EDUCATING STUDENTS WITH DYSLEXIA: WHAT DOES THE LAW SAY AND WHAT ARE THE ISSUES?

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I. INTRODUCTION

For the past several years, dyslexia has increasingly become a hot topic in special education law at the national level with many states being in different phases of legislative mandates regarding the identification of dyslexia and providing services to students diagnosed or otherwise identified as having dyslexia. This presentation will focus on what relevant law currently provides regarding the education of students with dyslexia and will provide a discussion of what the potential legal issues are related to the education of a student found to have dyslexia.

II. RELEVANT LEGISLATION

A. Georgia Law

O.C.G.A. § 20-2-159.6, also known as Senate Bill 48 or the "Dyslexia Bill," was signed into law in Georgia in May 2019. Among other things, it contains the following provisions:

- Definitions of conditions or "disorders," such as aphasia, dyscalculia, dysgraphia and dyslexia;

- A requirement for the Georgia Board of Education to develop policies and procedures for referring K-3 students for screening who have been identified through the RTI process as having characteristics of dyslexia, the "other disorders," or both by July 1, 2020. These policies shall include, but are not limited to:

    1. Definition and characteristics of dyslexia and "related disorders;"
    2. A list of approved dyslexia screening tools;
    3. The process for referring K-3 students for screening in collaboration with the local school system's RTI programs;
    4. A process for parents to provide informed consent for use of the screening tool and notification of the results of the screening;
    5. A process for parents to decline dyslexia screening;
    6. A process for providing the parents of students identified as having characteristics of dyslexia with information and resource material regarding dyslexia; and
    7. A process for monitoring student progress after the positive identification of characteristics of dyslexia.

- A requirement for the Georgia DOE to make available a dyslexia informational handbook by December 1, 2019;

- A requirement for the Georgia DOE to collaborate with the PSC to improve and update professional development opportunities for teachers specifically relating to dyslexia;

- A requirement for the State Superintendent to establish a three-year pilot program to demonstrate and evaluate the effectiveness of early reading assistance programs for students with risk factors for dyslexia beginning with the 2020-21 school year; and

- Mandatory screening by school systems of all K-12 students for characteristics of dyslexia beginning with the 2024-25 school year.

B. Federal Law

1. The Individuals with Disabilities Education Act (IDEA)

The IDEA's regulations include a definition of Specific Learning Disability (SLD) that mentions dyslexia as one of several conditions that might be included in the definition of SLD, along with perceptual disabilities, brain injury, minimal brain dysfunction, and developmental aphasia. 34 C.F.R. § 300.8(c)(10).

2. Section 504 of the Rehabilitation Act and the Americans with Disabilities Act

Obviously, Section 504 and its sister statute, the Americans with Disabilities Act (ADA), cannot be forgotten in our discussions about dyslexia. This is so because the definition of disability under both laws includes: (1) a mental or physical impairment that (2) substantially limits a major life activity.

Notably, in regulations promulgated by the Department of Justice under Title II of the ADA which took effect on October 11, 2016, it is expressly provided that a "physical or mental impairment" includes, but is not limited to, contagious and noncontagious diseases and conditions, such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. 28 C.F.R. § 35.108 (emphasis added).

III. THE LEGAL ISSUES INVOLVING STUDENTS DIAGNOSED WITH DYSLEXIA

A. Whether Schools Should Use the Term or Diagnose "Dyslexia"

Sometimes, teachers and others may be heard to say something like "we don't test for or diagnose dyslexia" or "we don't include dyslexia in IEPs—that's not a term we use." Clearly, all educators need to be trained to understand that while schools may not officially "diagnose" dyslexia or use the term "dyslexia," they will be screening for characteristics of it as part of the RTI process. Further, where a student is suspected or believed to be a student with a disability in need of special services under IDEA or Section 504, the student must be fully and comprehensively evaluated to determine whether a disability exists and, if so, what special services, if any, the student needs in order to receive FAPE.

On October 23, 2015, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) issued an important "Dear Colleague Letter" (DCL) in response to communications from stakeholders, including parents, advocacy groups and national disability organizations who were concerned that State and local educational agencies were reluctant to reference or use terms such as dyslexia, dyscalculia and dysgraphia in evaluations, eligibility

determinations, or in developing IEPs under the IDEA. Dear Colleague Letter, 66 IDELR 188 (OSERS 2015).

In the DCL, OSERS clarified that there is nothing in the IDEA that would prohibit the use of terms like dyslexia in evaluation, eligibility determinations or IEP documents, though the law does not require their use either. The DCL explains that as part of the IDEA's definition of "specific learning disability," a student with dyslexia could qualify for special education services as a child with a specific learning disability. However, regardless of whether a child has dyslexia or any other condition included in the definition of SLD, a school district must still conduct an evaluation in accordance with the IDEA's SLD regulations to determine whether the child meets the criteria for SLD or any of the other disabilities listed in the IDEA.

OSERS goes on to explain that for those students who may need additional academic and behavioral supports to succeed in a general education environment, schools may choose to implement a multi-tiered system of supports (MTSS), such as RTI or PBIS. OSERS points out that MTSS is a school-wide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce behavior problems.

OSERS notes that the MTSS framework may also be used to identify children suspected of having a specific learning disability. Within a multi-tiered instructional framework, schools identify students at risk for poor learning outcomes, including those with dyslexia; monitor their progress; provide evidence-based interventions; and adjust the intensity and nature of those interventions depending on a student's responsiveness. OSERS concludes that children who do not respond (or minimally respond) to interventions must be referred for an evaluation to determine if they are eligible for special education and related services. Those children who simply need intense short-term interventions may continue to receive those interventions.

In sum, OSERS encouraged SEAs and LEAs to consider situations where it would be appropriate to use terms like dyslexia to describe and address a student's unique, identified needs through evaluation, eligibility and IEP documents. For example, OSERS said, there could be situations where an IEP Team could determine that personnel responsible for the IEP's implementation would need to know about the condition underlying the child's disability (e.g., that the child has a weakness in decoding skills as a result of dyslexia). Under the IDEA, a child's IEP must be accessible to regular education teachers and any others who are responsible for implementation, and they must be informed of their specific responsibilities related to implementing the IEP and the specific accommodations, modifications and supports that must be provided for the child. Thus, OSERS reiterated that there is nothing in the IDEA or its regulations that would prohibit IEP Teams from referencing or using dyslexia in a child's IEP, noting that it actually might be useful to do so.

B. The Potential for Child Find Issues and Violations

While Georgia's developments in the area of identification of and providing educational interventions to students with dyslexia in the RTI process will be important, the affirmative child

find duty under both the IDEA and Section 504 cannot be ignored and must be balanced with those requirements. To say something like "we can't do an evaluation for special education because the 12 weeks of RTI interventions have not been completed" could have significant legal implications. This is because the legal duty to refer a student for an evaluation under the IDEA or Section 504 is not triggered based upon whether or how long a student has been receiving interventions in an RTI framework. Instead, the legal child find duty to refer under federal law is triggered when the school district has sufficient "reason to suspect" or "reason to know" that a particular student is a student with a disability in need of special education or 504 services.

1. A "referral red flags" checklist

Based upon existing case law, I have developed a running checklist of what I call "referral red flags" that courts/agencies have found, in combination, sufficient to constitute a "reason to suspect a disability" that would trigger the child find duty to refer a student for an evaluation.

IMPORTANT PRELIMINARY NOTES: When using this checklist, it is very important to remember that not one of these triggers alone (or even several together) would necessarily be sufficient to trigger the child find duty to refer a student for an evaluation under Section 504 or IDEA. However, the more of them that exist in a particular situation, the more likely it is that the duty to evaluate has been triggered.

It is also important to note that it is more likely that the duty to refer for an evaluation would be triggered under Section 504 before it would be under the IDEA, because the definition of disability is much broader and all-encompassing than it is under IDEA and 504 does not require a need for "special education" as defined by IDEA. OCR is likely to find that the 504 duty to evaluate has been triggered (i.e., to determine whether a disability exists so that the student is not discriminated against), even in the absence of any academic or learning concerns.

Look out for indicators in these areas and "when there's debate, evaluate!" (and reevaluate!)

a. Academic Concerns in School

- ☐ Failing or noticeably declining grades or academic performance
- ☐ Retention
- ☐ Poor or noticeably declining progress on standardized assessments
- ☐ Student negatively "stands out" academically from his/her same-age peers
- ☐ Student has been in the Problem Solving/RTI process and progress monitoring data indicate little academic progress or positive response to interventions
- ☐ For IDEA child find purposes, student already has a 504 Plan and 504 services or accommodations have provided little academic benefit
- ☐ For 504 child find, student has been evaluated under IDEA and found ineligible for special education services.

b. Behavioral/Social/Emotional Concerns in School

- ☐ Numerous or increasing disciplinary referrals for violations of the student code of conduct that are of significant concern
- ☐ Signs of significant depression, withdrawal, inattention/distraction, organizational issues, anxiety, mental illness or mental health issues, etc.
- ☐ Truancy problems, noticeably increased/chronic absences or skipping class
- ☐ Student negatively "stands out" behaviorally/socially/emotionally from his/her same-age peers
- ☐ Student has been in the Problem Solving/RTI process and progress monitoring data indicate little behavioral/social/emotional progress or positive response to interventions
- ☐ For IDEA child find purposes, student already has a 504 Plan and/or BIP and accommodations, interventions/strategies have provided little behavioral/social/emotional benefit
- ☐ For 504 child find, student has been evaluated under IDEA and found ineligible for special education services

c. Outside Information Provided

- ☐ Information that the student has been hospitalized or received medical treatment (particularly for mental health reasons, chronic health issues, etc.)
- ☐ Information that the student has received a DSM-5 diagnosis (Specific Learning Disorder, ADHD, ODD, OCD, PTSD, etc.)
- ☐ Hospital/homebound services have been recommended or provided (may have a disability that should be acknowledged under Section 504 to ensure nondiscrimination or 504 services)
- ☐ Information that the student has been exposed to traumatic event(s)
- ☐ Information that student has suffered a concussion or traumatic brain injury
- ☐ Student has an Individual Health Care Plan (may have a 504 disability that should be acknowledged to ensure nondiscrimination or a need for educational services beyond the IHP to ensure equal access and safety)
- ☐ Information that the student is taking medication
- ☐ Information that the student is seeing an outside counselor, therapist, physician, etc.
- ☐ Private evaluator/therapist/other service provider suggests the need for an evaluation or special services

d. Internal Information from School Personnel

- ☐ Teacher or other school service provider requests or suggests a need for an evaluation under 504 or IDEA or suggests counseling, special education or other special services, etc.

e. Parent Request for an Evaluation or Services

- ☐ Parent requests an evaluation or services and some other listed item(s) above is/are present

2. Case law regarding child find and students with dyslexia

There is some noteworthy case law regarding child find concerns for students with dyslexia:

> P.P. v. Northwest Indep. Sch. Dist., 77 IDELR 7 (5th Cir. 2020) (unpublished). Where the purpose of a compensatory education award is to put a student in the position that she would have been if the district had complied with its IDEA obligations, parents must show that their child lost ground because of the district's child find violation. Here, the parents rejected several remedial services offered by the district as part of general education, including a dyslexia class, individualized tutoring and further evaluations. In addition, the parents stymied the efforts of the district to correct deficiencies in the student's initial IEPs by refusing to meet with the IEP Team while an independent educational evaluation was pending and refusing to adopt agreed-upon revisions in an IEP proposed in May 2017. In addition, the student made substantial progress under her February and May 2017 IEPs and, therefore, was not entitled to compensatory education services just because the district waited seven months to evaluate the student for dyslexia and other learning disabilities. Thus, the district court's decision that compensatory education was not warranted is affirmed.
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> T.W. v. Leander Indep. Sch. Dist., 74 IDELR 12 (W.D. Tex. 2019). The hearing officer's decision that the district did not violate its child find duty when it refused the parent's request to evaluate a former star high school football player with dyslexia is upheld. Here, the student did not establish that he had any need for special education and related services that would have made him eligible for special education under the IDEA. The student passed all of his classes, graduated from high school, was admitted to college and performed well on most state assessments. Further, the student made behavioral progress and had appropriate social skills. Contrary to the student's assertions, the accommodations provided to the student both at home and school were not "highly individualized," but were available to other students as needed, including things such as extra time and opportunity to make up homework and tests. The provision of those accommodations did not show that the student needed specialized instruction. While the hearing officer considered the help and encouragement the student received from his parent and coaches, the student's overall performance, graduation and admission to college showed that he did not need special education. Thus, the district's motion for judgment on the child find claim is granted.

C. Evaluating Specifically "for Dyslexia"

1. Additional guidance from the U.S. DOE

As OSERS set forth in its 2015 DCL discussed above, evaluations are to be conducted under the IDEA for overall SLD eligibility, since "dyslexia" is not an eligibility classification under the IDEA, in and of itself. In terms of "evaluating for dyslexia" and challenges to district evaluations on that basis, there is a more recent letter from the Office of Special Education Programs (OSEP) that must be considered:

Letter to Unnerstall, 68 IDELR 22 (OSEP 2016). In follow up to the 2015 DCL regarding the use of the term dyslexia and other conditions, it is re-emphasized that a school district is required to conduct a comprehensive evaluation as specified by IDEA regulations, which requires the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. The information, which includes that provided by the parent, may assist in determining whether the child is a child with a disability and the content of the IEP to enable the child to be involved in and make progress in the general education curriculum. There is no requirement under IDEA that a disability label or "diagnosis" be given to each student receiving special education and related services, as long as the child receives needed special education and related services. In addition, there is no provision in the IDEA that gives a parent the right to dictate the specific areas that the school district must assess as part of the comprehensive evaluation. Rather, the district is only required to assess the child in particular areas related to the child's suspected disability, as it determines appropriate. However, if a determination is made through the evaluation process that a particular assessment for dyslexia is needed to ascertain whether the child has a disability and the child's educational needs, including those related to the child's reading difficulties, then the school district must conduct the necessary assessments. We also note that an evaluation for dyslexia could be an evaluation by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services. If the school district decides that a medical evaluation or any other assessment is necessary to determine whether the child has a disability and his or her educational needs, the entire evaluation must be provided at no cost to the parents. In addition, parents who disagree with the district's evaluation have the right to seek an IEE.

2. Case law regarding "evaluating for dyslexia"

There are a couple of interesting cases that address the issue of "evaluating for dyslexia," where parents have challenged the district's evaluation and requested an IEE because the district "did not evaluate for dyslexia" and requested an Independent Educational Evaluation (IEE):

L.C. v. Issaquah Sch. Dist., 74 IDELR 132 (W.D. Wash. 2019). District is not required to fund an IEE where it appropriately evaluated the student for SLD. While the parents took issue with the district's evaluation because it did not assess the student specifically for dyslexia, the district explained that dyslexia fell under the SLD category for IDEA eligibility. Under IDEA, districts are required to conduct "full and individual" evaluations and are to use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the student. Assessments are to be administered by trained and knowledgeable personnel and must encompass all areas related to suspected disability and special education and related service needs. The district met these requirements when it 1) obtained parent input; 2) considered a private evaluation; 3) conducted a classroom evaluation; 4) administered a battery of standardized assessments; and 5) evaluated the student in writing, math, communication and social emotional functioning. In addition, the district produced a "detailed and comprehensive evaluation report" that was sufficient in scope for developing an IEP.

Avila v. Spokane Sch. Dist. 81, 69 IDELR 204 (9th Cir. 2017) (unpublished). District's reevaluation of student for SLD was appropriate and parents' request for an IEE is rejected. The fact that the school district's reevaluation of the student with autism did not specifically evaluate for dyslexia and dysgraphia did not make it inappropriate. The reading and writing assessments conducted covered a variety of disorders in addition to SLDs and satisfied the district's duty to evaluate the student in all areas of suspected disability. The district did not refer to specific reading and writing disorders but, instead, evaluated for "specific learning disabilities," which covers a number of reading and writing difficulties.

D. Eligibility/Disability under the IDEA or Section 504

Many times, when a child receives a diagnosis of dyslexia (or any particular condition), there is an assumption on the part of the parent (or an evaluator) that the student is automatically considered to be a "child with a disability" in need of special education under the IDEA or Section 504. As a legal matter, that is not necessarily the case.

1. Elements need for eligibility under the IDEA

In my view and based upon years of case law, eligibility for IDEA services and an IEP requires three things: 1) a condition exists under the applicable rules based upon evaluative data (SLD, OHI, ASD, etc.); 2) the condition adversely affects educational performance; 3) to the degree that the student needs special education services.

2. Elements needed for determining the existence of a disability under 504

Under Section 504, the "evaluation" and "eligibility process" consists of two determinations: 1) whether the student has a disability (i.e., a physical or mental impairment that substantially limits a major life activity) and 2) if so, whether the student needs any special services under 504 (and a 504 Plan) in order to meet the student's educational needs as adequately as they are met for nondisabled students.

Under 504, it is clear that a student diagnosed with dyslexia could be found by a 504 Team to have a disability and a need for services via a 504 Plan. It is also clear that a student diagnosed with dyslexia could be found to have a disability but found not to be need of services via a 504 Plan because the student's needs are being met in the regular education setting.

3. Further guidance under ADA

It is important to note that the Title II ADA regulations that went into effect on October 11, 2016 (as discussed above) provide a consideration relevant to dyslexia and "eligibility." Specifically, the regulations in discussing what constitutes a disability provide an example of a gifted student with dyslexia. Noting that this student could be found to have a disability under the ADA (and, therefore, under Section 504) based upon the condition, manner or duration under which the student performs a major life activity, such as reading.

Specifically, the Department of Justice notes in the regulations that:

> (iii) In determining whether an individual has a disability under the ''actual disability'' or "record of'' prongs of the definition of ''disability,'' the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success but may nevertheless be substantially limited in one or more major life activities, including, but not limited to, reading, writing, speaking, or learning because of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population.

28 U.S.C. § 35.108(d)(3)(iii). However, the student who achieves very well, while meeting the definition of an individual with a disability under 504/ADA, still may not need special services under 504 to receive 504 FAPE.

4. Court decisions on dyslexia and eligibility

Some relevant cases on dyslexia and eligibility under the IDEA include:

> G.M. v. Martirano, 78 IDELR 68 (D. Md. 2021). School district correctly found that the student with ADHD and dyslexia is not eligible for services under IDEA. A student is only eligible for services under IDEA if he has a disability and a need for special education services as a result. While the student has a diagnosis of dyslexia, he does not have an IDEA disability because the student meets grade-level standards and does not exhibit a discernible pattern of strengths and weaknesses. In addition, while the student's ADHD may qualify as an "other health impairment," based on its adverse effect on his educational performance, the student has no need for specially designed instruction. Students who are progressing appropriately in general education classrooms do not need special education and, here, witnesses agreed that notwithstanding the student's behavior problems, he was making progress comparable to same age peers and meeting state-approved grade-level standards. Further, the district's expert witnesses testified that the interventions and accommodations made available to the student in the general education setting did not qualify as special education or specialized instruction. Therefore, since the student does not need special education services, he is not eligible for special education under IDEA, and the ALJ's denial of reimbursement for private school placement to the student's parents is affirmed.

> William V. v. Copperas Cove Indep. Sch. Dist., 74 IDELR 277 (5th Cir. 2019) (unpublished). The district court's decision finding the student with dyslexia eligible under IDEA is vacated and remanded where the court failed to consider whether the second-grader has an educational need for specialized instruction and related services. On remand, the lower court must apply the two-part test for IDEA eligibility and find that the student: 1) has one of the 13 disabilities specifically identified in the statute; and 2) needs special education and related services because of that disability. Thus, the district court erred in finding the student eligible based solely on his dyslexia diagnosis and simply

because dyslexia qualifies as a possible specific learning disability under IDEA. Where the district court never considered whether the accommodations the student received in the regular classroom qualified as special education -- a circumstance that might demonstrate a need for IDEA services -- nor did it discuss whether the student made appropriate progress with those accommodations, this court cannot review the appropriateness of the district's eligibility determination. NOTE: In the remanded case, the district court found again that the student was eligible as SLD but held that the failure to find the student eligible to be a procedural violation that is harmless, because the student actually received the services he needed and made appropriate progress where his reading deficits were addressed when the district included him in a reading group for students with dyslexia and provided afterschool tutoring once a week. William V. v. Copperas Cove Indep. Sch. Dist., 75 IDELR 124 (W.D. Tex. 2019).

William V. v. Copperas Cove Indep. Sch. Dist., 77 IDELR 92 (5th Cir. 2020) (unpublished). District court's decision granting judgment in favor of the district is affirmed where the court found that the student was, in fact, eligible under IDEA as an SLD student, but that it was a procedural violation that caused no substantive harm. While the student's scores on standardized tests showed he was performing below grade level, IDEA requires focus upon individual progress—not how a student's progress compares to that of his or her same-age peers. Here, the student's grades and reading level assessments demonstrated that he was making progress. Thus, the parents did not show that the district court clearly erred in finding that the student was making continuous progress in the general education setting in reading, writing and math. In addition, the parents' assertion that the district failed to use a "research-based" reading program is rejected where the district used the Wilson reading program, which is a structured research-based program that meets state standards for dyslexia instruction. Since the student did not lose any educational opportunities as a result of the flawed SLD eligibility determination, there was no denial of FAPE.

Mr. and Mrs. Doe v. Cape Elizabeth Sch. Dist., 68 IDELR 61 (1st Cir. 2016). The district court erred when relying solely upon report cards and performance on statewide assessments in determining that the student was not SLD. While a student's grades, classroom performance and standardized test scores are relevant in determining whether a student is SLD, the eligibility team cannot focus solely on academic measures. The team must consider the relationship between those academic measures and the alleged area of deficiency. Just as no single measurement or assessment can support a finding of SLD, neither can it be found to undermine a finding of a reading fluency deficiency when other evidence supports such a finding. This student received low or very low scores on assessments of reading fluency and, given that information, the district court erred in relying on her excellent grades and above-average performance on statewide assessments in determining that she did not have an SLD. The court, however, will not consider whether the student needs special education to receive educational benefit, as the district court did not address that question. This decision focuses only on whether the student has an SLD as defined by the IDEA. In order to be eligible for services, however, the student must also prove that she requires special education and related services as a result.

Department of Educ. v. Patrick P., 65 IDELR 285 (9th Cir. 2015) (unpublished). The Department did not err in finding the student with a diagnosis of dyslexia, among other things, ineligible for IDEA services. A child needs to satisfy two sets of criteria in order to receive services as an SLD student: first, the child must demonstrate either inadequate achievement or severe discrepancy between achievement and ability. Second, the child must demonstrate either insufficient progress or a pattern of strength or weaknesses in performance consistent with SLD. The student here failed to meet the first criteria, as the student performed well in the classroom, was engaged in his classes and received good grades. Further, the student was only receiving Tier I accommodations that were available to all students attending his private school, regardless of their disability status. The district court's decision is affirmed reversing the administrative hearing order in the parents' favor.

2. Case law regarding actual label or classification given

Within disputes over eligibility, there have been cases where actual eligibility and the need for services is undisputed, but the parents insist that the "label" of dyslexia be given to the student by an eligibility team or insist that it be documented in the paperwork. Relevant case law indicates, however, that "label" or "classification" does not matter from a legal perspective, as long as the IEP that has been developed and special education services provided are appropriate for the student:

J.D. v. Crown Point Sch. Corp., 58 IDELR 125 (N.D. Ind. 2012). Deaf student's receipt of FAPE was not contingent on his disability label. Rather, his IEP addressed his unique needs and conferred meaningful educational benefit, even though the IEPs did not contemplate whether the student also was SLD. Failing to properly label a student's disability in his IEP will not deprive him of FAPE, as long as the student receives an appropriate education, his parents receive an opportunity to participate in the IEP process, and he is not deprived of educational benefits. Here, the district received extensive notice of the student's cognitive deficits from his teachers and parents, which served to ensure that the district crafted IEPs that were tailored to address those deficits. In addition, records showed that in response to teacher and parent concerns, the district developed IEP goals and appropriate benchmarks and provided services geared toward increasing the student's reading fluency. Though the district ultimately determined that the student was not eligible as SLD, it increased the special education services he received when the parents provided private evaluation results indicating that the student had dyslexia. Importantly, the student made steady progress with reading pursuant to the district's attention to his cognitive deficiencies. In addition, the increase in his standardized test scores from second to fourth grade proved that his IEPs likely conferred meaningful benefit.

W.W. v. New York City Dept. of Educ., 63 IDELR 66 (S.D. N.Y. 2014). The failure to explicitly mention a diagnosis of dyslexia in the IEP goals for an LD student is not fatal to the IEP because the IEP goals were adequately designed to address the student's learning challenges, which include not only dyslexia, but also dyscalculia and dysgraphia.

E. Services/Programs Provided

Another common statement that could have legal implications is "but we don't have programs for dyslexic children." Of course schools do! Train staff to understand that, for those students who have characteristics of dyslexia, services for those students may come in the form of appropriate interventions via an RTI framework or, for students who have been determined to have a disability (either under the IDEA or Section 504), special education/related services or 504 services may be warranted. They may not be called "dyslexia services," but they are services designed to meet the unique needs of the student to enable the student to make appropriate progress in the general education curriculum.

1. OSERS' 2015 DCL guidance on services for students with dyslexia

In the OSERS' 2015 DCL, it was noted that stakeholders had requested that OSERS provide SEAs and LEAs with a "comprehensive guide" to commonly used accommodations in the classroom for students with SLD, including dyslexia, dyscalculia and dysgraphia. OSERS responded that the IDEA does not dictate the services or accommodations to be provided to individual children based solely on the disability category in which the child has been classified or the specific condition underlying the child's disability classification. Instead, OSERS referred to OSEP's large network of technical assistance centers that develop materials and resources to support States, school districts and teachers to improve the provision of services to children with disabilities. OSERS concluded that the U.S. DOE does not mandate the use of, or endorse the content of, these products, services, materials, and/or resources.

2. Methodological disputes regarding students with dyslexia

There have been a number of court cases over many years that have addressed specific services or reading methodologies for a student diagnosed with dyslexia, including some cases where the parents of a student diagnosed with dyslexia are seeking private school funding or funding for privately provided services:

> C.K. v. Board of Educ. of Sylvania City Sch. Dist., 78 IDELR 65 (N.D. Ohio 2021). The State Review Officer's decision in favor of reimbursing the parent for private Lindamood-Bell tutoring services for the elementary school student with autism and significant reading disabilities is reversed. The district provided the student FAPE and provided an IEP that would allow the student to make progress appropriate in light of the student's circumstances. The private Lindamood-Bell tutoring in reading unilaterally obtained by the parent required the student to miss several hours of school each day, thereby impeding his progress in areas other than reading. Indeed, the student's IEP goals in the areas of social communication and executive functioning, for example, "are not advanced and likely harmed" by taking him out of the classroom to receive the tutoring services. In addition, the parent had rejected the district's offer to include Lindamood-Bell instruction in the student's 4th grade IEP based upon her preference for private tutoring.
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> Matthews v. Douglas Co. Sch. Dist. RE 1, 73 IDELR 42 (D. Colo. 2018). ALJ's decision that the district provided FAPE to a student with dyslexia and other disabilities is affirmed.

Where the district agreed to use the Orton-Gillingham approach recommended by an independent evaluator for the provision of reading instruction to the student, it did not violate the IDEA when the Wilson Reading System was used instead. This is so because the Wilson program incorporates the Orton-Gillingham approach and it does not appear that the parents understand that, based upon their arguments. Further, the IEP team had no obligation to include a specific educational methodology in the student's program.

W.D. v. Watchung Hills Reg. High Sch. Bd. of Educ., 62 IDELR 299 (D. N.J. 2014), aff'd, 65 IDELR 63 (3d Cir. 2015) (unpublished). While the parent of a teenager with dyslexia and ADHD might have wanted the district to provide detailed information about her son's proposed reading program, the district's failure to discuss education methodologies or teacher qualifications did not entitle her to relief under the IDEA. The district did not impede the parent's participation in the IEP process, and while districts must develop IEPs that are designed to confer a meaningful educational benefit, they have no obligation to maximize a student's potential. This "basic floor of opportunity" standard also applies to the information the district members of the IEP team are required to share with the parents of students with disabilities. Thus, while the parent requested information about the educational methodologies the district intended to use and the qualifications of the teachers who would provide her son's instruction, the district had no obligation to provide those details, and the parent has not shown that, in this specific instance, this lack of information would sufficiently restrict the student's right to access educational benefits and opportunities or the parent's right to meaningfully participate. Even if the failure to provide the information the parent requested amounted to a procedural violation of the IDEA, it would be harmless. In addition, the parent's failure to provide appropriate notice of the student's unilateral private placement barred her reimbursement request.

I.S. v. School Town of Munster, 64 IDELR 40 (N.D. Ind. 2014). While districts generally have no obligation to specify a particular methodology in a student's IEP, where a particular one is inappropriate, the district must take steps to ensure that it is excluded from possible instructional techniques. Here, the Read 180 methodology had proved to be highly ineffective for the dyslexic student the previous school year and the district's possible continuation of it made the IEP substantively inappropriate. Because the IEP failed to specify an appropriate methodology or exclude the Read 180 program, which would have produced no benefit, it was not tailored to his unique needs or likely to produce progress instead of regression. The IEP was written in a way that would allow for the use of Read 180 which did not address the student's most significant needs in the areas of decoding and encoding.

Kathryn F. v. West Chester Area Sch. Dist., 62 IDELR 177 (E.D. Pa. 2013). Student's progress in reading from 2009 to 2012 is evidence that she received FAPE, even though the parents believed that the dyslexic student would have made more progress if the district had started using the Wilson reading method in 9th grade rather than adding Wilson tutoring to the student's IEP in 11th grade. The district had no obligation to maximize the student's educational benefit and progress made using the district's Read Naturally program was appropriate.

M.C. v. Katonah/Lewisboro Union Free Sch. Dist., 58 IDELR 196 (S.D. N.Y. 2012). Because the parent clearly knew that the proposed program contemplated the provision of specialized reading instruction, the fact that it was not specified on the child's IEP that she would be receiving that instruction in a special class did not make the IEP inappropriate. Thus, the parent is not entitled to reimbursement for the unilateral private placement of the student with dyslexia. The parent's argument that the IEP should have been more specific in light of the student's dyslexia and significant reading deficits is rejected. The Second Circuit has not adopted the "four corners" rule requiring that courts look only to the explicit content of the IEP when determining its appropriateness. Rather, looking beyond the document itself, the parent was clearly aware of the availability of specialized reading services at the public school and the item's absence "did not interfere with the parent's ability to judge the appropriateness of [the IEP]."

Davis v. Wappingers Cent. Sch. Dist., 56 IDELR 248, 772 F.Supp.2d 500 (2d Cir. 2011) (unpublished). In a private school reimbursement case, a three-step process governs whether parents are entitled to such reimbursement. First, the court asks whether the district has complied with the procedures set forth under the IDEA and then whether the IEP developed through those procedures is reasonably calculated to enable the child to received educational benefits. If these requirements are met, the court then engages in a third step and asks whether the private schooling obtained by the parents is appropriate to the child's needs. Here, the parents of the SLD child with dyslexia could not show that the private school was appropriate because it did not address their son's unique needs. The private school did not develop a behavior plan to address the student's attentional difficulties and, although the student had significant auditory processing deficits, the primary method of instruction was for teachers there to read aloud to students. In addition, the school's only strategy for addressing the student's organizational and work completion skills involved breaking down assignments. Finally, the school's academic dean testified that the school's language tutorial alone generated one and ½ hours of daily assignments for the student. Thus, even where the district denied FAPE, the parents are not entitled to private school tuition reimbursement where the private school did not meet the student's needs.

D.G. v. Cooperstown Cent. Sch. Dist., 55 IDELR 155, 2010 WL 4269127 (N.D. N.Y. 2010). District offered FAPE where its own reading programs were research-based and multisensory and would have conferred educational benefit to the student with dyslexia. "While [the student's parent] may have preferred the district to employ the Wilson program, the district did not fail to provide [the student] a free appropriate public education by utilizing other proven methods." Where FAPE was offered by the district, the parent is not entitled to tuition reimbursement for placement at The Gow School.

Fairfax Co. Sch. Bd. v. Knight, 49 IDELR 122, 261 Fed. Appx. 606 (4th Cir. 2008). The district's experts, who testified that the school district had offered FAPE to a ninth grader with dyslexia and other learning disabilities are entitled to more deference. They had extensive experience in special education, as well as post-baccalaureate degrees in the field, whereas the parents' experts did not have degrees in reading, education or special education. Thus, reimbursement for private schooling was not warranted.

Robinson v. Council Rock Sch. Dist., 2006 WL 1983180, 46 IDELR 38 (E.D. Pa. 2006). Parents' claim for private school tuition is denied. Though the student is diagnosed with dyslexia, the expert's recommendation that her dyslexia be "treated" through the use of a reading program such as Orton-Gillingham, Reading Master or Lindamood-Bell is rejected. Without more, a diagnosis of dyslexia does not trigger the applicability of the IDEA. Here, the student is only "disabled" in the area of written expression, and her IEP was geared toward helping her with writing. Thus, the IEP's ineffectiveness in addressing her dyslexia is relevant only insofar as that condition contributes to the impairment in written expression. Significantly, the student's scores on standardized reading and writing assessments yielded positive results based upon the program she received in public school.