect that he may have a learning disability and I would like him to be evaluated to rule this out. His mother called me today as she is worried about his English grade; so am I. She agreed with me about a possible disability and asked me to forward this request to you.

Thank you.

Troy Teacher, 9th grade English teacher

Attachment 3

February 13, 2006
Delivered In Hand

Mrs. Director
Diamond School District

We are writing to request a special education evaluation for our daughter, Sally Spelling. She has been experiencing severe headaches in school, and teachers have been reporting to us that she does not pay attention in class and seems sullen and withdrawn. We see this behavior at home as well. This is new behavior for her, and her grades have been suffering. She has always been a "straight-A" student. We are afraid she might have neurological, attentional or psychological issues affecting her ability to make progress in school. She is also becoming very withdrawn, and no longer wants to see her friends after school. Her teacher told us that she has begun sitting by herself in class and in the lunchroom.

We therefore request a full special education evaluation in the areas of neurological, attention, and psychological, in order to determine if she has a disability. We also request counseling to address these new behavior issues.

Please contact us as soon as possible, and we will give whatever consent is required to ensure that these evaluations are completed in a timely manner.

Sincerely,

Mr. and Mrs. Spelling

Attachment 4

Debbie Director
Director of Special Education
Diamond District
123 Delaware Ave.
Diamond, MA 00001

March 20, 2006

Dear Mr. and Mrs. Spelling:

Enclosed please find the consent form for the requested special education evaluation. I realize you had asked for neurological and attentional testing. The school district does not employ a physician and is unable to conduct or fund this type of assessments. We would be happy to consider any outside recommendations you bring from your private physicians. Please simply provide this information to me before the Team meeting.

We will conduct a psychological evaluation as you requested, however, please be advised that the district does not provide psychological counseling at the middle school level, due to funding constraints.

Please sign and return the enclosed consent form so that we can conduct an educational assessment. The special education teacher for your daughter's grade will be in touch thereafter, to schedule a meeting. When the meeting is scheduled, I will attend the meeting along with the special education teacher. Let me know if you would like anyone else to attend.

Sincerely,

Debbie Director

Enclosure: Evaluation Consent Form

Re: Sally Student

Notice Date: 3/20/06

Diamond District

EVALUATION CONSENT FORM
Attachment to N 1

REC'D - DIAMOND DISTRICT 3/22

Table with 3 columns: Assessment Type, Recommended Yes, Recommended No. Rows include: Assessment in All Areas Related to the Suspected Disability(ies), Educational Assessment, Observation of the Student, Health Assessment, Psychological Assessment, Home Assessment.

PARENT RESPONSE SECTION

Please indicate your response by checking at least one (1) box and returning a signed copy to the school district. Please keep one copy for your records. Thank you.

- I accept the proposed evaluation in full.
I reject the proposed evaluation in full.
I accept the proposed evaluation in part and request that only the listed assessments be completed:

I additionally request the following assessment(s):
assessment(s) listed above:
other assessments: (specify)
neurological
attentional
psychological

Signature of Parent, Guardian, Educational Surrogate Parent, Student 18 and Over*
Date 3/20/06

*Required signature once a student reaches 18 unless there is a court appointed guardian.
Please contact me for consent for other assessments.

I'd also like to PARENT INPUT discuss the

We strongly encourage you to share your knowledge of this student with us. If you choose, please provide a written statement (use back of form) or call the indicated contact person. Thank you.

evaluators being used for all assessments of student

**Commonwealth of Massachusetts
Bureau of Special Education Appeals (BSEA)
350 Main Street, Malden, MA 02148
(781) 338-6400 (phone number)
(781) 338-3398 (fax number)**

Hearing Request Form

COMPLETE ALL ITEMS ON THIS FORM.

Description of the Appeals Hearing process: A Special Education Appeals Hearing is conducted in accordance with federal and state statutes as well as the BSEA Hearing Rules. The Hearing Officer may conduct a pre-hearing conference prior to the full hearing. The formal administrative hearing allows the parties to present their respective cases through witnesses who testify under oath and documents that are entered into evidence. Hearings can last from a single day to multiple days. The Hearing Officer issues a final written decision based upon the submitted evidence and legal arguments. A Hearing Decision may be appealed to federal or state court within ninety days of the issuance of the decision. Further explanation of the Appeals Hearing process as well as a copy of the BSEA Hearing Rules may be found at the BSEA's website: <http://www.doe.mass.edu/bsea>

THIS FORM MAY BE USED TO FILE A HEARING REQUEST FOR THE FIRST TIME OR TO AMEND A HEARING REQUEST THAT HAS BEEN PREVIOUSLY FILED.

Please indicate whether this is an Initial Hearing Request or an Amended Hearing Request.

Please check one: Initial Hearing Request: Amended Hearing Request:

I. Student Information:

- 1. Student's Name: Sally Student
- 2. Student's Address: 333 Diamond Drive, Diamond, MA
- 3. Student's School District: Diamond Public Schools
- 4. School Student Attends: Diamond Middle School

II. Person Requesting Hearing:

1. Name of Person Requesting Hearing: Sarah + Steven Student

2. Please check one:

- Parent
- Student (if 18 or older)
- School District
- Individual with whom the student lives and who is acting in place of parent
- Attorney for school
- Attorney for parent/student
- Advocate for parent/student
- Educational Surrogate Parent*
- Guardian*
- Person appointed by court to make educational decisions*

**must attach copy of appointment.*

3. Address: 333 Diamond Drive, Diamond, MA

4. Phone Number(s): Home: (617) 535-0000 Work: (617) 535-0001 FAX Number: (617) 535-0002

III. Representation Information (if any):

Please check one: Parent School

1. Name of Your Attorney or Advocate:

2. Address:

3. Phone Number: () -

FAX Number: () -

We do not yet have an attorney and will hopefully have one soon. We have an appointment with an attorney today.

IV. Parent Information -- please provide information for each parent (if not listed in part II, page 1):

1. Name of Parent(s):

2. Address:

3. Phone Number(s): Home: () -

Work: () -

FAX Number: () -

See Part II

V. Second Parent Information (if different from above):

1. Name of Parent(s):

2. Address:

3. Phone Number(s): Home: () -

Work: () -

FAX Number: () -

See Part II

NOTE: Federal law requires that you completely and accurately describe the reason(s) you are asking for a hearing and the outcome you are seeking. This includes a description of the student's special needs, all of the issue(s) you want the hearing officer to address, and the facts relating to those issues.

Failure to provide complete information may result in a challenge to the sufficiency of the Hearing Request.

VI. Description of the issue(s):

Please describe the student, the student's IEP or educational program, and the reason(s) you are requesting a hearing. Please be as complete as possible including dates, names, and places when appropriate. Please identify all the issues you want the hearing officer to address. **Incomplete information may limit the scope of the hearing.** (Use additional pages if needed.)

We are challenging the actions of the Diamond School District under state and federal special education laws, including, but not limited to, IDEA 2004, M.G.L. chapter 71B, and section 504, and their regulations.

IV (continued)

Our daughter Sally is a 7th grade student at Diamond Middle School. She has been struggling in school for the past year. Previously, she had been a "straight-A" student. We requested a special education evaluation in February, 2006, and nothing has happened. We twice requested specific assessments, and the district has not responded appropriately. The district has not completed any evaluations yet, has only given us a one-page letter and a consent form, and has not scheduled a team meeting. Our daughter is continuing to receive poor grades, and her mood and behavior are worsening.

VII Proposed Resolution:

Please require Diamond to:

- conduct an expedited and complete evaluation of Sally;
- provide an IEP;
- provide appropriate services, including counseling;
- pay attorney's fees & pay costs;
- provide compensatory services to Sally.

(Description of the issue(s) continued from Page 2)

VII. Proposed resolution of the problem:

Please explain what you want the result of the hearing to be. (Use additional pages if needed.)

see page 3 of 4

Sarah Student
Signature of Person Requesting Hearing
Steven Student ss.

May 31, 2006
Date

THIS FORM MUST BE SENT TO THE OPPOSING PARTY. AT THE SAME TIME, YOU MUST SEND A COPY OF THIS FORM TO THE BSEA. PLEASE SIGN BELOW TO CERTIFY THAT YOU ARE COMPLYING WITH THIS REQUIREMENT.

I certify that I am sending this hearing request form to the opposing party and, at the same time, I am sending a copy to the BSEA.

Sarah Student
Signature
Steven Student ss.

5/31/06