

“The Divorce is Final”: Dyslexia has Left Section 504 for Special Education

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

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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.”

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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.

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2. What is the history of dyslexia in Texas?

For several years, Section 504 still maintained control over dyslexia. TEA has officially ended the relationship.

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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.

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4. Is parental consent required for the screening?

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

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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.

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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.

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

Not anymore.

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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.

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9. Who needs to be involved in the evaluation process if dyslexia is suspected?

TEC §29.0031 specifies that someone with specific knowledge of the reading process, dyslexia and related disorders, and dyslexia instruction must serve on the multidisciplinary team when dyslexia is the suspected disability.

The statute lists three means to satisfy this membership requirement:

- Be an licensed dyslexia therapist;
- Be an individual who holds the most advanced dyslexia-related certification issued by an association recognized by the SBOE, and identified in, or substantially similar to an association identified in, either the rules or Handbook adopted by the SBOE; or

If neither of the first two is available, be an individual who meets applicable training requirements adopted by the SBOE.

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10. How does the dyslexia member document their participation in a student's evaluation?

TEA expects the member to sign the evaluation report.

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11. 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.

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12. 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).

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13. What does the multidisciplinary team consider when assessing for dyslexia?

The team must look for a pattern of evidence reflective of the primary characteristics of dyslexia which is unexpectedly low performance in some or all of the following areas:

- reading words in isolation,
- decoding unfamiliar words accurately and automatically,
- reading fluency for connected text (rate and/or accuracy and/or prosody),and
- spelling (an isolated difficulty in spelling would not be sufficient to identify dyslexia).

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14. When making the determination of whether the student qualifies as having a SLD with the condition of dyslexia, what questions must be addressed?

The following questions must be considered when making a determination regarding dyslexia:

- Does the data show the following characteristics of dyslexia, i.e., Difficulty with accurate and/or fluent word reading; Poor spelling skills; Poor decoding ability
- Do these difficulties (typically) result from a deficit in the phonological component of language? (Remember, average phonological scores alone do not rule out dyslexia.)
- Are these difficulties unexpected for the student's age in relation to the student's other abilities and provision of effective classroom instruction?

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15. Is this member required for every ARD committee meeting?

No. This member must be a part of an ARD committee meeting that determines initial eligibility and any meeting at which a change in and/or continued eligibility is discussed, as in a re-evaluation. However, TEA has provided that a student's provider of dyslexia instruction must be involved in the development and implementation of the student's IEP.

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16. 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?

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16. Cont.

If the student needs dyslexia instruction the answer is yes. 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.

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17. 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.

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18. Is an evidence-based dyslexia program, also known as standard protocol dyslexia instruction, considered specially designed instruction?

Yes, the State specifically provides that there is no distinction between evidence-based dyslexia instruction and specially designed instruction.

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

A provider of dyslexia instruction does not have to be a certified special education teacher unless the individual is employed in a special education position that requires that certification. Districts will determine whether the position requires the certification. The most highly trained and qualified individuals need to be the ones providing dyslexia instruction, including in an evidence-based dyslexia program.

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19. Cont.

According to TEA, districts should strive to have the most highly trained and qualified individuals (e.g., CALTs, CALPs, LDTs) providing dyslexia instruction. Because paraprofessionals must work under the supervision of teachers, a paraprofessional cannot be the person providing instruction to students in the evidence-based dyslexia program.

Literacy achievement academies do not meet the requirements for a PDI to be considered fully trained.

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20. Once a student is determined eligible for special education and related services based on identification of dyslexia and a need for an evidence-based dyslexia program, how does an ARD committee determine and document the program in the IEP?

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20. Cont.

TEA has provided that very eligible student with dyslexia needs to be considered for the district's evidence-based dyslexia program. Each district's program is already required to address every component of dyslexia instruction and each instructional delivery method required in the Handbook. Consequently, TEA has stated that every ARD committee should be able to communicate and discuss how the program addresses the following:

- The required components of dyslexia instruction;
- The required instructional delivery methods;
- How teaching the program with fidelity is defined (e.g., grouping formats, duration of program, how often and for how long a student receives the program); and
- The PDI's training and skill level required for the program.

The student's PLAAFP and the goals developed based on the PLAAFP will also target the student's specific reading goals as determined by the ARD committee.

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21. 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.

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

No.

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23. 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.

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24. 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 reading interventions to address the student's difficulties, but not the dyslexia instruction.

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25. 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.

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

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26. Cont.

Section 504 committees must begin the process of discussing a student's continued need for an evidence-based dyslexia program and submitting referrals for special education initial evaluations. Absent any directives prescribed by the SBOE through its upcoming rule and Handbook revisions, TEA anticipates that each district should hold a Section 504 meeting as soon as possible, but no later than by the end of the 2024-2025 school year to determine whether the student continues to require an evidence-based dyslexia program.

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26. Cont.

If so, the district must refer the student for a special education evaluation. In these circumstances, the student should continue to receive instruction through an evidence-based dyslexia program while awaiting parental consent for the evaluation, its completion, and the subsequent eligibility determination. The districts should prepare for eligibility determinations to be made so that each eligible student could begin services under an IEP as soon as possible, but no later than the beginning of the 2025-2026 school year.

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27. Can the district determine that all students receiving dyslexia instruction will receive the services in lieu of specials?

Districts cannot unilaterally decide that all students who need to receive instruction through an evidence-based dyslexia program must give up specials (e.g., music, art) or a chosen elective in order to receive that instruction. While an ARD committee can come to agreement on certain scheduling decisions, a district must not place certain conditions on a student or student group that they would not impose on other students simply because of the identification of a disability and the need for special education and related services.

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27. Cont.

If the evidence-based dyslexia instruction that is being considered is outside of school hours or as a replacement for a non-core class or elective, it needs to be an ARD committee decision and must not be a unilateral decision of the district.

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