

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT. bnf
PARENT,
 Petitioner,**

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v.

DOCKET NO. 193-SE-0410

**HUMBLE INDEPENDENT
SCHOOL DISTRICT,
 Respondent.**

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, Student (“Petitioner” or “Student”) brings this action against the Respondent Humble Independent School District (“Respondent,” “the school district,” or, “HISD”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq (IDEA) and its implementing state and federal regulations.

Party Representatives

Student has been represented throughout this litigation by her legal counsel Michael O’Dell, Attorney at Law. The school district has been represented throughout this litigation by its legal counsel Janet Horton and her co-counsel Sarah Young with the law firm of Thompson & Horton.

Resolution Session and Mediation

The parties met in a Resolution Session on April 19, 2010 but were not able to reach a mutually agreeable settlement. Both parties declined the opportunity to attempt mediation as an alternative form of dispute resolution in this case.

Procedural History

Petitioner filed her request for hearing on April 2, 2010. An initial Scheduling Order was issued on April 5, 2010. The case was set for hearing on May 25-26, 2010. A prehearing conference was conducted on May 3, 2010 with counsel for both parties. After a discussion with counsel limiting the legal issues, both parties proposed resolving this case on the basis of cross motions for summary judgment without the necessity of conducting an evidentiary hearing.

A mutually agreeable timeline for the submission of summary judgment pleadings was confirmed during the prehearing conference and again by subsequent written order issued by the hearing officer on May 4, 2010. The Decision of the Hearing Officer was extended to July 16, 2010. Both parties submitted cross motions for summary judgment and responsive pleadings in a timely manner. The relevant pleadings are as follows: Petitioner’s Motion for Summary Judgment

(referred to hereafter as “P. MSJ”); Respondent’s Motion for Summary Judgment (referred to hereafter as “R. MSJ”); Petitioner’s Response to Respondent’s Motion for Summary Judgment (referred to hereafter as “P. Response”); and Respondent’s Response to Petitioner’s Motion for Summary Judgment (referred to hereafter as “R. Response”).

Issue

The sole issue in this case is whether Petitioner’s choice of an evaluator is qualified to conduct an agreed upon Independent Educational Evaluation (IEE) for reading under the IDEA or whether Respondent may apply criteria to the selection of an IEE evaluator that Petitioner’s choice does not meet.

Relief Requested

Petitioner seeks a ruling that she has the legal right under IDEA to an IEE performed by an evaluator of her choice. Petitioner also seeks attorney’s fees. Petitioner withdrew all other issues and requests for relief otherwise stated in her initial request for a due process hearing during the May 3, 2010 prehearing telephone conference.

Respondent seeks a ruling that it has the legal right under IDEA to limit an IEE at public expense to those evaluators who meet the school district’s guidelines and criteria. Respondent requests a finding that Petitioner’s choice of evaluator for the agreed upon IEE does not meet district criteria and that Petitioner must select another evaluator who does meet school district criteria for an IEE at public expense.

FINDINGS OF FACT

1. Student is *** years old and eligible for special education services from HISD as a student with autism, a speech impairment and as a student with other health impairment. Student was in the *** grade at *** School this past school year. There is no dispute about her overall eligibility for special education services from HISD. (Transcript, Prehearing Telephone Conference pp. 6, 8)(May 5, 2010)(P. MSJ)(R. MSJ)(R. MSJ Exhibit K)(referred to hereafter as “R. MSJ Ex. ____”).
2. Student demonstrates difficulty in reading, especially reading fluency. The school district conducted a number of assessments this past school year, including a reading assessment. Student initially resisted school district efforts to conduct the reading assessment although it was ultimately completed after several attempts. The school district used the Gray Oral Reading Test. The results showed Student met grade equivalent reading skills at the *** grade level with a fluency rate in the *** percentile and comprehension at the *** percentile. (R. MSJ Ex. A and M).
3. An ARD meeting was held on February 3, 2010. Student’s mother attended the ARD

- assisted by a parent advocate. The advocate, on behalf of Student's mother, stated parental disagreement with the results of the school district's reading evaluation and proposed there was a need to "go deeper" into Student's reading problems. The advocate submitted a "formal request" for an independent educational evaluation (IEE) to address Student's reading difficulties, determine her reading issues, and to make instructional recommendations. (R. MSJ Ex. A and B).
4. School personnel expressed some concerns about the need for a reading IEE. The reading teacher wondered whether it was necessary given that the ARD already had information about Student's reading deficits. School personnel felt those needs were being addressed in her IEP. The advocate stated his belief that Student would qualify as a student with a learning disability. School personnel suggested Student's reading issues were related to her autism and speech impairment. The school district proposed conducting a "deeper" reading assessment with qualified school district reading specialists. The advocate declined to debate the issue and restated the parental request for the IEE. The purpose of the IEE was to gain more information about Student's ability to read given the "life limiting" nature of a reading deficit. (R. MSJ Ex. A and B).
 5. School personnel expressed concerns about assessing Student given her resistance to the school district's own reading assessment. School personnel stated that any evaluator should be aware of Student's testing needs and that her performance could be affected by the testing situation. At the ARD the school district told Student's mother that the request for an IEE would be considered and she would be contacted with the school district's decision. (R. MSJ Ex. A and B)
 6. On February 18, 2010 the school district sent a letter to Student's mother agreeing to fund an IEE for reading. The letter also included school district IEE guidelines and criteria, a copy of procedural safeguards, and a list of "previously screened" qualified individuals who met the criteria. The list included seven psycho-educational professionals. All held Ph.D. degrees. Instructions to facilitate the IEE were also included in the February 18th letter. The letter stated that if Student's parents chose an evaluator who was not on the list they would need to provide the evaluator's credentials to the school district for approval. (R. MSJ Ex. C). Three of the psychologists were later removed from the February 18th list because they were not LSSP's. Two of the three also previously provided psychological consultations to the school district. (R. Response, Affidavit of ***).
 7. On March 2, 2010 Student's mother submitted a request that the IEE be conducted by Dr. ***. A copy of Dr. ***'s vitae was attached to the request. (P. MSJ, Affidavit of ***)(R. MSJ Ex. E)(R. Response, Affidavit of ***). Dr. *** is an Associate Professor in the Department of Pediatrics, Division of Developmental Pediatrics - Children's Institute at The University of Texas Medical School in Houston. Dr. *** has a B.A. in

- psychology, an M.A. in psychological counseling and a Ph.D. in counseling psychology. He is a licensed clinical psychologist through the Texas State Board of Examiners of Psychologists. (P. MSJ, Dr. *** Vitae - April 2010; (R. MSJ Ex. E).
8. Dr. *** has an extensive resume and a wide range of experience and expertise. His current clinical responsibilities include conducting neuropsychological assessments of infants and children from ages 18 months up to 18 years old two days per week. He also coordinates staff, supervises clinicians, sees patients, and oversees the entire scope of services for a weekly clinic at Children’s Protective Services, including the evaluation of infants going into foster care. He has some experience and conducted research in the area of reading assessment and learning disabilities. Dr. *** is not an LSSP and was not on the February 18th list of pre-approved qualified IEE examiners. (P. MSJ, Dr. *** Vitae – April 2010) (R. MSJ Ex. D and E).
 9. The school district reviewed Dr. ***’s vitae and contacted him by phone. Dr. *** confirmed that he is not an LSSP. On March 5, 2010 the school district sent a second letter to Student’s mother denying the parental request that Dr. *** conduct the IEE. The rationale for the school district’s decision was that Dr. *** was not a “qualified” examiner because he was not a licensed LSSP or certified educational diagnostician or a reading specialist for purposes of the reading IEE. The rationale for those credentials was to ensure familiarity with the school setting and that recommendations would be relevant to the school environment. The school district requested Student’s parents submit another “appropriately credentialed evaluator” or select one from the February 18th list. (R. MSJ Ex. G).
 10. Student’s mother began to make inquiries of the evaluators on the February 18th list. One of the evaluators told her although he was an LSSP he was not trained or qualified to conduct an IEE in the area of reading. Another stated that he was not an LSSP nor did he conduct IEEs. Student’s mother believes Dr. *** is imminently qualified to conduct the requested IEE. She is concerned with the list of school district approved examiners because in her view persons familiar with the school environment have failed to evaluate Student’s reading problems accurately or to provide recommendations for the use of peer reviewed research based reading programs. (P. MSJ, Affidavit of ***).
 11. Petitioner filed her request for hearing on April 2, 2010. A Resolution Session was conducted on April 19, 2010 as a step in the litigation process. The school district reviewed its licensure and certification requirements for the IEE examiner. The school district provided Student’s mother with a second very extensive list of approved IEE examiners in the relevant geographic area. The list did not include contact information – only a list of names organized geographically which Student’s mother did not find particularly helpful. The school district marked the LSSPs on the list who are HISD employees and thus not allowed to conduct the IEE. The meeting ended in disagreement. (P. MSJ, Affidavit of ***)(R. MSJ Ex. I, J and M). Student’s mother

again made inquiries of some of the persons on the April 2nd list. Of the two she was able to contact one only performed IQ and achievement testing and the other was semi-retired. (P. MSJ, Affidavit of ***).

12. Although the school district initially interpreted the IEE request to be for a reading assessment school personnel subsequently concluded (based on ARD deliberations and Resolution Session discussions) that the IEE request was to determine eligibility for special education as a student with a learning disability (LD). The school district noted its criteria is supported by state regulation which requires a multidisciplinary team make the LD eligibility determination. The team must include a LSSP, an educational diagnostician, or, another appropriately certified person with experience and training in learning disabilities. The school district views qualifications as synonymous with credentials. A person who does not have the credential of LSSP or educational diagnostician is not qualified to perform an IEE for LD eligibility because those credentials are what the school district itself requires when it conducts such an evaluation. (R. MSJ Ex. I, J, M, and N) (R. Response, Affidavit of ***).
13. The rationale for the school district's criteria is that those professionals, by virtue of their experience and training, are specially qualified to interpret test results and formulate diagnostic conclusions in the context of IDEA eligibility and to make recommendations for appropriate special education services for delivery within the unique environment of the public school. (R. MSJ Ex. M). The school district does not limit parental choice of an IEE evaluator to the persons on the two lists provided to Student's mother but it does insist the evaluator hold the requisite credentials. (R. MSJ. Ex. C, F, G).

DISCUSSION

Statute of Limitations

In its Response to Petitioner's initial request for a due process hearing and during the May 3, 2010 prehearing telephone conference Respondent raised the question as to whether the one year statute of limitations rule applied in Texas limits Petitioner's claim. *19 Tex. Admin. Code § 89.1151(c)*. The record on file confirms Petitioner's claim arose within the requisite one year limitations period. (Transcript, Prehearing Conference, May 3, 2010, p. 13).

Attorney's Fees

Petitioner requests an award of attorney's fees as an item of relief in this case. In Texas a special education hearing officer does not have the authority to make such an award. However, a prevailing party in a special education hearing may submit a request for attorney's fees to a court of competent jurisdiction. The court, in its discretion, may then award reasonable attorney's fees based upon the prevailing community hourly rate. *34 C.F.R. § 300.517*. Therefore, because I have

no authority to make an award of attorney's fees I make no finding or conclusion of law with regard to that item of requested relief. Should Petitioner prevail she is entitled to seek the award from the appropriate forum. *Id.*

Summary Judgment Standards

The Texas Rules of Civil Procedure govern the proceedings of the due process hearing except to the extent they are modified or otherwise limited by the provisions of the relevant federal and state special education regulations. *19 Tex. Admin. Code § 89.1185 (d)*. Therefore, in considering the relative merits of the submission of the parties' cross motions for summary judgment I look to the Texas Rules of Civil Procedure for guidance in application of appropriate summary judgment standards.

A party seeking to recover upon a claim may at any time after the adverse party has appeared or answered move for summary judgment with or without supporting affidavits. A party against whom a claim is asserted may, at any time, move for summary judgment with or without supporting affidavits. *Tex. R. Civ. P. 166a (a) (b)*. Summary judgment may be granted if the record on file in the case, including any summary judgment evidence, establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion, answer, or other response. Summary judgment may be based on uncontroverted testimonial evidence of an interested witness if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies and could have been readily controverted. *Tex. R. Civ. P. 166a (c)*.

Petitioner's Argument

Student contends that she is entitled to summary judgment under IDEA to select a qualified independent evaluator of parental choice to conduct an agreed upon independent educational evaluation even if the evaluator does not have the precise credentials (i.e., licenses or certifications) stated in school district IEE criteria.

Respondent's Argument

The school district contends that Student's parents are not entitled under IDEA to simply select whoever they choose to conduct an agreed upon independent educational evaluation at public expense. Instead, the school district argues it is entitled to summary judgment that requires Student's parents to select an independent evaluator who meets school district criteria -- including the specific credentials required by the school district of its own staff in conducting the same type of evaluation contemplated by the agreed upon IEE.

Seminal Issue

There is no factual dispute with regard to the material fact that Dr. *** does not hold the credentials required by the school district's criteria for an IEE at public expense. The question posed by the cross motions for summary judgment is whether the school district's criteria is inconsistent with the parental right to an IEE as a matter of law under IDEA.

Parental Right to an IEE

The parents of a child with a disability have the right to obtain an IEE if the parent disagrees with an evaluation conducted by the school district. *34 C.F.R. §§ 300.502 (a) (1) (b) (1)*. An IEE is an evaluation conducted by a "qualified examiner." However, the IEE examiner cannot be employed by the school district where the child is being educated. *34 C.F.R. § 300.502 (a) (3) (i)*. An IEE "at public expense" means that the school district either pays for the full cost of the IEE or ensures that the IEE is otherwise provided at no cost to the parent. *34 C.F.R. § 300.502 (a) (3) (ii)*; *See also, 34 C.F.R. § 300.103*.

School District Choice

Once a parent requests an IEE the school district must either agree to the request and ensure the IEE is provided or file a request for a due process hearing to show its own evaluation was appropriate. Either of those steps must be taken "without unnecessary delay." *Red Clay Cons. Sch. Dist., 108 LRP 52265 (SEA Del. 2005)(parent entitled to reimbursement for IEE at private expense where school district failed to seek due process hearing or pay for IEE after 4 months)*; *34 C.F.R. § 300.501 (b)(2)(i)(ii)*. *But see, Letter to Wessels, 16 IDELR 735 (OSEP 1990)(school district not required to immediately file for hearing after a parental request for IEE but may wait until IEE is completed)*.

Duty to Provide Parent Information

When a parent requests an IEE the school district must provide the parent with information about where the IEE may be obtained as well as school district IEE criteria. *34 C.F.R. § 300.502 (a) (2)*. *See, Letter to Bluhm, 211 IDELR 227A, 211 LRP 7086 (OSEP 1980) (a school district may explain its IEE criteria to a parent via mail or in person)*. Maintaining a list of qualified examiners is one way a school district may provide parents with information on how and where to obtain an IEE. The school district may restrict parental selection of the examiner to the persons on the list if the child's needs can be appropriately evaluated by the persons on the list *and* the list exhausts the availability of qualified persons within the specified geographic area. However, if the list does *not* exhaust the number of minimally-qualified persons, parents are free to select an examiner so long as the evaluator meets other school district criteria. *Letter to Parker, 41 IDELR 155 (OSERS 2004) (not inconsistent with IDEA for school district to publish list of names and addresses of evaluators that meet agency criteria including reasonable cost criteria)*.

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Parent's Choice

When the parties disagree with the parent's choice of an IEE evaluator the parent has a choice: to select another evaluator who meets school district criteria or proceed with the selected evaluator and then seek reimbursement of the cost of the IEE through the hearing process. *See, Evans v. Dist. No. 17 of Douglas Cnty., 841 F. 2d 824, 830(8th Cir. 1988)(parent entitled to reimbursement for IEE where school district failed to initiate request for due process hearing to show its own evaluation was appropriate). See also, D.H. v. Manheim Twnshp., 2005 U.S. Dist. LEXIS 39756 (D.C. Pa. 2005)(parent's refusal to provide consent for school district's re-evaluation resulted in denial of claim for reimbursement of IEE).*

Purpose and Rationale for Evaluation

The cornerstone of the IDEA is the Individual Educational Plan (IEP) and the collaborative, cooperative educational planning and decision making of its design by both parents and school personnel. *20 U.S.C. §1412 (a)(4); 34 C.F.R. §§ 300.112, 300.320-300.322; Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206 (1982).* In Texas this educational planning is the responsibility of the Admission, Review & Dismissal Committee (ARD). *19 Tex. Admin. Code § 89.1050 (a).* The foundation for the design of the IEP is evaluation and assessment data. Valid and comprehensive evaluation results are required to identify and describe the child's unique educational needs and thus guide the ARD in the design of the IEP and provision of special education and related services. *34 C.F.R. § 300.324 (a).*

Evaluation data also guides the parties and the hearing officer in resolving disputes over the nature, scope and/or appropriate and effective means of meeting the child's unique needs. School districts have a "natural advantage" in information and expertise. Congress recognized that advantage by establishing a set of procedural rights for parents under the IDEA including the right to an IEE. With the IEE provisions parents have access to an expert who is able to evaluate all the information the school district must make available and provide parents with an independent opinion. Under IDEA parents "... are not left to challenge [the school district] without a realistic opportunity to access the necessary evidence or without an expert with the firepower to match the opposition." *Schaffer v. Weast, 566 U.S. 49, 60-61 (2005).*

Limitations on Right to an IEE at Public Expense

However, the parental right to an IEE is not unlimited. A school district may ask the parent's reason for the IEE request but may not require the explanation. *34 C.F.R. § 300.502 (b)(4); Letter to Anonymous, 21 IDELR 1185 9 (OSEP 1994) (Texas school districts must respond to parental request for an IEE without undue delay and within a reasonable amount of time but not take so long as to essentially eliminate parent's right to an IEE).* A parent is entitled to only one IEE at public expense each time the school district conducts an evaluation upon which the parent disagrees. *34 C.F.R. § 300.502 (b)(5).* Furthermore, a school district may impose certain criteria on an IEE at public expense. *34 C.F.R. § 300.502 (e).*

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School District's Criteria

School district criteria may include both the location and qualifications of the examiner. However, the criteria must be the same as the criteria the school district itself uses when it initiates an evaluation and be consistent with the parental right to the IEE. *34 C.F.R. § 300.502 (e)*. For example, school district criteria placing limits on the total cost of an IEE have been upheld in Texas. *Letter to Kirby, 213 IDELR 233 (OSEP 1989); Tolar Ind. Sch. Dist., 22 IDELR 174 (SEA Tex. 1994); Tatum Ind. Sch. Dist., 21 IDELR 206 (SEA Tex. 1994)*.

The issue in this case is not whether Dr. *** is qualified to administer an IEE (whether it is for reading fluency or whether a broader inquiry to determine eligibility as a student with a learning disability) but instead whether the school district's criteria that restricts an IEE at public expense to an examiner who holds a specific licensure and/or certification violates the parental right to an IEE under IDEA.

Policy Interpretations

The Department of Education Office of Special Education Programs (OSEP) within the Office of Special Education and Rehabilitative Services (OSERS) is the federal agency charged with issuing regulations that implement the IDEA and policy letters that interpret the statute and those regulations. *20 U.S.C. §§ 1402, 1406 (a)(e)(f)*. Specifying criteria for providing psychological services in the public schools was interpreted by OSEP to be consistent with Texas's responsibility under IDEA to ensure there is an adequate supply of qualified personnel to deliver appropriate instruction and services to children with disabilities. *Letter to McClanahan, 28 IDELR 481 (OSEP 1997)*.

OSEP concluded that the requirement that only school psychologists with a master's level license as an LSSP from the Texas Board of Examiners of Psychologists could practice school psychology in the public schools was not inconsistent with IDEA. OSEP determined that the statute does not prohibit a state from requiring individuals with a doctorate in psychology to fulfill other requirements to satisfy state requirements for the LSSP license. *Id.*; *See also Letter to Petska, 35 IDELR 191 (OSEP 2001)(public agency may establish qualification that requires IEE examiner to either hold or be eligible to hold a particular license when the public agency requires the same licensure for its own staff concluding school district criteria prohibiting IEE examiners from associations with private schools and parent advocacy associations inconsistent with parental right to IEE)*. *See, also, Letter to Young, 39 IDELR 98 (OSEP 2003)(a public agency may establish qualifications that require an IEE examiner to hold a particular license when it requires the same licensure for its own staff conducting the same types of evaluations)*.

In 1990 OSEP specifically reminded the school district in this case that the application of its IEE criteria must be consistent with its own evaluations. *Letter to Rambo, 16 IDELR 1078 (OSEP 1990)*. The school district's IEE criteria at the time required a personal interview and recommendations from other professionals who employed the proposed evaluator. Those aspects

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of the school district's criteria were considered subjective and although not prohibited by IDEA OSEP suggested that same criteria must also be applied to school district evaluations. By requiring an IEE examiner to hold specific licensure or certifications the school district has adopted objective rather than subjective criteria capable of uniformity and consistency in its application to both school district evaluations and publicly funded IEEs. *See, R. MSJ Ex. F.*

However, a school district may not require all evaluators to be licensed if only those individuals employed by the school district are capable of obtaining the required license. *Comment, 71 Fed. Reg. 156, p. 46689 (Aug. 14, 2006)(declining to revise Section 34 C.F.R. Section 300.502 to require IEE evaluators to be licensed by the state because the regulation already required the standards be the same for all evaluators as long as the agency's criteria for evaluators does not prohibit a parent from obtaining an IEE.)*

Application of Law to Summary Judgment Proof

Construing Respondent's summary judgment evidence in the light most favorable to Petitioner Dr. *** is certainly capable and qualified to assess Student even though he does not hold LSSP licensure or certification as an educational diagnostician or reading specialist. Dr. *** may well fall under the category of an "appropriately licensed practitioner with experience and training" in the area of learning disabilities. *19 Tex. Admin. Code § 89.1040 (b)(1).*

However, in construing Petitioner's summary judgment evidence in the light most favorable to Respondent, the school district only utilizes an LSSP or educational diagnostician when it conducts an evaluation to determine LD eligibility or, (adding to the list) a reading specialist when it conducts a reading assessment. *See, 19 Tex. Admin. Code § 89.1040 (b).* Therefore, Dr. *** does not meet school district licensure or certification requirements to conduct an IEE at public expense for either a reading assessment or to determine whether Student may be eligible as a student with a learning disability.

Furthermore, the school district did not limit the selection of the IEE examiner to the professionals noted on the two lists. There is no credible or competent summary judgment proof that Student's parents were thus prohibited from selecting an IEE evaluator. Student does not seek to establish any "unique circumstances" that would otherwise justify the selection of Dr. *** other than a deep skepticism by her mother that any professional with public school district experience could perform a proper evaluation.

This speculative viewpoint, without more, does not justify the selection of Dr. *** for the IEE. *Letter to Parker, supra (district must allow parents opportunity to demonstrate unique circumstances to justify selection of evaluator who does not meet school district criteria).* The school district's criteria does not prohibit Student's parents from obtaining an IEE for reading or for determining whether she may be eligible for special education services as a student with a learning disability. *34 C.F.R. § 300.5.*

Conclusion

The school district's application of its licensure and certification requirements is lawful under IDEA. Therefore, the school district is not required to fund an IEE performed by Dr. ***. *Houston Ind. Sch. Dist., 109 LRP 72788 (SEA Tex. 2009)(parent not entitled to reimbursement for psychological IEE not conducted by LSSP as required by school district criteria when school district's disputed psychological conducted by LSSP); Gorham Sch. Dist., 21 IDELR 779 (SEA Maine 1994)(parental choice of IEE examiner located in Vermont denied where proposed examiner not certified in Maine and number of certified in-state examiners were available).*

Although the school district is not required to fund an IEE by Dr. *** Student's parents retain the right to secure the IEE at their own expense. They may also seek reimbursement of the IEE in a due process hearing. *See, Evans, 841 F. 2d at 830.* Furthermore, the results of Dr. ***'s IEE must be considered by the ARD in making educational decisions regarding the provision of a free, appropriate public education for Student. Dr. ***'s evaluation may also be presented as evidence at a due process hearing. *34 C.F.R. § 300.502 (c)(1)(2); 19 Tex. Admin. Code §89.1050 (a)(5)(7)(h).*

CONCLUSIONS OF LAW

1. Petitioner is entitled to an Independent Educational Evaluation (IEE) at public expense. *34 C.F.R. § 300.502 (a).*
2. Petitioner's right to an IEE at public expense is not unlimited. The school district may require that the IEE meet specified criteria, including the cost, location, and qualifications of the examiner so long as the same criteria is applied by the school district when it conducts its own evaluation and so long as the criteria is consistent with Petitioner's right to an IEE. *34 C.F.R. § 300.501 (e).*
3. The school district's criteria that requires an IEE for reading to be conducted only by a licensed specialist in school psychology (LSSP), certified educational diagnostician or certified reading specialist is consistent with Petitioner's right to an IEE under IDEA because those credentials are the same the school district requires when it conducts a reading evaluation. *34 C.F.R. § 300.502 (a)(2)(e).*
4. The school district's criteria that requires an IEE to explore eligibility for special education as a student with a learning disability be conducted only by a licensed LSSP or an educational diagnostician is consistent with Petitioner's right to an IEE under IDEA because those credentials are the same the school district requires when it conducts the same type of evaluation. *34 C.F.R. § 300.502 (a)(2)(e).*

ORDERS

Based upon the foregoing findings of fact and conclusions of law it is therefore **ORDERED** that Petitioner's Motion for Summary Judgment is **DENIED**, that Respondent's Motion for Summary Judgment is **GRANTED** and that Petitioner's choice of Dr. ***, a licensed clinical psychologist, to conduct an independent educational evaluation for reading and/or to determine eligibility for special education as a student with a learning disability at Respondent's expense is **DENIED**.

It is further **ORDERED** that all other relief requested not specifically stated herein is **DENIED**.

SIGNED the 13th day of July 2010.

Ann Vevier Lockwood
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. *19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).*

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT, bnf
PARENT,
Petitioner,**

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v.

DOCKET NO. 193-SE-0410

**HUMBLE INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

SYNOPSIS

ISSUE:

Whether parent entitled to select licensed clinical psychologist as evaluator for an independent educational evaluation at school district expense to conduct reading evaluation or to determine eligibility for special education services as a student with a learning disability in reading or whether parent’s selected evaluator must meet school district criteria that evaluator be licensed specialist in school psychology (LSSP), certified educational diagnostician or, in the case of reading evaluation, a certified reading specialist.

HELD:

FOR THE SCHOOL DISTRICT.

Although parent’s selection of licensed clinical psychologist was qualified, in general sense, and may have met definition of “other appropriately ... licensed practitioner with experience and training” in the area of learning disabilities, school district could lawfully require IEE evaluator to hold LSSP licensure and/or certification as educational diagnostician (or also a certified reading specialist for reading evaluation) before funding IEE at public expense.

School district may impose criteria applicable to IEE at public expense that is the same as the criteria used by the school district in conducting the same type of evaluation. In this case, school district required licensed LSSP or certified educational diagnostician to conduct evaluation to determine eligibility for special education as student with learning disabilities and, a licensed LSSP, or certified educational diagnostician or reading specialist to conduct a reading evaluation; therefore, the criteria was consistent with parental right to an IEE.

34 C.F.R. § 300.502 (a)(e); 19 Tex. Admin. Code § 1040 (b)(1).