

# “Dyslexia, Dyslexia, Where Art Thou?”: The Role of Section 504 and the Changed Rules on Dyslexia

**Cynthia Buechler**  
**Attorney at Law**  
**Buechler & Associates, P.C.**

1

## 1. What is dyslexia?

The International Dyslexia Association defines dyslexia as follows:

“Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with 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 often 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.”

2

## 2. What is the history of dyslexia in Texas?

Historically, dyslexia was provided as a general education program. Students were assessed and provided services under Section 504. In 2016, after the Houston Chronicle published a multi part series on the failings of special education in Texas and the limitation placed on school to keep the special education population at 8.5 percent. Because of that series, the US Department of Education conducted an investigation regarding a cap by TEA of 8.5 percent of special education students that schools were required to maintain as part of accountability. TEA was cited and required to take corrective action, which in turn, required schools in Texas to revamp their referral process. During the investigation, the Department of Education cited TEA regarding its provision of services to students with dyslexia, including delays in assessment and the implementation of dyslexia instruction. In 2017, the Legislature removed the 8.5 cap.

3

## 2. What is the history of dyslexia in Texas?

For several years, Section 504 still maintained control over dyslexia. However, in 2021, significant changes occurred as to how a student is assessed and provided instruction.

4

### 3. When are students screened for dyslexia?

Texas Education Code (TEC) §38.003, Screening and Treatment for Dyslexia, requires that all kindergarten and first-grade public school students be screened for dyslexia and related disorders.

5

### 4. Is parental consent required for the screening?

No. When all of the students are receiving the screening, parental consent is not required.

6

5. If the school suspects that the student is a student with dyslexia, should the student be referred for testing even if the student is in kindergarten or first grade?

Yes. Whenever school staff suspect that a student has a disability that is in need of specially designed instruction, the student must be referred for testing.

7

6. Can the school give the parent a choice of having the student evaluated under IDEA or Section 504?

No. All testing for dyslexia needed to be funneled through special education at this point in time.

8

**7. If the parent does not want the student tested for special education services, can the school offer an evaluation under Section 504?**

The school is not allowed to suggest or persuade the parent to have testing under Section 504 rather than special education. If, after the parent is informed of the full individual evaluation under special education and declines the testing, the school may suggest evaluation under Section 504.

9

**8. Can a parent initiate a referral for an evaluation for dyslexia?**

Yes. If a parent has requested special education testing in writing, the school has 15 school days to determine whether or not the school will evaluate and inform the parent. If the school chooses to evaluate, the school will provide the parent with a written Notice of Evaluation, Written Consent Form and Procedural Safeguards. If the school declines to evaluate, the school will provide the parent Prior Written Notice of its decision and Procedural Safeguards.

10

## 9. Under what eligibility would the student be tested?

When a student is suspected of having dyslexia, the student will be assessed for a specific learning disability (SLD) in the areas of basic reading and reading fluency.

11

## 10. What areas need to be tested in order to determine whether the student has dyslexia?

The Dyslexia Handbook outlines the characteristics of dyslexia and identifies specific areas to assess (e.g., letter knowledge, reading rate and accuracy, phonemic awareness).

12

11. If the multidisciplinary team's evaluation shows that the student meets the eligibility criteria for a SLD in basic reading and/or reading fluency, does the student automatically qualify for special education services?

No. There are two prongs that must be met for a student to qualify for special education services. The first prong is whether the student has a disability. The multidisciplinary team's evaluation determines the first prong. The second prong is whether the student needs specially designed instruction due to the disability.

13

12. Who determines whether the student is eligible for special education services?

The ARD committee determines the second prong of whether the student needs specially designed instruction due to the disability.

14

### 13. Is the standard protocol dyslexia instruction considered specially designed instruction?

Yes. For any individual student, 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. The fact that standard protocol dyslexia instruction is available to students who need it as part of the continuum of general education interventions does not preclude an ARD committee from determining that it is a required component of the IEP for an individual student.

15

### 14. If the student is placed in special education, can the student still receive instruction in the standard protocol dyslexia instruction?

Yes. Since it is a program that is provided in general education, it is the least restrictive environment and should be considered first.

16

**15. If the standard protocol dyslexia instruction is provided in general education, how is it specially designed instruction?**

TEA has provided that for some students, standard protocol dyslexia instruction through the general education program along with indirect, or support services from a special education service provider (e.g. consultative support for IEP development and progress monitoring) may fully meet the student's needs and be the only service provided in the IEP.

17

**15. If the standard protocol dyslexia instruction is provided in general education, how is it specially designed instruction?**

Consequently, providing and supporting the general education standard protocol dyslexia instruction through measurable annual goals, progress monitoring, direct, indirect, or support services from an appropriately certified special education staff member can be considered specially designed instruction the student requires in order to receive a free and appropriate public education.

18

16. If the student is placed in special education, must the student be taught by a special education teacher?

No. If the student is in the standard protocol dyslexia instruction, the reading interventionist must be trained in providing dyslexia instruction and the program that the school is using.

19

17. What should a school do if the parent brings an outside assessment that finds the student has dyslexia?

The school is required to consider the outside evaluation, but does not have to accept it. The school can request to conduct its own evaluation and seek consent from the parent.

20

**18. What if a parent does not want special education or Section 504, can the student still receive dyslexia instruction?**

Without an eligibility identification of dyslexia, the school may still provide dyslexia instruction under MTSS to meet the student’s needs. Parental notification is required when a student receives assistance from the school district for learning difficulties, including intervention strategies that the school district provides the child.

21

**19. Can a parent determine what dyslexia program is used with their child?**

No. The school is entitled to determine what dyslexia program it uses, either purchased or created but the school, as long as it has the required components of dyslexia instruction as outlined in the dyslexia handbook.

22

20. If the student does not meet eligibility criteria for SLD in basic reading and/or reading fluency, what should the school do if the student is still struggling?

The school can still take the evaluation and under the MTSS, provide interventions to address the student's difficulties.

23

21. What are the school's obligations to private school students?

Under IDEA, if a student attends private school or is home-schooled and is suspected to have a disability and the need for special education services, the student must be referred for a full individual and initial evaluation as required by the Child Find provisions of IDEA. The school district where the private school is located is responsible for conducting Child Find for parentally placed private school children.

24

## 22. If the student is currently receiving dyslexia instruction under Section 504, does the school now need to assess under IDEA?

If a student is making adequate progress (i.e., data from progress monitoring demonstrating consistent movement towards closing achievement gaps) and the parent or guardian agrees with the current supports and services, it is permissible to continue to provide dyslexia intervention, including standard protocol dyslexia instruction, under Section 504 without conducting a full individual and initial evaluation (FIIE).

25

## 22. If the student is currently receiving dyslexia instruction under Section 504, does the school now need to assess under IDEA?

However, schools have an affirmative duty to promptly refer any student who is suspected of having a disability and needing special education services for an FIIE under the IDEA. Students identified with dyslexia who are not progressing well under Section 504 and/or are otherwise suspected of needing special education services must be referred for an evaluation under IDEA. Interventions and Section 504 plans may not be used to delay or deny an evaluation when there is suspicion of a disability and need for special education services.

26

## **Disclaimer**

The legal information provided during this webinar is for general purposes only. It is not intended as a substitute for individual legal advice or the provision of legal services. Accessing this information does not create an attorney/client relationship. Individual legal situations vary greatly and attendees should consult directly with an attorney.