

---

# DOCKET NO. 242-SE-0606

---

B/N/F\*\*\*&\*\*\*

PETITIONER

vs.

SOCORRO INDEPENDENT

SCHOOL DISTRICT

RESPONDENT

BEFORE A SPECIAL EDUCATION  
HEARING OFFICER  
FOR THE STATE OF TEXAS

## DECISION OF THE HEARING OFFICER

### Statement of the Case

Petitioner student brings this appeal by his next friend, \*\*\*, pursuant to the Individuals with Disabilities Education Act 20 U.S.C. § 1400 et seq., (hereinafter referred to as "IDEA"), against Respondent Socorro Independent School District (hereinafter referred to as "Respondent" or "Socorro ISD"). Petitioner student by next friend \*\*\* (hereinafter referred to as "Petitioner" or "student") filed a written request for a due process hearing which was received by the Texas Education Agency on June 14, 2006. Petitioner was represented by Attorney Mark Berry of El Paso, Texas. Respondent was represented by Attorney Henry Hosford of the law firm Baskind & Hosford of El Paso, Texas.

All procedural matters have been conducted by agreement of the parties and in accordance with their schedules. A telephone prehearing conference was held on Wednesday, July 19, 2006, and a Prehearing Order was issued on Friday, July 21, 2006. Disclosure occurred on Monday, July 31, 2006, and the due process hearing was held on Tuesday, August 8, 2006 at \*\*\* School in Socorro

ISD. Petitioner and Respondent requested the opportunity to file written closing arguments and agreed that Respondent would file its brief on Monday, August 21, 2006 and Petitioner would file his brief on Monday, August 28, 2006. A Post Hearing Scheduling Order was issued on Tuesday, August 15, 2006 setting forth the agreed upon briefing scheduled and confirming the previously stated decision due date. All filings were due by 5:00 p.m. El Paso time.

Petitioner states that Respondent has deprived student of a free appropriate public education by failing to provide an Independent Educational Evaluation (“IEE”) by \*\*\*, and by failing to request a hearing in support of Respondent’s February, 2006 Full and Individual Evaluation. As relief in this due process hearing, Petitioner requests an IEE at Socorro ISD expense to be performed by\*\*\*, and a determination that Respondent’s failure to provide the IEE as requested by petitioner constituted a denial of Petitioner’s right to a free appropriate public education.

Respondent contends that it has not refused Petitioner’s request for an IEE, but has imposed reasonable and lawful qualifications for the person performing the IEE. Respondent also asserts that no violation of 34 C. F. R. §300.502 has occurred. Respondent maintains that Socorro ISD has provided Petitioner with a free appropriate public education, and that Petitioner’s request for an IEE will be honored in accordance with Respondent’s qualification requirements for persons conducting evaluations.

Based upon the evidence and the argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law.

### **Findings of Fact**

1. Student is a \*\*\* year-old male student who resides within the Socorro Independent School District.
2. Socorro ISD is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing student a free appropriate public education in accordance with the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400, et seq., and the rules and regulations promulgated pursuant to IDEA.

3. Student is eligible for special education placement, programs and services as a student who has hearing impairment and other health impairment (“OHI”).
4. On August 19, 2005, an Admission, Review, Dismissal (“ARD”) Committee met to consider student’s annual goals and the transition to high school. Student was scheduled to receive \*\*\* Grade Reading, English, Math, and Science in an inclusion class where both special education and general education students are taught. Student was scheduled to receive \*\*\* grade social studies, P. E., and two electives in a general education classroom. Following enrollment in\*\*\*, student was scheduled to receive English I, Algebra I, and Science/Biology in inclusion classes with both general education and special education students. Student was scheduled to receive Social Studies/World Geography, P. E., and two electives in the general education classroom. Student was also to receive 30 minutes per week in Content Mastery and AI itinerant services (monitoring) for nine (9) weeks.
5. At the request of student’s parent, a Full and Individual Evaluation (“FIE”) was completed and the report was issued on February 1, 2006 by \*\*\*, M. Ed., Educational Diagnostician. Mr. \*\*\* acknowledged that student is currently receiving special education services as a student with a hearing impairment and Other Health Impairment.
6. The February 1, 2006 FIE used information from an April 30, 2004 re-evaluation report, which stated that the student’s vision was normal with glasses, but that his hearing was not within normal limits. Student was reported to have a history of hearing impairment and ADD. However, student did not have one or more physical conditions which directly affected his ability to profit from the educational process, so adapted physical education was not indicated.
7. Mr. \*\*\* observed that student. is reported to have a significant health history that included a history of hearing impairment and attention deficit. However, Mr. \*\*\* concluded that student does not appear to have one or more physical conditions which directly affect his education and adapted physical education was not indicated.
8. Mr. \*\*\* noted that neither cultural nor lifestyle factors appeared to influence student’s learning and behavioral patterns, and that his sociological status did not indicate a lack of previous educational opportunities. Mr. \*\*\* also concluded that characteristics of student’s in-school and out-of-school behaviors did not appear to influence the student’s learning, educational placement and programming, or ability to follow the school’s disciplinary rules. It was noted, however, the student demonstrated attention deficit disorder.
9. Mr. \*\*\* administered the Universal Nonverbal Intelligence Test (“UNIT”) on February 1, 2006. Mr. \*\*\* noted that student. had the following UNIT scores:

<b>Universal Nonverbal Intelligence Test</b>	<b>Standard Score</b>	<b>Percentile Rank</b>	<b>Descriptive Classification</b>
Memory Quotient	***	***	low average
Reasoning Quotient	***	***	average
Symbolic Quotient	***	***	average
Nonsymbolic Quotient	***	***	average

Full Scale Intelligence Quotient	***	***	average
----------------------------------	-----	-----	---------

- 10.
11. Mr. \*\*\* concluded that student's functioning was in the average range.
12. Mr. \*\*\* reviewed student's scores on the Woodcock Johnson III Tests of Cognitive Abilities that was administered on April 30, 2004. At that time, student received the following scores on the Woodcock Johnson III Tests of Cognitive Abilities:

Cognitive Ability	Standard Score
Verbal Ability	***
Thinking Ability	***
Cognitive Ability	***
*GIA	***

- 13.
- Mr. \*\*\* reported that student's scores were compared to students with similar ages and/or grade placements for Reading, Math, and Language.
14. In administering the Woodcock Johnson III Tests of Achievement, Mr. \*\*\* reported \*\*\* scored as follows:

CLUSTER/Test	Age Equivalence	Grade Equivalence	Percentile Rank	Standard Score
Basic Reading Skills	***	***	***	***
Reading Comprehension	***	***	***	***
Math Calculation Skills	***	***	***	***
Math Reasoning	***	***	***	***
Written Expression	***	***	***	***
Academic Applications	***	***	***	***

- 15.
- Accordingly, Mr. \*\*\* concluded that student demonstrates significant \*\*\* areas of basic reading skills. However, he concluded that student's educational functioning is consistent with his intellectual or cognitive functioning; and that there was no severe discrepancy established between norm-referenced measures of educational performance and intellectual functioning.
16. Mr. \*\*\* noted student's assistive technology needs were considered based on his previously addressed competencies, and assistive technology devices and/or services were not recommended.

17. Mr. \*\*\* concluded that student appears to meet eligibility criteria as a student with a hearing impairment and an other health impairment. He recommended AH Consultative Services and special education services. He concluded that student does not qualify as learning disabled, though he acknowledged student has a \*\*\*. He recommended:

- o -inclusion classes;
- o content mastery support;
- o modified regular education classes; and
- o monitoring by an Auditory Impairment specialist

18. In an April, 2006 Dyslexia Profile, student was reported to have the following dyslexia assessments:

<b>Area Evaluated</b>	<b>Age Equiv.</b>	<b>Grade Equiv.</b>	<b>Percentile</b>	<b>Score</b>
Phonological Awareness	***	***	***	***
Phonological Memory	***	***	***	***
Rapid Naming	***	***	***	***
Letter Knowledge	***	***	***	***
Word Recognition (TOWRE)	***	***	***	***
Word Recognition (WRAT)	***	***	***	***
Decoding (TOWRE)	***	***	***	***
Decoding	***	***	***	***
Spelling	***	***	***	***
Calculations (Woodcock-Johnson III)	***	***	***	***
Applied Problems (Woodcock-Johnson III)	***	***	***	***
Rate (GORT)	***			
Accuracy (GORT)	***			
Fluency (GORT)	***			
Comprehension (GORT)	***			
Listening Comprehension (OWLS)	***			

19. Student's parent was not happy with the results of the February 1, 2006 FIE and requested an independent speech evaluation and speech services. On April 25, 2006, by letter to Ms. \*\*\*, Principal, \*\*\* school parent requested an independent educational evaluation ("IEE") and an independent speech language assessment at the school district's

- expense, and asked how to make those arrangements. The parent specifically requested \*\*\* perform the IEE.
20. On May 2, 2006, the parent sent a follow-up letter to \*\*\*, Principal, \*\*\* School, again requesting an independent evaluation and an independent speech language assessment at the school district's expense, and stated that the assessment should be completed as soon as possible. Again, the parent specifically requested \*\*\* perform the IEE. Based upon the parent's schedule, an ARD committee meeting could not be scheduled at a mutually convenient time until May 22, 2006.
  21. Student took the Texas State Developed Alternative Assessment for Reading in May, 2006. At the time of the test, student was enrolled in the \*\*\* grade. Student's ARD Committee expected student to score at the \*\*\* level on this test. Student actually scored at the \*\*\* level and met the TAKS Equivalency Standard.
  22. An ARD Committee meeting was convened on student's behalf on May 22, 2006. The purpose of the meeting was to perform an annual review of student's special education program, particularly to review student's dyslexia assessment and address parent concerns.
  23. On May 22, 2006, an Admission, Review, Dismissal ("ARD") committee convened to review a Dyslexia assessment and to address parent concerns. Before this meeting, the parent had requested an independent Full and Individual Evaluation ("FIE") and speech assessment.
  24. During the May 22, 2006 ARD meeting, a dyslexia specialist reviewed the dyslexia assessment and determined that the student qualified for and would need to receive dyslexia services starting during the next school year. Consequently, the parent would need to take the dyslexia paperwork and sign it before the student could receive said services, which were scheduled to begin the next school year.
  25. At the May 22, 2006 ARD meeting, the parent had concerns regarding the student's inclusion classes and the modification he is receiving. The class-

- within-class (“CWC”) teacher addressed those concerns and reviewed the modifications.
26. During the May 22, 2006 ARD meeting, the parent was not happy with the February 1, 2006 FIE and needed more information. One of the concerns the parent had was with the speech evaluation, and the parent wanted to know if the student needed speech services. \*\*\*, Associate Director for Special Education, explained the procedures for receiving Independent Speech and Educational Evaluations, and the committee was advised that the parent would take the student to an audiologist before these evaluations were complete.
  27. The May 22, 2006 ARD Committee discussed student’s excessive tardiness and absences. It was stressed that student needed to come to school every day or risk losing credit. The staff attending the May 22, 2006 ARD committee meeting advised the parent that the student needed to arrive at school on time and attend everyday because credit would be lost due to excessive absences and tardies.
  28. The parent chose not to sign the paperwork for the May 22, 2006 ARD meeting even though there was no ten (10) day recess, but the parent was not disagreeing.
  29. On June 5, 2006, the parent received a letter from \*\*\*, Socorro ISD Associate Director for Special Education listing diagnosticians and speech therapists who were available to do independent assessments for student , and also included the district regulations in regards to the requirements for independent evaluators. The letter outlined that the parent would have to (1) contact \*\*\* regarding the assessor to set up a contract; (2) schedule an appointment with the assessor; and ( 3) discuss the results of the assessor at an ARD meeting held at the school.
  30. After considering Ms. \*\*\* response to the parent request for an IEE to be provided by \*\*\*, Petitioner filed this request for due process hearing on August 21, 2006, without further response to Socorro ISD.

31. Requirements for independent examiners for IEEs at Socorro ISD's expense are included in the September 23, 2004 regulations approved by Dr. \*\*\*, Superintendent and are referred to as EHBAD. Under EHBAD:
- Parents are free to select whomever they choose to perform the IEE so long as the evaluator meets the District's criteria.
  - The evaluator conducting an IEE of a child with a disability at public expense must be located within a 100-mile radius of the District. \
  - Evaluators must possess current licensure/certification in the State of Texas to conduct evaluation
32. \*\*\* received two Bachelor of Arts degrees in Special Education and Elementary Education and has worked in Las Cruces public school from 1971 through 1996, first as a teacher, and then, after receiving her educational diagnostician's license, as an educational diagnostician. She has been licensed as an educational diagnostician by the New Mexico Department of Education since 1989. \*\*\* went into private practice as the owner of \*\*\* Educational Diagnostics, specializing in diagnosis of dyslexia.
33. \*\*\* has never been licensed by the State of Texas as an educational diagnostician or any other type of license, including teacher, or LSSP. \*\*\* has, however, worked with school districts in the El Paso area and lives within 45 miles of El Paso. \*\*\* has stated that she has never needed a Texas license to administer the diagnostic tests she uses, including the Woodcock-Johnson III, where use of the test is restricted to qualified professionals.
34. Ms. \*\*\* provided IEEs to Socorro ISD in January, 2004, before the September, 2004 adoption of EHBAD. When Socorro ISD personnel contacted Ms. \*\*\* regarding the IEE for E. M., they learned she was not licensed in Texas and confirmed her lack of a Texas license before concluding that she could not provide an IEE for \*\*\*.

## **Discussion**

This case presents a limited issue regarding a school district's response to a request for an IEE. Despite the fact that Respondent Socorro ISD performed extensive testing of student in all areas of the student's suspected disabilities, Respondent has not opposed Petitioner's request for an IEE. Respondent has agreed to allow the IEE in accordance with its regulations regarding providing such evaluations. Nonetheless, Petitioner asserts that Respondent has refused an IEE because Respondent has not allowed the IEE to be performed by\*\*\*, Petitioner's only choice of evaluator, and has limited Petitioner's choice of examiners to those eligible under extant Superintendent rules which specify that

persons performing IEEs must be certified in the State of Texas. Respondent's specified qualifications would not allow Petitioner's IEE to be performed by \*\*\*. Federal regulations implementing the IDEIA requirement that parents be made aware of the procedural safeguard of in IEE, 20 U. S. C. §1415 (d)(2) state in 34 C. F. R. § 300.502:

(a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) thorough (e) of this section.

(2) Each public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluations as set forth paragraph (e) of this section.

\* \* \*

(e) Agency criteria. (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parents' right to an independent educational evaluation.

Accordingly, Respondent is authorized to specify the criteria for the independent evaluator and is limited in those specifications to the extent that Respondent cannot impose any criteria on the independent evaluator which are inconsistent with Respondent's own evaluator criteria or are inconsistent with Petitioner's right to an IEE.

Petitioner does not deny that Respondent is entitled to establish reasonable qualifications for evaluators, and also does not deny that there are evaluators available which meet the criteria. Instead, Petitioner insists on one evaluator, and one evaluator only. Petitioner's argument that Texas licensure is not essential or is arbitrary and capricious lacks merit, considering that the Texas Education Agency, like Socorro Independent School District is responsible for administering IDEIA in Texas. It is not unreasonable or arbitrary, as Petitioner suggests, that special education personnel in Texas be licensed in Texas, in order to hold the educational diagnosticians responsible for Texas regulations and the Texas Education Code. Texas Education Agency specifically requires all special education, related service, and paraprofessional personnel to be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.23 and §300.136; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials. See, 19 T. A. C. §89.1131.

Petitioner states, and Respondent's witnesses did not refute, that there are no evaluators who meet Respondent's criteria who are not affiliated with any of the school districts in the El Paso area. Petitioner offered no evidence supporting the suggestion that available evaluators who met Respondent's qualifications could not provide an independent evaluation for student. . Petitioner's contention that only one person could perform the IEE was unreasonably narrow, and the contention that the requirement that the requirement for a Texas license is arbitrary and capricious goes against the IDEIA rules which specifically allow school districts to establish standards for evaluators. Petitioner has not met its burden of establishing that it was denied an IEE upon request, in violation of IDEIA. Therefore, because Respondent has not refused Petitioner an IEE, but only limited the choice of evaluators as specifically allowed under IDEIA regulations. Consequently, Respondent cannot be found in violation of 34 C. F. R. §300.502 (b) (2), which requires that a public agency must request a hearing in support of its FIE or ensure that the IEE is provided.

## **Conclusions of Law**

1. Petitioner student is a student in Socorro ISD who is eligible for special education services based on his classification as a student who is hearing impaired and other health impaired. 20 U.S.C.A. § 1401(3); 34 C. F. R. § 300.7; 19 T. A. C. § 89.1040.
2. Respondent Socorro ISD has a responsibility to provide student with a free appropriate public education. 20 U.S.C.A. § 1414; 34 C. F. R. §300.300; 19 T. A. C.§ 89.1001.
3. Petitioner did not prove that Respondent deprived Petitioner of a free appropriate public education by requiring persons performing an independent educational evaluation to be licensed in Texas, and therefore not allowing an IEE for a Socorro ISD student to be performed by an individual licensed in New Mexico. 20 U. S. C. 1415 (d)(2), 34 C. F. R. §300.502.

## **Order**

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner is DENIED.

Further, Respondent has been found not to have violated IDEIA, pursuant to implementing regulations regarding Independent Educational Evaluations at 34 C. F. R. §300.502.

SIGNED this 14th day of September, 2006.

Gwendolyn Hill Webb  
Special Education Hearing Officer

---

# DOCKET NO. 242-SE-0606

B/N/F\*\*\*&\*\*\*

PETITIONER

vs. BEFORE A SPECIAL EDUCATION  
HEARING OFFICER

SOCORRO INDEPENDENT FOR THE STATE OF TEXAS

SCHOOL DISTRICT

RESPONDENT

## SYNOPSIS OF DECISION

**ISSUE:** Did Respondent school district deprive Petitioner of an individual educational evaluation, and therefore FAPE, when Respondent imposed a requirement on evaluators, both school district and independent, that they be licensed in Texas.

**CITATION:** 20 U.S.C.A. §1415(D)(2) ;34 CFR §§ 300.502; and 19 T. A. C. §89.1131

**HELD:** Requirement that evaluators be licensed in Texas was reasonable and was not arbitrary and capricious and did not serve to deprive Petitioner of either an independent educational evaluation or a free appropriate public education.