

“BREAKING UP IS HARD TO DO”: THE NEW RELATIONSHIP BETWEEN 504 AND DYSLEXIA

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1. IF A STUDENT IS SUSPECTED OF HAVING DYSLEXIA, WHAT IS THE REFERRAL PROCESS?

This school year, the referral process has changed. At this time, if the school suspects or has reason to suspect that a student has dyslexia or a related disorder and needs services, the school is required to refer the student for a special education full individual educational evaluation under IDEA.

2. WHY WAS THERE A CHANGE?

The change was based upon OSEP's clarification to TEA regarding dyslexia evaluations and services.

3. CAN THE PARENT REFUSE AN EVALUATION UNDER IDEA AND REQUEST AN EVALUATION UNDER SECTION 504?

A parent always has the right to decline testing under IDEA. If the parent chooses to decline special education testing, the school can offer an evaluation under Section 504.

4. CAN THE SCHOOL PROVIDE THE PARENT WITH THE OPTION OF HAVING TESTING UNDER IDEA OR SECTION 504?

No. All dyslexia evaluations are initially funneled through IDEA. Only when a parent refuses an IDEA evaluation can the school offer an evaluation under Section 504.

5. CAN A PARENT THAT HAS REFUSED AN EVALUATION UNDER IDEA SECTION 504?

Yes. Under both IDEA and Section 504, a parent must give written consent for evaluation.

6. IF A PARENT REFUSES AN EVALUATION UNDER IDEA AND SECTION 504 AND THE SCHOOL SUSPECTS THAT THE STUDENT HAS DYSLEXIA, WHAT SHOULD THE SCHOOL DO?

Even without an eligibility identification of dyslexia, the school may still provide appropriate tiered interventions that are relevant to the student's needs under RtI. Remember, parent notification is required under RtI when a student receives assistance from the school for learning difficulties, including the intervention strategies that will be provided to the child, how long it is anticipated the student will be receiving the intervention and progress updates regarding the effectiveness of the strategy.

7. IF THE STUDENT IS CURRENTLY IDENTIFIED WITH DYSLEXIA UNDER SECTION 504 AND IS RECEIVING DYSLEXIA INSTRUCTION UNDER AN ACCOMMODATION PLAN, DOES THE SCHOOL NEED TO NOW EVALUATE THE STUDENT UNDER IDEA?

Not necessarily. If the interventions are working and the student is making progress, then the student does not need to be evaluated under IDEA for dyslexia. It is important to remember, however, that the parent needs to be made aware of the student's progress and their right to request an evaluation under IDEA.

8. WHAT IF THE STUDENT IS MAKING MINIMAL PROGRESS WITH THE DYSLEXIA INSTRUCTION UNDER SECTION 504?

As has always been the case, when students identified with dyslexia under Section 504 are not progressing well with the current supports, services and accommodations, then the student needs to be referred for an evaluation under IDEA.

9. WHAT CRITERIA IS USED TO IDENTIFY DYSLEXIA WHEN CONDUCTING AN EVALUATION UNDER IDEA?

Under IDEA, dyslexia is subsumed under the eligibility of Specific Learning Disability (SLD). An evaluation would need to test for the characteristics of dyslexia such as letter knowledge, reading rate and accuracy, and phonemic awareness. Under SLD, the student will qualify for a SLD in basic reading and/or reading fluency with the condition of dyslexia. Remember, there are two prongs to eligibility: 1) having the disability, and 2) because of the disability, a need for special education and related services.

10. WHO DECIDES WHETHER THE STUDENT HAS A SLD WITH THE CONDITION OF DYSLEXIA?

The multidisciplinary team that conducts the evaluation determines whether the student has a disability. The ARD committee determines whether the student is in need of special education and related services because of the disability.

11. WHAT IS STANDARD PROTOCOL DYSLEXIA INSTRUCTION?

Each school must purchase a reading program or develop its own reading program for students with dyslexia and related disorders that is aligned with the descriptors for a dyslexia program outlined in the Dyslexia Handbook, the program must be evidence based.

12. IS THE STANDARD PROTOCOL DYSLEXIA INSTRUCTION PROVIDED AS PART OF THE REGULAR EDUCATION PROGRAM?

Yes. Standard protocol dyslexia instruction is a routinized program that is part of the continuum of tiered intervention and instruction available to any student who needs it, including students served by special education.

13. CAN STANDARD PROTOCOL DYSLEXIA INSTRUCTION BE CONSIDERED SPECIALLY DESIGNED INSTRUCTION FOR A STUDENT SERVED BY SPECIAL EDUCATION?

Yes. The ARD committee may determine that participation in standard protocol dyslexia instruction is part of the specially designed instruction and services that a student needs to access and progress in the general curriculum.

14. IS THE STANDARD PROTOCOL DYSLEXIA INSTRUCTION, WITHOUT ANY ADAPTATIONS, CONSIDERED SPECIALLY DESIGNED INSTRUCTION?

TEA has stated that standard protocol dyslexia instruction can be considered specially designed instruction for an individual student. TEA has opined that in this situation, the ARD committee determines that the student needs standard protocol dyslexia instruction along with customized, measurable annual goals, progress monitoring, direct, indirect, or support services from an appropriately certified special education staff member and other required IEP components.

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15. WHAT IF THE STUDENT ONLY NEEDS ACCOMMODATIONS?

If the student only needs accommodations, the student may be eligible for services under Section 504.

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16. WHAT IF THE PARENT ALLOWED TESTING UNDER IDEA, BUT REFUSED PLACEMENT UNDER IDEA?

If a parent declines special education services, the student identified with dyslexia may still receive any appropriate tiered interventions, including standard protocol dyslexia instruction (with or without a Section 504 plan).

17. SHOULD THE STANDARD PROTOCOL DYSLEXIA INSTRUCTIONAL SERVICES BE IDENTIFIED ON THE SCHEDULE OF SERVICES FOR THE STUDENTS WITH AN IEP?

Yes. The services needs to be clearly indicated on the schedule of services.

18. IS A DISTRICT RESPONSIBLE FOR EVALUATING STUDENTS IN PRIVATE SCHOOLS FOR DYSLEXIA?

Yes. School districts have an obligation to locate and identify any children in their jurisdictional boundaries that are suspected to have a disability and in need of special education services. The district must provide an evaluation under IDEA at no cost. The school district where the private school is located is responsible for conducting Child Find for parent placed private school children.

19. IS THE DISTRICT REQUIRED TO PROVIDE DYSLEXIA SERVICES TO STUDENTS THAT ARE IN PARENT PLACED PRIVATE SCHOOLS?

Students that are in private school do not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. However, the student in the private school would be entitled to a proportionate share of the Part B funds designated for private schools.

20. DOES A STUDENT NEED TO FAIL A CLASS BEFORE BEING REFERRED FOR AN EVALUATION?

No. A student does not need to fail a class or fail the state assessment in order to be referred for an evaluation. The student needs to be referred if the school suspects that the student has a disability that is in need of special education and related services. There are multiple factors to consider, including the student's reading performance, reading difficulties, poor response to interventions, teacher input and parent input. If these factors lead to the suspicion, the student needs to be referred.

21. IF A STUDENT QUALIFIES FOR SECTION 504 SERVICES UNDER ANOTHER DISABILITY CONDITION AND THE SCHOOL SUSPECTS THAT THE STUDENT HAS DYSLEXIA, CAN THE EVALUATION OCCUR UNDER SECTION 504?

No. Any evaluations for dyslexia going forward must be through the special education process. Consequently, the student needs to be referred for a special education evaluation.

22. IF THE STUDENT IS IN SECTION 504 FOR DYSLEXIA AND IS DOING WELL, CAN THE RE-EVALUATION OCCUR UNDER SECTION 504?

If the student is performing well under Section 504 and the parent has been informed of their right to an evaluation under special education and is not choosing to access the IDEA process, the re-evaluation can occur under Section 504.

23. CAN A PARENT REQUEST THAT A STUDENT BE EVALUATED FOR DYSLEXIA?

Yes. A parent can always ask for their child to be evaluated. Once a parent requests in writing to the administrator or special education director that their child be evaluated under IDEA, the school must consider the request and either agree or decline to conduct the evaluation within 15 school days of the request. The decision to test or not test must be provided to the parent in writing. The refusal must be accompanied by a copy of the procedural safeguards and Prior Written Notice. If the school agrees to conduct the evaluation, the written notice must be accompanied by a copy of the procedural safeguards, Notice of Evaluation and a Written Consent Form for the parent to sign.

24. WHAT SHOULD A SCHOOL DO IF THE PARENT PRESENTS AN OUTSIDE EVALUATION THAT INDICATES THAT THE STUDENT HAS DYSLEXIA?

The outside evaluation should be considered by the Rtl team. However, the district does not have to accept the evaluation. The district can use this information to determine whether a referral for special education testing is warranted. This information will be data that is reviewed as part of FIIE.

25. WHAT IF THE PARENT DOES NOT WANT THE DISTRICT TO TEST AND INSISTS THAT THE DISTRICT ACCEPT THE OUTSIDE EVALUATION?

If the parent wants to access special education services, the parent must allow the district to conduct its own testing. The district is not required to accept outside evaluations. The district is only required to consider any outside testing.

26. MAY A COMPUTER PROGRAM BE USED AS THE PRIMARY METHOD OF DELIVERY FOR A DYSLEXIA INSTRUCTION PROGRAM?

No. It may be used for practice and reinforcement, but not in lieu of direct instruction by a qualified teacher.