

**Special Education Law
Final Examination
Fall 2009
Massachusetts School of Law
Professor Michelle Griffin
December 12, 2009 - 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 the last four digits of your social security number/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").

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.

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: Robby 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: []

Re: 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.

- 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) 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 Suburbia public mls