

CESD

THE COUNCIL OF EDUCATORS FOR STUDENTS WITH DISABILITIES, INC.



CESD 19th Annual Texas Dyslexia Conference

Pre-Conference Notebook, October 11, 2020





Table of Contents

Customized livestream training for you and your audience from Dave & Jose

What happened to the CESD 504 forms?

General Sessions

(click on a session title to go those materials)

Dyslexia 101—*Mary Yarus, Dyslexia Consultant, ESC IV.*

Some students struggle with learning to read, write, and spell. Could it be dyslexia? What is dyslexia and what does it look like? When should a student be considered for an evaluation? What does dyslexia intervention look like and how can a teacher help? This session will cover the basics of dyslexia for teachers and administrators.

The Intersection of Section 504, IDEA & the Texas Dyslexia Law—*Jose Martin, Attorney at Law, Richards Lindsay & Martin, LLP, Austin, Texas.*

A persistent difficulty in understanding the role of the Texas Dyslexia Program lies in figuring out its interplay with IDEA and §504. This session briefly addresses the basic eligibility standards of IDEA and §504, and how the dyslexia program is intended to work in harmony with the two laws, as appropriate. With reference to the 2018 TEA Dyslexia Handbook, the session will address initiating dyslexia assessments under either law, choosing the referral path, the role of dyslexia-knowledgeable staff in 504 team meetings, and monitoring students' progress in dyslexia programs. Additionally, the discussion will cover making appropriate decisions on referring students with dyslexia to special education when conditions warrant, a proposed data-based rubric for dyslexia referral decisions, and dispelling misconceptions that impeded referrals to special education in the past. Lastly, the session will review issues related to students with dyslexia in special education, including incorporating dyslexia assessments in special education evaluations, LD eligibility vs. dyslexia identification, the criteria of need for special education, and IEP requirements for students with dyslexia, among others.

[Download the State Dyslexia Handbook from ESC X \(click the link\)](#)

CESD training can be customized for your needs and livestreamed just to you and your audience.



Training once required a lot of travel. For most of their legal careers, Jose Martin (left) and Dave Richards (below) travelled all over the country presenting on disability law topics to groups of public educators. These groups have been as small a handful of colleagues sitting around a table at a campus to 3,500 people in a packed ballroom for a statewide or national conference. Back in the day (last year) presenters and audiences often travelled to get to the same spot. Regardless of audience size, location, or the travel involved, Dave & Jose always focus on child-centered legal compliance training.



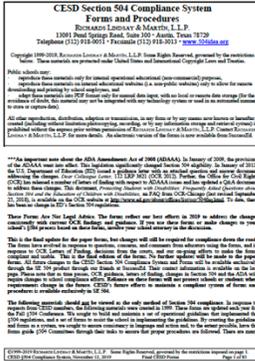
Understanding precedes compliance. You can't comply with a law you don't understand. Unfortunately, IDEA and Section 504 are not without vagaries and difficult concepts. Dave & Jose explain the law in simple, common-sense language, illustrated with frequent examples from real-world experiences. Rather than expanding on the law and its requirements from academic perspective, they focus on the everyday implications of the law, emphasizing compliance through awareness and planning. They supplement presentations with written materials that provide authority and additional clarity.

Every group of participants has unique training needs. There is no one-size-fits-all perfect IDEA or 504 training that meets the needs of every campus, region or state in the country. Just like services under the IDEA and 504, presentations (to be appropriate) must focus on unique needs and provide understanding in areas that matter to the presentation audience. Consequently, Dave and Jose will work closely with you to develop a training that covers the issues that matter to you and your audience. Further, when the size of the audience permits, Dave and Jose prefer to take questions from participants throughout presentations to establish an interactive format within which participants feel free to add their comments and thoughts to the presentation agenda. They create a truly individualized learning experience.

Social Distancing complicates the traditional in-service. But we have a tested solution that works. While the campus or school district in-service has been a training mainstay for years, with presenters traveling to central locations to meet a gathered audience, that pattern isn't possible in a time of social distancing. Safety requires us to make some changes to established patterns. Rather than gathering your employees and having Dave or Jose travel to join you, Dave & Jose can provide the training that you and your colleagues need on a variety of live platforms. Your group doesn't have to be in one place. Jose and Dave can stream the training live to you and your colleagues wherever you are, on any pc/mac, tablet or smartphone, providing the content you request together with live interactive questions and answers. As an added bonus, you save the cost of presenter travel! Contact us at cesd@504idea.org to discuss what Jose & Dave can do to help you and your public school, school district, state or national organization.

What happened to the CESD Section 504 Forms?

A little history....



In response to requests from CESD Conference participants, we created the first version of the CESD Section 504 Forms in 1999. We sought to build and maintain a set of operational guidelines that implemented the regulations, and a set of forms to assist schools in implementing the guidelines. At the time, few schools had a firm grasp of the Section 504 process. By creating the guidelines and forms as a system, we sought to ensure consistency in language and action and, to the extent possible, have the forms guide Section 504 Committees through their tasks to ensure that proper procedures were followed to satisfy the Office for Civil Rights (OCR).

Since 1999, we updated the forms prior to each year's Section 504 Conference to address changes in the law as well as current guidance from OCR and the courts. While there are many ways to articulate the rules and to gather, analyze, and communicate the information necessary for Section 504 compliance, we think our system is pretty great. Over time, schools throughout Texas and all over the country have agreed. If you choose to use our forms, involve your school attorney in the decision. The edition of the forms dated November 12, 2019 is the last edition of the paper forms.

The Future of the CESD Forms... SuccessED SE 504

Section 504 compliance has become increasingly more complex since the forms were first created. Each year, new pieces are added and old pieces are updated to the point that the paper forms have become quite voluminous. Further, with more eligible students since the ADA was passed in 2008, schools have been slow to respond with additional resources to help address the rising compliance burden. The result of this dynamic is more students are Section 504-eligible but the same number of personnel are assigned to oversee compliance. We think that future compliance efforts will require more technology—hence, the partnership with SuccessEd and the creation of SE 504. We likewise find that the paper forms have become unwieldy.

The final version of the Forms created for the November 2019 Section 504 Conference will be the last updated paper version of the paper forms and will continue to be distributed at the 504 Conference and elsewhere by agreement for a short time. The paper forms will subject to the copyright restrictions printed on page one on the forms

Moving forward, schools wanting updates from Dave & Jose will find them only in the SE 504 program available through SuccessEd. Plan now to transition your school! Visit the SuccessEd booth at either CESD Conference, succeeded.net on the web, or call Karen Hale at SuccessEd at (214) 613-1546 for more information.

TAKE CONTROL OF SECTION 504



SE 504 From SuccessEd

Are you fully confident that:

- you are meeting all compliance requirements for your students eligible for Section 504?
- your Section 504 forms and processes are up-to-date and compliant?
- you have a strong process in place for identifying and serving all of your Section 504 students?
- no students are falling through the cracks?

Are you in control of Section 504?

SuccessEd has created SE 504, a software solution that allows you to confidently answer “Yes!” to these difficult questions. First released in 2012, SE 504 is designed to support districts in their management of the complex and ever-evolving requirements of the **Section 504 amendments to the Americans with Disabilities Act of 2008**.

The power of the SE 504 solution lies in the exclusive partnership with Dave Richards and Jose Martín of the law firm Richards Lindsay & Martín, LLP. In 1999, Dave and Jose first leveraged their decades of experience into the creation of their CESD Section 504 forms.

Each year, they update the forms to address changes in the law, guidance from the Office for Civil Rights (OCR), and rulings from the courts. SuccessEd has an exclusive agreement with Dave and Jose to deliver an electronic version of these forms in our SE 504 program. We are proud that these trusted and respected national experts have selected SuccessEd to work with them.



TAKE CONTROL OF SECTION 504!
For more information, visit our website
www.succeeded.net

Take Control of SE 504



SE 504 from SuccessEd

www.SuccessEd.net

The Confidence of Compliance

Reporting

Armed with a single online system for all of the key Section 504 information, users of SuccessEd's SE 504 are confident in their compliance with complete visibility across campuses. Real-time reports can be generated to identify:

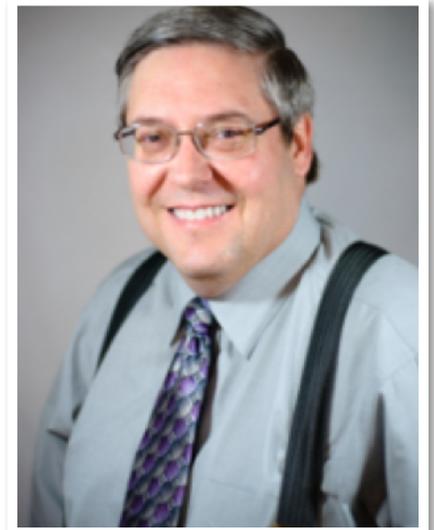
- Students Eligible for Section 504
- Meeting Dates, Evaluation Decisions
- Compliance
- State Assessment Accommodations
- Student Accommodations
- Students with Behavior Intervention Plans
- Related Services

Forms

With SE 504 from SuccessEd, schools can simplify the process of complying with Section 504 requirements. Take control of Section 504 with online forms created by experts. Always compliant, up-to-date, easy-to-use, and easy-to-understand.

Forms Include:

- Parent Notices and Rights
- Parent Consent
- Evaluations
- Student Service Plan
- Behavior Intervention Plan
- Manifestation Determination
- Contact Log
- Teacher & Parent Input
- Forms for Parents Also in Spanish



SuccessEd's SE 504 delivers Section 504 forms designed to protect our clients by automating compliance with a truly comprehensive Section 504 solution.



CESD 19th Annual Texas Dyslexia Pre-Conference

General Session

Dyslexia 101—*Mary Yarus, Dyslexia Consultant, ESC IV.*



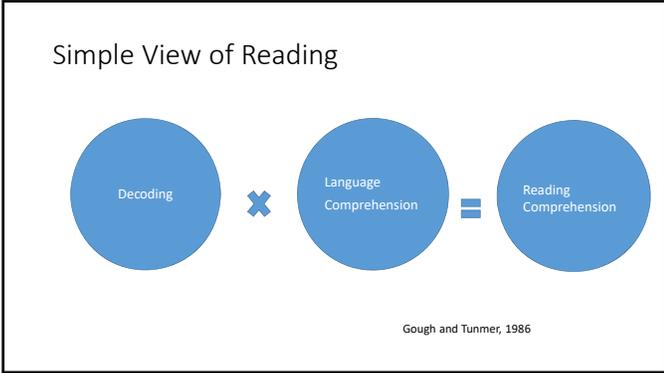
Speaking vs. Reading

- Everyone speaks but not everyone reads.
- Speaking is natural, and reading is not.

Shaywitz, 2020

What is reading?

- Letters
- Sounds
- Meaning

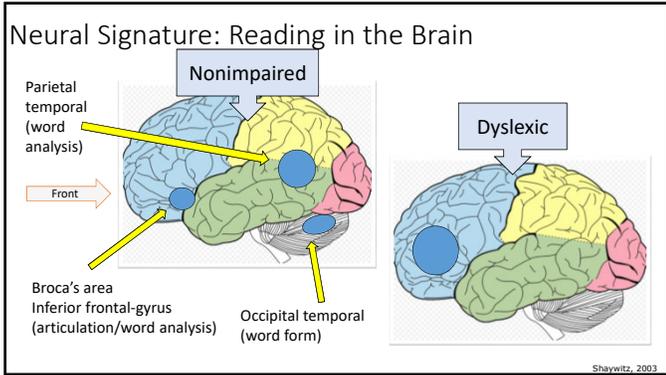


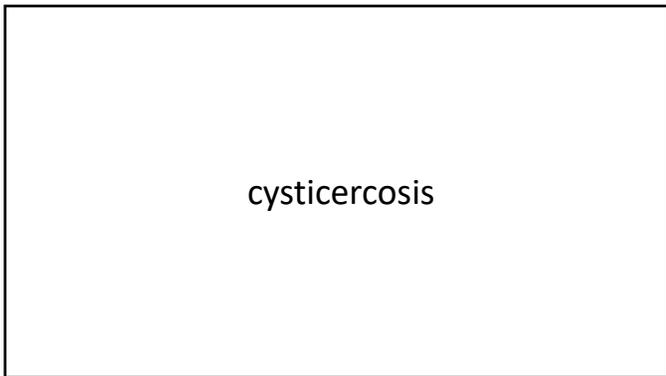
- ### National Reading Panel Report
- Phonemic awareness
 - Phonics
 - Fluency
 - Vocabulary
 - Text comprehension
- National Reading Panel Report, 2000

What is dyslexia?

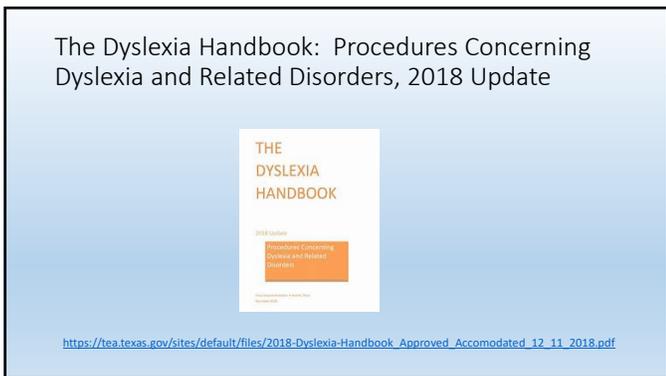
Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties in accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

Adopted by the IDA Board of Directors, November 12, 2002





cysticercosis



Common risk factors in preschool

- Delay in learning to talk
- Difficulty with rhyming
- Difficulty pronouncing words (e.g. "pusgetti" for "spaghetti," "mawn lower" for "lawn mower")
- Poor auditory memory for nursery rhymes and chants
- Difficulty adding new vocabulary words
- Inability to recall the right word (word retrieval)

Common risk factors in preschool

- Trouble learning and naming letters and numbers and remembering the letters in his/her name
- Aversion to print (e.g., doesn't enjoy following along if a book is read aloud)

Common risk factors in K and 1st grade

- Difficulty breaking words into smaller parts, or syllables (e.g., "baseball" can be pulled apart into "base" "ball" or "napkin" can be pulled apart into "nap" "kin")
- Difficulty identifying and manipulating sounds in syllables (e.g., "man" sounded out as /m/ /a/ /n/)
- Difficulty remembering the names of letters and recalling their corresponding sounds
- Difficulty decoding single words (reading single words in isolation)
- Difficulty spelling words the way they sound (phonetically) or remembering letter sequences in very common words seen often in print (e.g., "sed" for "said")

Common risk factors in 2nd and 3rd grades

- Difficulty recognizing common sight words (e.g., “to,” “said,” “been”)
- Difficulty decoding single words
- Difficulty recalling the correct sounds for letters and letter patterns in reading
- Difficulty connecting speech sounds with appropriate letter or letter combinations and omitting letters in words for spelling (e.g., “after” spelled “eftr”)
- Difficulty reading fluently (e.g., reading is slow, inaccurate, and/or without expression)
- Difficulty decoding unfamiliar words in sentences using knowledge of phonics

Common risk factors in 2nd and 3rd grades

- Reliance on picture clues, story theme, or guessing at words
- Difficulty with written expression

Common risk factors in 4th through 6th grades

- Difficulty reading aloud (e.g., fear of reading aloud in front of classmates)
- Avoidance of reading (particularly for pleasure)
- Difficulty reading fluently (e.g., reading is slow, inaccurate, and/or without expression)
- Difficulty decoding unfamiliar words in sentences using knowledge of phonics
- Acquisition of less vocabulary due to reduced independent reading
- Use of less complicated words in writing that are easier to spell than more appropriate words (e.g., “big” instead of “enormous”)
- Reliance on listening rather than reading for comprehension

Common risk factors in middle school and high school

- Difficulty with the volume of reading and written work
- Frustration with the amount of time required and energy expended for reading
- Difficulty reading fluently (e.g., reading is slow, inaccurate, and/or without expression)
- Difficulty decoding unfamiliar words in sentences using knowledge of phonics
- Difficulty with written assignments
- Tendency to avoid reading (particularly for pleasure)
- Difficulty learning a foreign language

Common risk factors in postsecondary

- Difficulty pronouncing names of people and places or parts of words
- Difficulty remembering names of people and places
- Difficulty with word retrieval
- Difficulty with spoken vocabulary
- Difficulty completing the reading demands for multiple course requirements
- Difficulty with notetaking
- Difficulty with written production
- Difficulty remembering sequences (e.g., mathematical and/or scientific formulas)

Texas Dyslexia Handbook, 2018

Screening

“If the persistent achievement gap between dyslexics and typical readers is to be narrowed, or even closed, reading interventions must be implemented early, when children are still developing the basic foundation for reading acquisition.”

Ferrer, et al., 2015
Texas Dyslexia Handbook, 2018 Update

What works?

Evidence-based multisensory structured literacy instruction that is explicit, systematic, and intentional in its approach

Critical, Evidence-Based Components of Dyslexia Instruction

- Evidence-based and effective for students with dyslexia;
- Taught by an appropriately trained instructor; and
- Implemented with fidelity

Texas Dyslexia Handbook, 2018

Critical, Evidence-Based Components of Dyslexia Instruction

- Content:
- Phonological awareness
 - Sound-symbol association
 - Syllabication
 - Orthography
 - Morphology
 - Reading comprehension
 - Reading fluency
 - Explicit
 - Systematic and cumulative
 - Multimodal
 - Diagnostic and responsive

Texas Dyslexia Handbook, 2018

Delivery of Instruction

- Simultaneous, multisensory (VAKT)
- Systematic and cumulative
- Explicit instruction
- Diagnostic teaching to automaticity
- Synthetic instruction
- Analytic instruction

Texas Dyslexia Handbook, 2018

English Learners with Dyslexia

- K and 1st grade screening must be offered in English and Spanish
- Identification and service delivery process for dyslexia must be aligned to the student's linguistic environment and educational background
- Provision of dyslexia instruction should be in accordance with the program model the student is currently receiving
- Interventionists working with ELs should have additional training on the specialized needs of ELs

Dysgraphia

Dysgraphia is the condition of impaired letter writing by hand, that is, disabled handwriting. Impaired handwriting can interfere with learning to spell words in writing and speed of writing text. Children with dysgraphia may have only impaired handwriting, only impaired spelling (without reading problems), or both impaired handwriting and impaired spelling.

IDA Fact Sheet

Characteristics of dysgraphia

- Variably shaped and poorly formed letters
- Excessive erasures and cross-outs
- Poor spacing between letters and words
- Letter and number reversals
- Awkward, inconsistent pencil grip
- Heavy pressure and hand fatigue
- Slow writing and copying with legible or illegible handwriting

Andrews and Lombardino, 2014
Texas Dyslexia Handbook, 2018

Additional consequences of dysgraphia

- Difficulty with unedited written spelling
- Low volume of written output as well as problems with other aspects of written expression

What can we do?

- Posture – Watch Our Writing (WOW!)
- Pencil grip
- Teach – and practice – letter formation
- Teach spelling
- Accommodations
- Assistive technology

Facts and Myths
Are they seeing things backwards?

Facts and Myths
Isn't it rare?

Facts and Myths
Could it be ADHD?

Why not just wait another year?

Children with dyslexia neither spontaneously remit nor do they demonstrate a lag mechanism for catching up in the development of reading skills.

Connecticut Longitudinal Study, Shaywitz, 2020

Why not just wait another year?

“When appropriate intervention is applied early, it is not only more effective in younger children, but also increases the chances of sparing a child from the negative secondary consequences associated with reading failure, such as decline in self-confidence and depression.”

Eden, 2015

Social Emotional Aspects



Adult Literacy Facts

- Children of parents with low literacy skills have a 72% chance of being at the lowest reading levels themselves.
- 43% of adults with the lowest literacy levels live in poverty.
- An excess of \$230 billion a year in health care costs is linked to low adult literacy.
- Low literacy costs the U.S. at least \$225 billion each in non-productivity in the workforce, crime, and loss of tax revenue due to unemployment.

Adult Literacy Facts

- Every year, one in six young adults – more than 1.2 million – drop out of high school.
- 50% of the two million immigrants that come to the U.S. each year lack high school education and proficient English language skills.
- 75% of state prison inmates did not complete high school or can be classified as low literate.

ProLiteracy.org, 2020

Qualities correlated with success

- Motivation
- Confidence
- Persistence/perseverance
- Resilience
- Self-discipline

Hamblet, 2017

More good news...

- More than a third of entrepreneurs - 35 percent - identify themselves as having dyslexia!

Logan, 2007

What can a teacher do?

- Learn more about dyslexia and the Texas Dyslexia Handbook.
- Share your knowledge with other teachers and administrators.
- Dyslexia impacts your student in every class – not just reading.
- Familiarize yourself with your student’s plan and accommodations.
- Remember that your student is also frustrated.
- Listen to the parent’s perspective.
- Teamwork!

What can a parent do?

- Read to your child.
- Talk to your child about dyslexia.
- Learn more about dyslexia.
- Share your knowledge.
- Ask questions at your child’s school.
- Work as a team with your child’s teachers.
- Join – or build! – a support group.
- Breathe!

Helpful websites

- Region 4 ESC <https://www.esc4.net/>
- IDA <https://dyslexiaida.org/>
- Understood <https://www.understood.org/>
- Reading Rockets <https://www.readingrockets.org/>
- WrightsLaw <https://www.wrightslaw.com/>
- Learning Ally <https://learningally.org/>
- Bookshare <https://www.bookshare.org/>
- Yale Center for Dyslexia and Creativity <http://www.dyslexia.yale.edu/>

References

- Andrews and Lombardino, 2014
- Birsh and Carreker, 2018
- Colvin, 2016
- Eden, 2015
- Gough and Tunmer, 1986
- Hamblet, 2017
- International Dyslexia Association, 2019
- Jacobson, Ryan, Denckla, Mostofsky, and Malone, 2013
- Logan, 2007
- National Reading Panel Report, 2000
- ProLiteracy.org, 2020
- Shaywitz, 2020
- The Dyslexia Handbook, 2018 Update, Texas Education Agency
- Willcutt, Pennington, Olson, Chhabildas, and Hulslander, 2005

Mary Yarus, M.Ed., LDT, CALT, SLDS
 Region 4 Education Service Center
www.esc4.net
 713-744-6353
mary.yarus@esc4.net





CESD 19th Annual Texas Dyslexia Conference

General Session

**The Intersection of Section 504, IDEA & the Texas
Dyslexia Law—*Jose Martin, Attorney at Law, Richards
Lindsay & Martin, LLP, Austin, Texas.***

The Intersection of Section 504, IDEA, and the Texas Dyslexia Law

Presented by
Jose L. Martin, Attorney
Richards Lindsay & Martin, L.L.P.—Austin, Texas
2020 CESD Dyslexia Conference
Copyright © 2020 Richards Lindsay & Martin, L.L.P.

Texas Dyslexia Law

- **Tex. Educ. Code §38.003** (first version passed in late 1980's)
 1. Screening of all students (K and 1st)
 2. Dyslexia assessment, as appropriate
 3. Services for identified students
 4. TEA oversight

Dyslexia and §504 Eligibility

- **§504 eligibility** = impairment + substantial limitation on major life activity (34 C.F.R. §104.3(j))
- Dyslexia is a “mental impairment”
- Since ADAAA of 2008, **reading** is considered a “major life activity”
- Under ADAAA, “substantial limitation” is a relaxed standard, lower than significant restriction
- Since dyslexia makes reading more difficult, laborious, and burdensome, virtually all dyslexic students will qualify under §504

“Old-School” Major Life Activities

- **Pre-2008 ADAAA Listing (not exhaustive)—34 CFR 104.3(j)(2)(ii):**

- Caring for one’s self
- Performing manual tasks
- Walking
- Seeing
- Hearing
- Speaking
- Breathing
- Learning
- Working

2008 ADA Amendments

- **Purpose**—Expansion of eligibility under ADA and §504 in response to overly restrictive interpretations of Supreme Court
- Effective January 2009
- A sea change in §504 doctrine
- ADAAA expands §504 eligibility in several significant ways

“New-School” §504 Major Life Activities

- **2008 ADAAA Added:**

- Eating
- Sleeping
- Lifting
- Standing
- Bending
- Reading**
- Concentrating
- Thinking.
- Communicating
- All major body functions/systems

Impact on Academics Not Needed

- While some impairments may limit the major life activity of “learning,” impairments can limit other life activities and qualify student as §504

“Nothing in the ADA or Section 504 limits coverage or protection to those whose impairments concern learning.” *2012 OCR Dear Colleague Letter and Q & A*, at question 7.

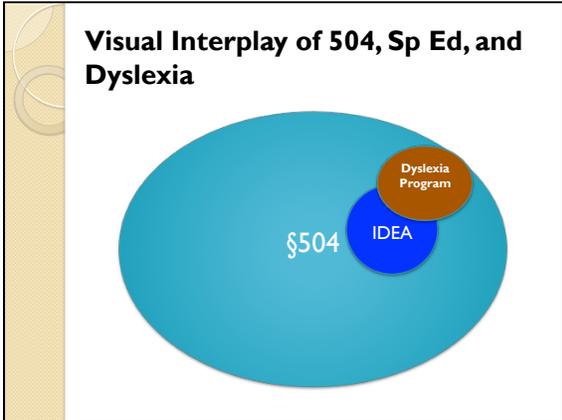
No “educational need” requirement for §504 eligibility; only limitation on *any* major life activity (with dyslexia, the major life activity of “reading” is most directly in play)

Key §504 and Dyslexia Intersection Points

1. Determination of dyslexia means student will easily qualify under §504, since dyslexia impacts major life activity of “reading”
2. §504 committees for student with dyslexia must involve dyslexia program staff
3. Dyslexia services become part of the student’s §504 plan and “placement”
4. §504 committee is responsible for monitoring progress data from dyslexia program
5. §504 committee assists with IDEA child-find

Dysgraphia and §504 Eligibility

- Although “writing” is not listed as a “major life activity” in ADA of 2008, the DOJ’s ADA regulation includes writing as a “major life activity.” See 28 C.F.R. §35.108(c)(1)(i).
- Dysgraphia also often limits “learning”
- Thus, dysgraphia will tend to qualify a student under §504.



§504 and Dyslexia Intersection Points

- When **dyslexia assessment** is recommended, it must happen under either §504 or IDEA
 - If under §504, committee members must include staff knowledgeable about:
 1. Student,
 2. Evaluation instruments used,
 3. Meaning of evaluation data collected
 - Plus, an LPAC member if student is an English learner

2018 Dyslexia Handbook, at p. 30

§504 and Dyslexia Intersection Points

- As noted in prior Dyslexia Handbooks, students assessed for dyslexia must at least be referred through the §504 process
 - “If a student is suspected of have a disability, but is not suspected of needing special education services, the student may still be eligible to receive certain accommodations and/or services outside of special education under Section 504.”

2018 Dyslexia Handbook, at p. 73 (Question 1)

Notice of Dyslexia Assessment

- **19 Tex. Admin. Code §74.28(f):**

At least 5 school days before conducting dyslexia assessment, schools must provide written **notice** to parents/guardians, including the following:

1. Reasonable description of the assessment,
2. Info on strategies or interventions used before decision to conduct dyslexia assessment,
3. Estimated timeframe for conducting assessment,
4. Campus point of contact, info on parent training and information (PTI) projects, other parent resources.

- **Sample description of assessment :**

Dyslexia assessment includes both formal and informal data examining academic skills, cognitive processes, and potential additional areas, which are collectively used to determine whether the student demonstrates a pattern of performance indicating dyslexia. Specific areas of assessment will include letter knowledge, reading words in isolation, decoding unfamiliar words, reading fluency, reading comprehension, spelling, phonological/phonemic awareness, and rapid naming. It may include additional areas, such as vocabulary, listening comprehension, written expression, handwriting, orthographic processing, math processing, phonological memory, verbal working memory, and/or processing speed.

§504 and Dyslexia Intersection Points

If dyslexia testing takes place under §504, committee members **must** include staff knowledgeable about:

1. Student,
2. Evaluation instruments used,
3. Meaning of evaluation data collected

Plus, an LPAC member if student is an English learner

2018 Dyslexia Handbook, at p. 30

• For students with dyslexia, Section 504 committee members **should** have knowledge of:

1. The reading process,
2. Dyslexia and related disorders,
3. Dyslexia instruction, and
4. Local and State guidelines for evaluation

2018 *Dyslexia Handbook*, at p. 30

• Plan must set forth “**Placement**” under §504

“Placement” under both §504 and IDEA is a concept comprehensive of services, accommodations, modifications, and locations, rather than just one of physical location

See 34 C.F.R. §104.33(b) and its internal reference to the section on “evaluation and placement” (34 C.F.R. §104.35)

• “**Placement**” in dyslexia program must be set forth with specificity in §504 plan, since parents must know the specific commitment of district resources to the child

“Districts are required by the Section 504 regulation at 34 C.F.R. §104.36 to provide parents with notice of their decisions concerning placement and services for students with disabilities. Parents must be provided with information sufficient to understand the services being proposed so that they can decide whether they agree with the District’s proposal.”
Inglewood (CA) USD, 51 IDELR 21 (OCR 2008).

- See also *2018 Dyslexia Handbook (OB)*:

“For eligible students, the Section 504 committee will develop the student’s Section 504 Plan, which must include appropriate reading instruction as appropriate to meet the individual needs of the student.”

“The Section 504 committee will also consider whether the student requires additional accommodations and/or related services for the provision of FAPE.”

2018 Dyslexia Handbook, at p. 33

- Informing parents of the “placement” is also part of complying with the notice requirements of §504 (34 C.F.R. §104.36)
- And, dyslexia services will generally pull the student out of regular classes, thus impacting **LRE** (see 34 C.F.R. §104.34(a))
- **Components of Placement Notice on Services:** frequency, amount, location, duration

Best if set frequency and amount, but might be stated in terms of “minimum of...” (NOT just “dyslexia program” or “LEXIA program”)

- **Components of Placement Notice on Services:** frequency, amount, location, duration

What about **modality**? E.g., 1:1 vs. small-group instruction

Probably best to include staff-to-student ratio in dyslexia program as part of the §504 plan

Examples—“Three 45-min sessions per week, in dyslexia lab, with small-group instruction (1 dyslexia provider to maximum 6 students)”

Or, “at least 50 sessions per semester, generally 3 sessions per week, in dyslexia lab, in small-group (1:6),” which affords some flexibility

- “The special education or related aids and services a student needs that are included in a Section 504 Plan, or other document, should be clear and as detailed as necessary so that the school and parents both understand what the plan requires.”

2017 OCR ADHD Resource Guide, at p. 29

Of course, specific notice of the exact nature of the reading services also enables parents to identify if there has been a failure to implement the §504 Plan services

- **Changes to the dyslexia program** must be made by §504 committee, as they constitute changes in “placement”

See Stafford (TX) Municipal Sch. Dist., 37 IDELR 132 (OCR 2002)

OCR found no violation where §504 committee notified parent and then met to discontinue dyslexia program upon successful conclusion (based on review of dyslexia program data)

Committee determined §504 plan should continue with the existing classroom accommodations

- **§504 committee must monitor student’s progress in dyslexia program**

Why? Because if student is not making the expected rate of progress, measures need to be considered by committee, including:

- Changes to intervention program
- Special education referral
- Measures to address complicating comorbid conditions

2018 Dyslexia Handbook, at p. 90 (Question 52)

IDEA—Special Education

- A funding law passed in late 1970's to assist participating States in meeting the needs of resource-intensive students with disabilities (20 U.S.C. §1400, et seq.)

Applies to students that (1) meet criteria under at least 1 of 13 eligibility categories, and (2) need special education services by reason of the disability (34 C.F.R. §300.8(a)(1))

FAPE—IEPs reasonably calculated to enable the student to make appropriate progress in light of their circumstances (based on Supreme Court opinion in *Endrew F.*, 69 IDELR 174 (2017))

IDEA—Special Education

- **§504 vs. IDEA Eligibility Distinctions**

IDEA eligibility based on evaluation reports
 IDEA students must need sp ed services
 IDEA students generally more severely impaired
 IDEA eligibility confers a higher FAPE standard
 IDEA confers greater safeguards and rights
 IDEA eligibility possible for ages 3-21
 IEPs can be based on modified curricula
 Alternate State assessment possible

Can a Child with Dyslexia Qualify Sp Ed?—§504-to-IDEA Child-find

- **34 C.F.R. §300.8(b)(10)**

“a disorder in one or more of the basic psychological processes involved in understanding or in using language”

“including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, **dyslexia**, and developmental aphasia.”

Thus, dyslexia (or dysgraphia) *could* qualify a student as LD under IDEA

• But, to qualify, the student’s dyslexia must meet LD criteria under IDEA (34 C.F.R. §300.309)

1. Inadequate achievement,
2. Lack of progress with RtI, or pattern of strengths and weaknesses in assessments that is indicative of LD,
3. Rule out other disabilities and non-disability factors, and
4. Rule out lack of appropriate instruction

Plus, a finding that the student needs sp ed services (“specially designed instruction”)

• But, to qualify, the student’s dyslexia must meet LD criteria under IDEA (34 C.F.R. §300.309)

Thus, a child could potentially show characteristics of dyslexia but not meet 4-part criteria for LD under IDEA (not too likely)

And, a child could have dyslexia but not need special education services (more likely scenario)

But certainly, some students with dyslexia might both (1) meet LD criteria and (2) need special education services (particularly if dyslexia is severe or complicated with another condition)

2018 OSEP Investigation Findings

TEA’s 8.5% PBMAS indicator (now gone) was disincentive to referrals to sp ed, violated IDEA’s child-find and FAPE requirements

RtI misconceptions, lack of clarity, rigidity, also delayed and denied evaluations improperly

Students may have been placed in §504 that really needed sp ed

Students may have been placed in dyslexia under §504, but really needed sp ed

• Problem Practices Cited by OSEP

Problem issues with respect to dyslexia:

First, OSEP indicated it may be appropriate to serve a student with dyslexia through §504

But, it interpreted the old Dyslexia Handbook as requiring that a dyslexic student have an additional disability in order to qualify for sp ed (not really an accurate reading of old Handbook, however)

OSEP clarified that if a child who only has dyslexia needs special education services under IDEA because of dyslexia, it would be unlawful to deny them an IDEA evaluation and eligibility determination

Problem issues with respect to dyslexia:

Data of Interest—OSEP noted that data indicated 20% of students identified with dyslexia are served in special education in TX already

Note—Number seemed to partially undermine OSEP's notion that significant numbers of dyslexic/ §504 students should really be in sp ed

OSEP found inconsistencies in practices for referring dyslexic students to sp ed

• Problem Practices Cited by OSEP

Problem issues with respect to dyslexia:

Note—OSEP's findings on dyslexia are not really based on data, but rather anecdotal information from parents and staff

Put together with inconsistent perceptions of when students with dyslexia should be referred to sp ed, led OSEP to conclude some students in dyslexia/§504 should really have been referred to sp ed

A circumstantial case...

TEA Dyslexia Letter (June 6, 2018)

- **Important State Guidance Document**—Addresses OSEP findings that §504/dyslexia students who really needed sped did not get referred in a timely manner, or at all
 - Note*—Substance of letter is reflected in 2018 Dyslexia Handbook
- **Main Question Addressed**—How should schools determine if a student that is assessed for dyslexia, or who is currently in a dyslexia program under §504, should be referred to sped?

TEA Dyslexia Letter (June 6, 2018)

- **Key factors in Child-Find Path Decision:**
 1. How the student’s reading difficulty affects learning,
 2. The gap between current and expected performance in reading,
 3. Additional concerns that may further exacerbate challenges learning to read (i.e. other disabilities), and
 4. Whether student made the anticipated rate of improvement in the dyslexia program.

TEA Dyslexia Letter (June 6, 2018)

- Thus, schools must examine **dyslexia assessment** data and needs of students with dyslexia to determine if sped might be needed, not just dyslexia services and mods
 - Does assessment show **large gap** between grade level and functional reading level?
 - Is **reading comprehension low**, together with poor mechanics scores?
 - Is the student performing in the **classroom**?

TEA Dyslexia Letter (June 6, 2018)

- Or, schools examine **dyslexia program data** to determine if a student presently in dyslexia program should be referred to sp ed
 - Is student making the rate of progress anticipated in guidelines of dyslexia program used by district?
 - Is program sufficiently individualized and intensive?
 - How is the student performing in classroom and on STAAR reading?
 - Might program need to be supplemented with sp ed supports (inclusion, resource) in order to deliver progress in reading?

TEA Dyslexia Letter (June 6, 2018)

- Of course, an important additional factor should be **parental input**, as parent can request sp ed evaluation at any time, and has to consent to sp ed evaluation
 - If parent is offered a sp ed evaluation, but declines, offer and rejection should be documented (to show child-find compliance)
 - It can also be helpful to document child-find discussion and data bases with parents (but child-find responsibility rests with district)

TEA Dyslexia Letter (June 6, 2018)

- Of course, an important additional factor should be **parental input**, as parents can request sp ed evaluation *at any time*
 - Parents should not be “talked out” of requesting a sp ed evaluation, if that is what they want
 - Parents should be informed that a written request for sp ed evaluation triggers a 3-week timeline for district to respond (TEC §29.004(c))

• **Does letter mean that every student tested for, or in a dyslexia program, should be referred to sp ed?**

(This was one early interpretation of the letter)

Both Justin Porter (TEA Exec Dir of Sp Pops) and a TEA panel presenting at TCASE Summer 2018 said that the letter neither says so, nor means so

The letter emphasizes that *some* students should be referred, depending on the picture painted by the individual data situation

2018 Dyslexia Handbook, p.77 (Questions 10, 12)

• **Are services under the Texas Dyslexia Program “Special Education” services?**

(Another interpretation...)

Although the programs adapt methodology of instruction for dyslexic students, the program is **not** individualized for each student

IDEA definition of “specially designed instruction” means “adapting, as appropriate to the needs of **an eligible child** under this part, the content, methodology, or delivery of instruction...” 34 C.F.R. §300.39(b)(3)

• **Are services under the Texas Dyslexia Program “Special Education”?**

Dyslexia programs under the TEA Handbook are the same for all students identified as dyslexic in a district (same methodology, same frequency and amount of services)

Thus, systemically, the Texas Dyslexia Program is not individualized per student

Special education services, however, are designed individually to meet the needs of *one* student

• Are services under the Texas Dyslexia Program “Special Education”?

2018 Handbook, App. A, Question 50 (p. 89)
—“No. Required dyslexia instruction as described in the *Dyslexia Handbook* is not in and of itself considered ‘special education’ or ‘specially designed instruction in the context of IDEA.”

Thus, the Handbook sees special education services as more uniquely individualized (and potentially more intensive) than dyslexia services under the Texas Dyslexia Program

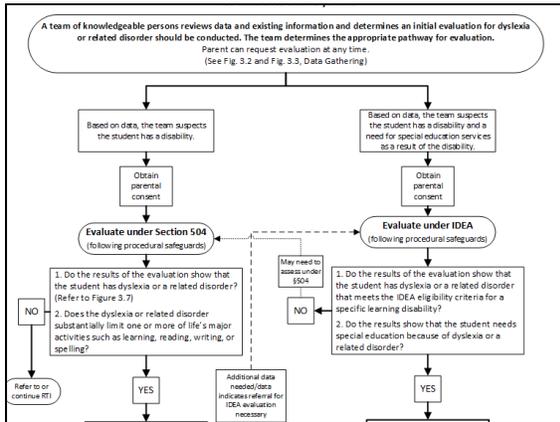
2018 Dyslexia Handbook Provisions on Child-Find

“It is important to remember that any point in the process a referral for a dyslexia evaluation may be made either under Section 504 if a disability is suspected or under IDEA if a disability and a corresponding need for special education services are suspected.” (p. 16).

When can parents request sp ed referral? Whenever and wherever the student is in whatever process

2018 Dyslexia Handbook Provisions on Child-Find

- Thus, if a child is suspected of having dyslexia **and** needing special education services, then referral to sp ed should take place
- If a child is suspected **only** of having dyslexia, but need for special education is not suspected, then referral to §504 should take place (see p. 23; Flowchart on p. 35)



2018 Dyslexia Handbook Provisions on Child-Find

- Language mirrors that of June 2018 TEA letter on dyslexia and IDEA child-find:
 - Parents can request eval at any time
 - Rtl and referral can take place at same time
 - Rtl can include dyslexia services

Handbook at p. 27 (contains most key points of June 2018 TEA letter)

- **“A special education evaluation should be conducted whenever it appears to be appropriate, including upon request from the parent/guardian.** Some students will not proceed through all the steps before being referred for an FIE or Section 504 evaluation.” (See p. 34).

Handbook rightly acknowledges the importance and implications of a parent request for IDEA evaluation (denial requires prior written notice and notice of IDEA rights, and can expose a school to a failure-to-identify legal claim)

- **“A dyslexia evaluation may be incorporated into the FIE through special education.”** (*Handbook*, p. 34)

Good practice—Conducting a dyslexia evaluation with, or within, an LD FIE, if data indicates LD in reading, can add to ARD committee’s understanding of the student’s reading needs and how to meet them, in appropriate cases

See also, *Dear Colleague Letter*, 66 IDELR 188 (OSEP 2015); *Letter to Unnerstall*, 68 IDELR 22 (OSEP 2016)

- **Q & A in Handbook Appendix A**

Question 10, 12—No, every student suspected of having dyslexia does not have to be referred under IDEA

Reinforces OSEP’s position that some students with dyslexia are properly served under §504 and not IDEA

Also reinforces the position of TEA’s June 2018 letter, which provides guidance on determining when a student with dyslexia should be evaluated under IDEA

- **Q & A in Handbook Appendix A**

Question 11—Determining whether to refer to §504 or IDEA

“If, based on the data it has reviewed, the team suspects that a disability exists and that special education services are necessary, the team must refer the student for an evaluation under the IDEA.”

“If the team does not have a reason to suspect that the student needs specially designed instruction, but suspects that the student has dyslexia, then that student must be referred for a Section 504 evaluation.”

Question 29—Yes, students suspected of having dyslexia can be evaluated under IDEA, as it is a learning disability that could potentially qualify a student under IDEA, “if it is suspected that the student has dyslexia and a need for specially designed instruction.”

Question 31—More content derived from TEA June 2018 letter on when to refer a dyslexic child to IDEA, based on consideration of key data points

• **Current dyslexia/IDEA dynamic:**

Since dyslexia assessment triggers at least a §504 referral, the additional question is whether a student with dyslexia should be referred to special education

Schools will be under scrutiny to ensure that students assessed for dyslexia, and those provided dyslexia services, are properly referred to sp ed when appropriate

More scrutiny is likely if sp ed numbers are low in the district... (U.S. average is about 13% sp ed, TX average is around 9%)

When to Refer a Dyslexic Child to Sp Ed? Applying the Data Pieces

A Multi-Factor Rubric:

I. Analysis of degree to which dyslexia is affecting student’s overall learning

Data: overall grades, STAAR scores, other achievement tests, teacher input, parent input

Notes—Poor grades in early grade levels are of greater concern, grades in reading-intensive classes are more significant

A Multi-Factor Rubric:

2. The size of the gap between the student's expected reading level and their actual reading level

Data: reading screening scores, dyslexia assessment scores, STAAR reading, STAAR reading benchmark tests

Notes—The larger the gap, the more likely special referral is required. Gaps should be seen as more significant in early grades.

A Multi-Factor Rubric:

3. The presence of other concerns that may further add to the student's challenges in learning to read, such as other disabilities (e.g., ADHD, oral language difficulties)

Data: §504 evaluation, private evaluation data, parent input, nurse information, other sources

Notes—Both prior and current Dyslexia handbooks agree that additional disabilities can complicate the student's profile and render dyslexia services less effective, potentially requiring special

A Multi-Factor Rubric:

4. For students already receiving dyslexia services, whether student is making the anticipated rate of progress in the dyslexia program

Data: dyslexia program progress data, expected rates of progress in program (according to program specifications)

Notes—A student's failure to make expected progress in a dyslexia program (despite proper implementation) is a strong indicator of potential need for special education services, and thus, a need to consider IDEA referral

A Multi-Factor Rubric:

5. Discrepancy between performance in reading and that in other achievement areas

Data: functional reading levels, grades and STAAR scores in other areas, test results in other areas

Notes—The more the reading performance is deficient in comparison to other areas, the more likely the student may need sp ed

A Multi-Factor Rubric:

6. Additional district-based factors for consideration

Data: present district IDEA eligibility rate (compared to 13% national average), percentage of dyslexia students in sp ed (compared to 20% Texas rate)

Notes—The lower those numbers, in comparison to national or State figures, the more assertive the district's IDEA child-find efforts should be within the dyslexia program.

Issues in Dyslexia Instruction and Special Education

- Who decides the reading program and accommodations for a sp ed student with dyslexia?**

The IEP team

Not the district's regular dyslexia program

Dyslexia services should comply with State requirements for such programs

Issues in Dyslexia Instruction and Special Education

- “Intersection” issues between dyslexia program and other programs are toughest
- **Who decides the reading program and accommodations for a sp ed student with dyslexia?**

IEP team decides reading services and accommodations in classroom and State assessment

- **IEP Team Makes Decisions on IDEA Students with Dyslexia**

IEPT requires input from dyslexia program staff

IEPT has to monitor reading progress, and take action if anticipated progress is not made

And, IEPT must ensure services are provided in the LRE (which would prefer a regular dyslexia classroom over a sp ed setting)

Dyslexia Within Special Education

For IDEA students with dyslexia,ARD committee makes instructional and services decision

ARD committee should have input of dyslexia-knowledgeable staff (could be sped staff)

IEP must include dyslexia instruction that meets State dyslexia program requirements (per Dyslexia Handbook)

Dyslexia Within Special Education

Dyslexia services for a sp ed student must be set in IEP with specificity

IEP must include dyslexia program goals (and perhaps objectives in areas of specific weakness) (see *Student v. Riesel ISD*, 116 LRP 28346 (SEA TX 2016)(failure to include dyslexia goals in IEP precluded effective determination of progress)

If data does not indicate progress, ARDC must make changes to reading program and services

Dyslexia program's partnership with sp ed is crucial with sp ed students with dyslexia

Key Intersection Points

For IDEA-dyslexic students in regular dyslexia program, IEP team must closely monitor progress in program

As discussed previously, districts must consider IDEA referrals for §504 students not making anticipated progress in regular ed dyslexia program

Dysgraphia (Orange Book (OB), p. 59)

• Definition and Characteristics

- “Dysgraphia is related to dyslexia as **both are language-based disorders**. In dyslexia, the impairment is about word reading.
- Dysgraphia is a written language disorder in serial production of strokes to form a handwritten letter. **This involves not only motor skills but also language skills—finding, retrieving and producing letters, which is a subword-level language skill.**

The impaired handwriting may interfere with spelling and/or composing, but individuals with only dysgraphia do not have difficulty with reading.”

Dysgraphia (OB, p. 59)

- **Definition and Characteristics**
 - “A review of recent evidence indicates that **dysgraphia is best defined as a neurodevelopmental disorder** manifested by illegible and/or inefficient handwriting due to difficulty with letter formation.

This difficulty is the result of deficits in graphomotor function (hand movements used for writing) and/or storing and retrieving orthographic codes (letter forms). Secondary consequences may include problems with spelling and written expression.

The difficulty is not solely due to lack of instruction and is not associated with other developmental or neurological conditions that involve motor impairment.”

- **Handwriting is not just a motor skill**
 - “Despite the widespread beliefs that handwriting is purely a motor skill or that only multisensory methods are needed to teach handwriting, **multiple language processes are also involved in handwriting.**
 - Handwriting draws on language by hand (letter production), language by ear (listening to letter names when writing dictated letters), language by mouth (saying letter names), and language by eye (viewing the letters to be copied or reviewing for accuracy the letters that are produced from memory).” (OB, at p. 60).

- **Data Gathering—Look for & document characteristics of dysgraphia (OB, p. 61)**
 - Slow or labored written work
 - Poor formation of letters
 - Improper letter slant
 - Poor pencil grip
 - Inadequate pressure during handwriting (too hard or too soft)
 - Excessive erasures
 - Poor spacing between words
 - Poor spacing inside words
 - Inability to recall accurate orthographic patterns for words
 - “b” and “d” reversals beyond developmentally appropriate time
 - Inability to copy words accurately
 - Inability of student to read what was previously written
 - Overuse of short familiar words such as “big”
 - Avoidance of written tasks
 - Difficulty with visual-motor integrated sports or activities

• **Evaluation Pathways (Similar to Dyslexia Pathways)(OB at p. 62)**

The identification of dysgraphia is made by either the ARD committee under IDEA or Section 504 committee under Section 504 following the respective evaluation processes of the laws

In addition to regular attendees, committee members should have knowledge regarding:

- the handwriting process;
- dysgraphia and related disorders;
- dysgraphia instruction, and;
- district or charter school, state, and federal guidelines for evaluation. (OB, at p. 64)

• **Formal Assessment of Dysgraphia**

Handwriting—Alphabet task, copying task, composition, spelling

Cognitive Processes—Finger succession task, orthographic coding, rapid naming, phonological awareness

Brenda Taylor, PhD, CALT, LDT (2018); OB at p. 64

- Ultimately, you are looking for impaired orthographic coding, and/or graphomotor planning for sequential finger movements (i.e., unexpected difficulty in automatic retrieval and production of legible letters)(Berninger, 2009).

• **Review & Interpretation of Data**—“Interpret tests results in light of the student’s educational history, linguistic background, environmental or socioeconomic factors, and any other pertinent factors that affect learning.” (OB, at p. 65)

The ARD/§504 committee determines if difficulties in the areas of writing and spelling:

- reflect a **pattern showing characteristics of dysgraphia**
- with **unexpectedly low performance in writing** for the student’s age and educational level in some or all of the following areas: Handwriting, Writing Fluency (accuracy and rate), Written Expression, Spelling.”

• Review & Interpretation of Data

Committee will look to determine **whether the weaknesses in writing and spelling are unexpected** in relation to the student's other abilities, sociocultural factors, language differences, irregular attendance, or lack of appropriate and effective instruction.

“For example, the student may exhibit strengths in areas such as reading comprehension, listening comprehension, oral verbal ability, or math reasoning yet still have difficulty with writing and spelling.”

◦ **No one single indicator, but rather a preponderance of informal and formal data, indicates unexpected weakness**

◦ **If dysgraphia is identified:** Committee then determines eligibility and need for services, including the creation of a 504 Plan or IEP as appropriate.

◦ **If dysgraphia is not identified:** Committee then determines if another impairment needs to be identified and what further action is necessary with respect to that impairment.

• Instruction for Students with Handwriting Difficulty

10-20% of students struggle with handwriting. Handbook suggests some simple instruction that can benefit these students whose penmanship is illegible or dysfluent (but who might not be dysgraphic)(OB, at p. 66-67).

- Show students how to hold a pencil.
- Model efficient and legible letter formation.
- Provide multiple opportunities for students to practice effective letter formation.
- Use scaffolds, such as letters with numbered arrows showing the order and direction of strokes.
- Have students practice writing letters from memory.
- Provide handwriting fluency practice to build students' automaticity.
- Practice handwriting in short sessions.

• Instruction for Students with Dysgraphia (OB at p. 66-70)

- Start with research-based instruction in the elements of handwriting, spelling and written language provided to all students, AND
“for those students who require additional supports and services for dysgraphia, instructional decisions must be made by a committee (either Section 504 or ARD) that is knowledgeable about the instructional elements and delivery of instruction that is consistent with research-based practice.”
- OB, at pgs. 68-70 provides details—note similarity to some of the elements of dyslexia instruction.

• Instructional Accommodations (OB, at p. 71)

- **Same basic rules apply in terms of meeting needs. OB lists some possible considerations impacting what and how much accommodation may be necessary.**
 - Rate of producing written work
 - Volume of the work to be produced
 - Complexity of the writing task
 - Tools used to produce the written product
 - Format of the product

• Examples of accommodations for students with dysgraphia (OB, at p. 71)

- Allow **more time** for written tasks including note taking, copying, and tests
- **Reduce the length** requirements of written assignments
- Provide **copies of notes** or assign a buddy to assist with filling in missing information
- Allow the student to **audiotape** important assignments and/or take oral tests
- Assist student with developing logical **steps to complete a writing assignment**

• **Examples of accommodations for a student with dysgraphia**

- Allow the use of **technology** (e.g., speech to text software, etc.)
- Allow the student to use **cursive or manuscript**, whichever is most efficient
- Allow the student to use graph paper for math, or to turn lined paper sideways, to help with lining up columns of numbers
- Offer an **alternative to a written project** such as an oral report, dramatic presentation, or visual media project
