

STUDENT <i>B/N/F</i>	§	BEFORE A SPECIAL EDUCATION
PARENTS,	§	
	§	
PETITIONER AND COUNTER-RESPONDENT,	§	
	§	
V.	§	HEARING OFFICER
	§	
NORTHSIDE INDEPENDENT	§	
SCHOOL DISTRICT,	§	
	§	
RESPONDENT AND COUNTER-PETITIONER.	§	FOR THE STATE OF TEXAS

**DECISION OF THE SPECIAL EDUCATION HEARING OFFICER**

**I.  
STATEMENT OF THE CASE**

Petitioner, Student *b/n/f* Parents (“Petitioner”), requested a Due Process Hearing pursuant to the Individuals With Disabilities Education Act (“IDEA”), 20 U.S.C. §1400 *et. seq.*, contending that Northside Independent School District (“Respondent” or “NISD” or “the District”) denied Petitioner a free, appropriate, public education (“FAPE”) when it failed in its “child find” obligations by not assessing or providing Petitioner with special education and related services in a timely manner. Petitioner requested that the Hearing Officer enter an Order requiring Respondent to: 1) pay for an independent educational evaluation (“IEE”); 2) place Petitioner in the \*\*\* grade; 3) provide compensatory education and related services; and 4) reimburse Petitioner’s parents for all outside educational costs. In response, NISD filed a counter-claim, seeking a finding that the District’s full and individual evaluation (“FIE”) of Petitioner was appropriate and thus, Petitioner was not entitled to an IEE at public expense.<sup>1</sup>

**II.  
PROCEDURAL HISTORY**

**A. DUE PROCESS SCHEDULING ISSUES**

On June 1, 2005, the Texas Education Agency (“TEA”) received Petitioner’s Request for Due Process Hearing and assigned the case Docket No. 336-SE-0605. On June 1, 2005, TEA assigned Docket No. 336-SE-0605 to the undersigned Hearing Officer. On June 2, 2005, the Hearing Officer notified the parties that the first prehearing telephone conference would be held on June 9, 2005, that the Due Process Hearing was

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<sup>1</sup> This case was filed prior to the effective date of the 2004 reauthorization of IDEA. Accordingly, all legal citations and applied law refer to authority in effect at the time of the filing in June 2005

scheduled for July 5, 2005, and that the Decision due date was July 16, 2005. Due to conflicting schedules the prehearing telephone conference was re-scheduled to June 15, 2005.

On June 15, 2005, the telephone conference convened as scheduled. In attendance were the following: 1) Mr. Matthew L. Finch, counsel for Petitioner; 2) Ms. Debra Liva, advocate for Petitioner; 3) Ms. Paula Maddox Roalson, counsel for Respondent; 4) Ms. \*\*\* Special Education Director; 5) Ms. \*\*\*, Area Special Education Coordinator; 6) the court reporter; and 7) the undersigned Hearing Officer. During the telephone conference the parties discussed the issues, re-scheduled the Due Process Hearing for July 25-26, and extended the Decision deadline to August 6, 2005.

Also during the telephone conference the parties discussed the status of Petitioner's FIE. Respondent requested that Petitioner's parents allow the District to perform an FIE; Petitioner's parents declined, arguing that Respondent waived its right to conduct the FIE when it failed over the years to assess Petitioner for special education services. The parties agreed to provide briefing on their positions and ruling on the request by the District was postponed.

The parties provided briefing on their respective FIE positions. On July 6, 2005, the undersigned Hearing Officer entered an order overriding Petitioner's lack of consent for the initial FIE. In that order the Hearing Officer informed the parties that a continuance of the July 25-26, 2005, Due Process Hearing would be granted if the grounds for the request were that the evaluations and ARD Committee meeting could not be accomplished in a timely manner prior to the scheduled hearing.

On July 12, 2005, the Respondent filed a Motion for Continuance of the July 25-26, 2005, Due Process Hearing to allow for the completion of Petitioner's FIE and the convening of an ARD Committee to discuss the results of the FIE prior to the Due Process Hearing. Over Petitioner's objection, the Hearing Officer found good cause for the continuance.

On July 26, 2005, the parties convened for a second prehearing telephone conference. In attendance were the following: 1) Mr. Finch; 2) Ms. Liva; 3) Ms. Roalson; 4) Ms. \*\*\*, Principal of \*\*\*; 5) Ms. \*\*\*, Area Special Education Coordinator; 6) the court reporter; and 7) the undersigned Hearing Officer. The parties discussed the status of Petitioner's testing and confirmed the re-scheduled deadlines: the Due Process Hearing would be September 1-2, 2005, with Disclosures due by August 25, 2005; the Decision deadline was extended to September 12, 2005.

On August 15, 2005, the District filed a second Motion for Continuance, this time related to the September 1-2, 2005, Due Process Hearing. Petitioner had just filed an Amended Complaint urging numerous non-IDEA claims against additional Respondents: TEA, District employees, and the District's Board of Trustees. NISD requested the

continuance to allow for the completion of Petitioner's evaluations and to allow the District to evaluate and respond to Petitioner's First Amended Complaint.

On August 24, 2005, the parties convened for a third prehearing telephone conference to discuss the continuance issue, the amended complaint, and the dismissal motions. In attendance were the following: 1) Mr. Finch; 2) Ms. Liva; 3) Ms. Roalson and 4) Mr. Elvin Houston, counsel for the District; 5) Ms. Joan Stewart, counsel for TEA; 6) the court reporter; and 7) the undersigned Hearing Officer. During this telephone conference, Petitioner agreed with the need for a continuance of the September 1-2, 2005, hearing. The parties discussed pending dispositive motions, responses thereto, and applicable deadlines. Per the agreement of the parties and Hearing Officer, the Due Process Hearing was re-scheduled for October 3-5, 2005; the Disclosure deadline became September 26, 2005; and the Decision deadline was extended to October 15, 2005.

On September 23, 2005, the parties filed a third continuance motion, a Joint Motion for Continuance. The parties convened for a fourth telephone conference on September 27, 2005. In attendance were the following: 1) Mr. Finch; 2) Ms. Liva; 3) Ms. Roalson; 4) Ms. \*\*\*; 5) the court reporter; and 6) the undersigned Hearing Officer. The parties agreed to re-schedule the Due Process Hearing for October 26-28, 2005; the Disclosure deadline became October 15, 2005, and the Decision deadline was extended to November 7, 2005.

**B. PETITIONER'S CLAIMS AGAINST NISD, DISTRICT EMPLOYEES, AND THE BOARD OF TRUSTEES**

Following the June 15, 2005, telephone conference, the undersigned issued an order setting forth the extended deadlines agreed upon by the parties and delineating the issues presented by Petitioner at that point in time.

On August 11, 2005, Petitioner filed its First Amended Complaint bringing additional claims and naming TEA, the District's Board of Trustees, and multiple employees of the District, both individually and in their official capacities. In this Complaint, Petitioner argued that TEA failed in its duty to ensure Petitioner's receipt of FAPE. Specifically, Petitioner argued that because TEA receives federal funds to provide special education services to eligible children, and as such, has the ultimate duty of monitoring school districts such as NISD, the District's failure to timely identify Petitioner's specific learning disability (dyslexia), call a meeting of her ADR Committee, and provide her with individualized services inures to TEA. Petitioner asserted that the NISD Board of Trustees and individuals named in the Amended Complaint knew, or should have known, that Petitioner qualified for special education services; that each individual had a duty under IDEA to identify Petitioner as a qualifying student and to provide her with an appropriate education; and that each named individual, as well as the District's Board of Trustees, negligently failed in this duty to provide Petitioner FAPE.

Also In its Amended Complaint, Petitioner re-urged her claims under Section 504 of the Rehabilitation Act of 1973 (“Section 504”), the Americans With Disabilities Act (“ADA”), the No Child Left Behind Act (“NCLB”), the Texas Education Code (“TEC”), and the Texas Administrative Code (“TEC”), which claims were first presented in Petitioner’s original Request For Due Process Hearing in June 2005.<sup>2</sup>

On August 19, 2005, the District filed its Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, requesting dismissal of all claims against the District’s Trustees and the individual employees, as well as all claims over which the Hearing Officer has no jurisdiction. Also on August 19, 2005, the District filed its counter-claim requesting that the Hearing Officer find that its FIE is appropriate and that Petitioner is not entitled to an IEE at public expense. On August 24, 2005, TEA filed its Motion and Amended Motion to Dismiss and Plea to the Jurisdiction.

On September 1, 2005, the undersigned issued the Second Order Granting Continuance and Fourth Order Scheduling Due Process Hearing, which set forth all briefing deadlines related to the dismissal motions. Originally, Petitioner was to file her Response to the two dismissal motions by September 7, 2005. Petitioner requested, and the Respondents did not object to, an extension of time to file her Responses to the two dismissal motions. In accordance with the extension granted, Petitioner filed her Responses to the two dismissal motions on September 24, 2005.

In its Motion, TEA argued that Petitioner’s claims against it are groundless in the following particulars: 1) the claims fail to state a cause of action upon which relief may be granted; 2) the claims are not ripe because there has been no finding that NISD failed to provide Petitioner FAPE and that NISD is unable or unwilling to provide such requisite FAPE to Petitioner; 3) Petitioner does not have standing to bring this claim against TEA because there is no actual on-going controversy between Petitioner and TEA; and 4) the relief requested of TEA is beyond the scope of this Hearing Officer’s jurisdiction.<sup>3</sup> Based upon the procedural and substantive posture of this case, the undersigned dismissed all claims lodged against TEA.

In its Motion, NISD argued that: 1) the Hearing Officer has no *in personam* jurisdiction over the individual Respondents; 2) the individual Respondents are not subject to suit in their official capacities; 3) the individual Respondents have qualified immunity from claims under IDEA; and 4) the individual Respondents have statutory immunity from state law claims sounding in tort. Finding that Petitioner’s claims against the Board, its members, and the other individuals mirrored the claims she alleged against

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<sup>2</sup> During the first telephone conference on June 15, 2005, Respondent objected to the inclusion of any claim that was not authorized under IDEA. No written ruling on that objection issued at that time.

<sup>3</sup> Petitioner requested that TEA be ordered to provide special education services to Petitioner; to conduct an on-site visit to analyze the District’s policies and procedures related to “child find”; to conduct an on-site visit to analyze the District’s dyslexia program; and to monitor NISD’s dyslexia program over the next three years.

the District, the undersigned dismissed the added Respondents on the ground that suing these individuals, in their official capacities, for acts performed within the scope of their authority, is equivalent to suing the District. Such redundancy mandated dismissal. *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S.Ct. 3099, 3205. 87 L.Ed.2d 114 (1985).

As to the claims against all in their individual capacities, they were dismissed for want of jurisdiction. Likewise, the undersigned dismissed with prejudice all non-IDEA claims under the ADA, Section 504, NCLB, and state tort law. 19 TAC §89.1151(a).

### **C. REMAINING DUE PROCESS ISSUES**

On September 21, 2005, the undersigned issued a final order setting forth the issues lodged by both sides. Petitioner's remaining issues against NISD were: 1) whether Petitioner qualifies for special education and related services; 2) whether Respondent failed to timely convene an ARD Committee and develop an appropriate program and placement within special education; and 3) whether Respondent failed to timely evaluate Petitioner for special education and related services. The relief requested, that was appropriate to the issues, was: 1) payment for an IEE; 2) placement of Petitioner in the fourth grade; 3) provision of appropriate compensatory education and related services; and 4) reimbursement for all outside educational costs.

By this point in time, Respondent had conducted its FIE, but Petitioner did not agree with it. Accordingly, Respondent's counter-claim remained viable: whether its FIE is appropriate.

### **D. THE DUE PROCESS HEARING**

On October 26, 2005, the Due Process Hearing convened at \*\*\* School, \*\*\*, San Antonio, Texas. The following were in attendance on October 26, 2005: 1) Mr. Finch; 2) Parent., Petitioner's mother; 3) Ms. Liva; 4) Ms. Roalson, 5) Mr. Houston, and 6) Mr. Robb Decker, counsel for the District; 7) Ms. \*\*\*; 8) Dr. \*\*\*, NISD psychologist; 9) the court reporter; and 10) the undersigned Hearing Officer.

Prior to taking testimony on October 26, 2005, Petitioner introduced one volume of documentary evidence and Respondent introduced two volumes. Petitioner called seven witnesses: 1) Ms. \*\*\*, Petitioner's tutor in fall 2004; 2) Ms. \*\*\*, a reading specialist who tutored Petitioner in Spring 2005; 3) Ms. \*\*\* Petitioner's \*\*\* grade teacher in school year 2002-2003; 4) Ms. \*\*\*, Petitioner's \*\*\* grade teacher in school year 2003-2004; 5) Mr. \*\*\*, Center Director of the \*\*\* in Alamo Heights; 6) Ms. \*\*\*, Petitioner's \*\*\* grade teacher in school year 2004-2005; and 7) Dr. \*\*\*, LSSP supervisor who tested Petitioner in July 2005.

The second day of Hearing convened on October 27, 2005. The following were in attendance throughout the October 27, 2005, Hearing: 1) Mr. Finch; 2) Parent.; 3) Ms. Liva; 4) Ms. Roalson, 5) Mr. Houston, 6) Mr. Decker; 7) Ms. \*\*\*; 8) Dr. \*\*\*; 9) the court

reporter; and 10) the undersigned Hearing Officer. Petitioner called three witnesses before resting: 1) Ms. \*\*\*, the District's elementary intervention specialist for interventions and dyslexia; 2) Ms. \*\*\*; and 3) parent. Respondent called four witnesses: Ms. \*\*\*, a speech and language pathologist for the District; 2) Dr. \*\*\*; 3) Ms. \*\*\* and 4) Ms. \*\*\*.

At the conclusion of the Hearing on October 27, 2005, the Hearing Officer requested that the parties file their post-hearing Briefs by November 23, 2005. The Decision deadline was extended to November 30, 2005. A transcript of the Hearing was provided to the parties.

### **III. FINDINGS OF FACT**

1. Petitioner is \*\*\* years old. She resides within the geographical boundaries of NISD. Prior to fall 2005, Petitioner attended school within the District starting with \*\*\* and ending with the \*\*\* grade in school year 2004-2005. Throughout her years at NISD, Petitioner never received special education services under the auspices of IDEA. Petitioner currently attends a public charter school pursuant to her parents' decision to withdraw her from NISD.
2. NISD is a political subdivision of the State of Texas and a duly incorporated independent school district.

#### **School Year 2002-2003: \*\*\* Grade**

3. At the end of \*\*\*, school year 2001-2002, Petitioner had mastered the District's standards for promotion from \*\*\* to \*\*\* grade. However, Petitioner's difficulty with reading became more obvious in the \*\*\* grade, requiring some general education interventions. By the end of her \*\*\* grade year, Petitioner had not met the standards in reading for promotion to \*\*\* grade, which required that she be reading at a \*\*\*-grade, \*\*\*-semester level. However, the decision was made to place her in \*\*\* grade.

### **School Year 2003-2004: \*\*\* Grade**

4. Petitioner continued to have difficulty in reading during school year 2003-2004. When she entered \*\*\* grade, she was reading one year below her peers: \*\*\*-grade, first-semester.
5. During this school year, the District assessed Petitioner, which revealed that she is below average intellectually and manifests characteristics of dyslexia. NISD referred her for early educational interventions through the District's CHILD program, as well as other general education interventions. At the conclusion of her \*\*\* grade year, Petitioner was still reading one year below her peers, but she had made one-year's progress in reading. Likewise, she had made progress in Language Arts.
6. At the conclusion of school year 2003-2004, Petitioner's CHILD committee considered retaining Petitioner in \*\*\* grade. The committee agreed to monitor Petitioner's performance in the District's summer STEP program and to defer a decision regarding her retention until the conclusion of the summer program. Petitioner made sufficient progress in the STEP program and her committee agreed to place her in the \*\*\* grade.

### **School Year 2004-2005: \*\*\* Grade**

7. In \*\*\* grade, Petitioner continued to struggle with reading. She initially tested at the \*\*\*-grade, first-semester level. Petitioner's CHILD committee discussed all available interventions for Petitioner, including a possible referral for Section 504 or special education services. The committee decided not to refer her for special education evaluation.
8. During the \*\*\* grade Petitioner received many general education interventions to target her deficits in reading. Petitioner also received private tutoring through \*\*\* and private tutoring with a NISD Reading Specialist.
9. In February 2005 Petitioner took the Texas Assessment of Knowledge and Skills ("TAKS") but failed to meet the mastery standard in reading. Petitioner took the TAKS two more times and never mastered reading. However, following intense interventions between the February and April 2005 TAKS, Petitioner's reading score improved. NISD recommended further intervention during summer 2005 via the District's acceleration program before the third and final administration of the TAKS in June; however, Petitioner's mother declined the services. Petitioner took the TAKS in June 2005 without benefit of the summer program. Her TAKS scores in reading showed regression from the April 2005 test. As such, NISD recommended that Petitioner be retained in \*\*\* grade, which Petitioner's mother contested.

10. Prior to the start of school year 2005-2006, Petitioner's \*\*\* grade year, Parent. withdrew Petitioner from NISD and enrolled her in a public charter school

**Petitioner's Assessments:**

11. NISD conducted Petitioner's FIE in summer 2005.<sup>4</sup> The FIE was comprehensive. All tests were given under standard procedures and in Petitioner's native language; all standardized tests were validated for the specific purpose for which they were used; and all tests were administered by trained personnel, who evidenced years of experience conducting assessments of children, who took into consideration Petitioner's cultural, linguistic, and socioeconomic characteristics and their impact on her learning.
12. Dr. \*\*\* concluded that Petitioner does not qualify as learning disabled because there was no significant discrepancy between Petitioner's intellect and her achievement. Dr. \*\*\*, who performed the speech language evaluations, determined that Petitioner does not have a speech/language or communication disorder. The Otology Group in San Antonio performed a medical/audiological evaluation. The University of Texas at Dallas Callier Center for Communication Disorders performed an auditory processing evaluation. Petitioner did not demonstrate an auditory processing disorder. Finally, psychological testing in July 2005 concluded that Petitioner does not suffer from attention issues.
13. Petitioner's ARD Committee convened on August 16, 2005, to review the results of the evaluations and to determine whether Petitioner qualified for special education and all required committee members were present. Each member had an opportunity for meaningful participation. Parent disagreed with the Committee's recommendation that Petitioner does not qualify for special education services. At the conclusion of that ARD Committee meeting, Parent requested an IEE at the District's expense. The District declined to pay for the IEE.
14. Prior to the Due Process Hearing, Petitioner failed to obtain an IEE.
15. Petitioner is a student with dyslexia. She is functioning intellectually at a below-average level. She does not manifest a severe discrepancy between her achievement and intellectual ability.
16. Petitioner is making slow but steady progress with the interventions of the District and parents. Petitioner does not currently manifest a need for special education.
17. The FIE performed by NISD is appropriate.

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<sup>4</sup> Petitioner presented herself for the evaluation pursuant to an order by the Hearing Officer overriding the parents' failure to consent to the FIE.

## IV. DISCUSSION

It is well-settled that school districts, which receive federal funding, must provide FAPE to its disabled students. 20 U.S.C. §1412(1) & 1414(d).<sup>5</sup> A disabled child is one whose disabilities fall under one or more of the eligibility categories and who, by reason thereof, needs special education and related services. 20 U.S.C. §1401(3)(A). In this due process proceeding, Petitioner had the burden of proving that she is a student who qualifies for special education and related services. She failed to do so.

### A. PETITIONER DOES NOT QUALIFY FOR SPECIAL EDUCATION SERVICES.

Petitioner alleges that her dyslexia is a learning disability that requires special education intervention. While dyslexia is a disability, it does not automatically qualify Petitioner for services under IDEA. In this case, Petitioner failed to prove that she is, in fact, learning disabled, as determined by IDEA and the federal and state implementing statutes.

A “specific learning disability” is a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. 34 C.F.R. §300.7(c)(10). In Texas, a student with a “specific learning disability” is one who has been determined by a multidisciplinary team to meet the criteria for specific learning disability as stated in the federal regulations and in whom the team has determined whether a severe discrepancy between achievement and intellectual ability exists in accordance with 34 C.F.R. §300.540-543. A severe discrepancy between achievement and intellectual ability exists when the student’s assessed intellectual ability is above the mentally retarded range, but the student’s assessed educational achievement in areas specified in 34 C.F.R. §300.541 is more than one standard deviation below the student’s intellectual ability. Tex. Admin. Code §89.1040(9)(A).<sup>6</sup>

There are multiple regulations attendant to evaluating students suspected of having a specific learning disability. 34 C.F.R. §300.530-543. The regulations require,

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<sup>5</sup> Simply put, the school district must comply with the procedural requirements of IDEA *and* design and implement a program that is “reasonably calculated” to provide the disabled student with educational benefits. *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175, 206-207 (1982).

<sup>6</sup> Part B of this section, referred to as “Method Two,” requires that if the multidisciplinary team cannot establish the existence of a severe discrepancy because of the lack of appropriate evaluation instruments, or if the student does not meet the criteria but the team believes a severe discrepancy exists, the team must document in its written report the areas identified and the basis for determining that the student has a severe discrepancy. The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement. 19 TAC §89.1040(c)(9). Part B is not applicable to this case because of the extensive, appropriate evaluations conducted by NISD.

*inter alia*, that the testing not discriminate on a racial or cultural basis. It must be given in the child's native language or other mode of communication. The assessors must use a variety of assessment tools and strategies. Standardized tests must have been validated for the specific purpose for which they are used and must be administered by trained and knowledgeable personnel

Next, eligibility must be determined by "the child's parents and a team of qualified professionals," which must include the child's regular teacher, or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age, and at least one person qualified to administer individual diagnostic examinations, such as a school psychologist, speech-language pathologist, or remedial reading teacher. The team must find a "severe discrepancy" in one or more of seven basic areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, and mathematics reasoning. A team member other than the teacher must observe the child in the regular classroom setting.

In the instant case, Petitioner was evaluated pursuant to these regulations. NISD conducted an FIE in summer 2005 pursuant to an order overriding the parents' lack of consent. The FIE included intellectual and achievement evaluations, a psychological evaluation, which addressed an attention issue, a speech/language evaluation, and assessments related to auditory processing disorder. The FIE was initiated on July 19, 2005, by Dr. \*\*\*, a supervising LSSP with NISD, who has worked with NISD for over ten (10) years and has evaluated thousands of students referred for special education testing. She has extensive experience in evaluating students suspected of having learning disabilities. Dr. \*\*\* utilized a variety of sources of data in her evaluation, including Petitioner's educational records, dyslexia testing, and information from Petitioner's parents, teachers, and Petitioner herself. Dr. \*\*\* administered numerous tests and standardized assessments, which were administered according to standard procedures; all standardized tests were validated for the specific purpose for which they were used. These tests clearly were administered by trained and knowledgeable personnel who took into consideration the Petitioner's cultural, linguistic, and socioeconomic characteristics and their impact on her learning. Further, Dr. \*\*\* psychological testing in July 2005 specifically looked at attentional problems and found none.

Dr. \*\*\* concluded that Petitioner does not meet specific eligibility criteria for special education services. Testing supports that Petitioner does not meet criteria as having a specific learning disability due to the lack of a significant discrepancy between Petitioner's intellect and achievement. Petitioner is working commensurate with her intellectual ability.

Ms. \*\*\*, a speech/language pathologist in NISD, conducted a speech/language evaluation in July. Ms. \*\*\* has evaluated hundreds of students for speech and language disorders. Ms. \*\*\*'s assessments were conducted using standard procedures for all tests administered; all standardized tests were validated for the specific purpose for which they were used. Ms. \*\*\* used formal sources of data for the speech/language evaluation. Petitioner was tested in the areas of both receptive and expressive language. Based on

the results of the speech/language evaluation, Ms. \*\*\* determined that Petitioner does not have a speech/language or communication disorder.

Petitioner received a medical/audiological evaluation from the Otology Group in San Antonio, as well as an auditory processing evaluation by the University of Texas at Dallas Callier Center for Communication Disorders. These assessments showed that Petitioner does not have an auditory processing disorder.

**B. RESPONDENT DID NOT VIOLATE PETITIONER'S PROCEDURAL RIGHTS UNDER IDEA.**

Petitioner's argument that Respondent committed procedural violations of IDEA is not correct. This argument presupposes that Petitioner qualifies for special education services, which she does not. What the record shows is a District working on multiple interventions over the years to help make Petitioner's educational experience successful. What the record does not show is a District complacently allowing Petitioner to fall further and further behind her peers.

When Petitioner again had difficulty in reading in the \*\*\* grade, school year 2003-2004, she was referred for early educational interventions through the District's CHILD process. The CHILD process provides consultative help to provide support to classroom teachers. Data is gathered regarding areas of need and student response to early general education intervention strategies. During 2003-2004, Petitioner's progress was monitored closely throughout the CHILD process.

The District provided Petitioner with numerous general education interventions during her \*\*\* grade year, including daily reading in small groups, instruction with the campus reading specialist, tutorials, and daily morning reading using select reading programs. At the conclusion of the 2003-2004 school year, Petitioner's CHILD team met to review her progress and decided to enroll her in the District's summer STEP program. The CHILD committee agreed that there was not a need for special education testing at that time. Petitioner's participation in the STEP program was successful and allowed her to move into the \*\*\* grade.

During \*\*\* grade, Petitioner received many general education interventions to target reading, such as small groups, phonics programs, content mastery, and tutorials. Her CHILD committee closely tracked her response to these interventions, which were found by the committee to adequately address her educational needs.

**C. RESPONDENT'S FIE WAS APPROPRIATE.**

By its counter-claim, Respondent seeks a finding that its FIE was appropriate. This filing is procedurally correct where, as here, a parent requests an IEE at public expense. 34 C.F.R. §300.502(b)(2). In response to Petitioner's Request for Due Process Hearing, Respondent requested permission to conduct an FIE. Petitioner declined this request. It took an order from the undersigned Hearing Officer to effect the requested evaluation. Upon receipt of the results of the evaluation and Petitioner's request for an IEE,

Respondent lodged its own counter-claim under Section 300.502. The assessment regulations were properly followed in evaluating Petitioner. See 34 C.F.R. §300.530-543. The FIE was appropriate and therefore, Respondent is not obligated to fund the IEE for Petitioner.

There is no dispute that Petitioner has some learning obstacles. She has an I. Q. that places her in the below average range. She has dyslexia. Either or both of these conditions will make learning a struggle for Petitioner. However, these struggles do not qualify her for special education services.

**V.  
CONCLUSIONS OF LAW**

1. Petitioner does not qualify for special education services as a student with a specific learning disability. 34 C.F.R. §500.530-543.
2. Respondent's FIE was appropriate, thereby denying Petitioner an IEE at public expense. 34 C.F.R. §300.502

**VI.  
ORDER**

Based upon the record of this proceeding and the foregoing Findings Of Fact and Conclusions Of Law, it is ORDERED that the relief requested by Petitioner is DENIED. It is further

ORDERED that the relief requested by Respondent is GRANTED.

Finding that the public welfare requires the immediate effect of this Decision, the Special Education Hearing Officer makes it effective immediately.

SIGNED this 30<sup>th</sup> day of November 2005.

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Deborah Heaton McElvaney  
Special Education Hearing Officer

07606/Decisionfinal

COPIES SENT TO:

Mr. Matthew L. Finch  
The Law Offices of Matthew L. Finch  
126 East Main Plaza  
San Antonio, Texas 78205  
*Counsel for Petitioner*

Ms. Paula Maddox Roalson  
Walsh, Anderson, Brown, Schulze &  
Anderson, P.C.  
100 N.E. Loop 410, #1000  
San Antonio, Texas 78216  
*Counsel for Respondent*

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**DECISION OF THE SPECIAL EDUCATION HEARING OFFICER**

*Student b/n/f Parents v. Northside ISD*

Docket No. 336-SE-0605

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**SYNOPSIS**

**ISSUE:** *Whether Student qualifies for special education as a student with a specific learning disability.*

**C.F.R. CITATION:** 34 C.F.R. §300.7(c)(10); 34 C.F.R. §300.540-543.

**HELD:** **For Respondent.** Student does not exhibit a severe discrepancy between achievement and intellectual ability, *i.e.*, her assessed intellectual ability is above the mentally retarded range and her assessed educational achievement is not more than one standard deviation below her intellectual ability.

**ISSUE:** *Whether Respondent's FIE was appropriate and timely.*

**C.F.R. CITATION:** 34 C.F.R. §300.530-543.

**HELD:** **For Respondent.** Respondent conducted appropriate evaluations specifically targeting learning disabilities, speech/language problems, auditory disorders, and attention deficits. Respondent conducted such evaluations pursuant to the operative regulations, *i.e.*, they were provided to Student in her native language; the testing did not discriminate on a racial or cultural basis; the assessors used a variety of assessment tools and strategies; standardized tests were validated for the specific purpose for which they were used and they were administered by trained and knowledgeable personnel.

Further, Respondent did not unduly delay seeking permission to perform an FIE. Respondent worked with Petitioner on multiple interventions over the years to help make Petitioner's educational experience successful; she was referred for early educational interventions through the District's CHILD process; Respondent provided daily reading small groups, instruction with the campus reading specialist, tutorials, and daily morning reading using select reading programs. Petitioner made steady progress through these interventions.