

Specific Learning Disability

NELI DISABILITY CONDITION SERIES 2024

Gail M. Cheramie, Ph.D. & Cynthia Buechler, JD

TOPICS

- **Statistics**
- **Definition/Criteria for SLD**
- **Assessment/Evaluation of SLD**
- **Common challenges in identification and evaluation**
- **Case examples**
- **Litigation issues and implications**

TEXAS PEIMS DATA SLD 2017-2024

2017-18 to 2023-24 percentage of SLD students in Texas has increased, especially in the past 3 years. Number increased from 21-22 to 23-24 = 72,874.

SLD most common category among students receiving special education services

2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
31.66%	30.78%	31.2%	31.57%	32.23%	33.66%	35.84%
157,752	163,688	183,452	191,045	204,684	236,564	277,558

Percentage of SLD based on National Center for Education Statistics (22-23) = 32%

SLD Brief History

- **1962: Samuel Kirk** first proposed a definition of LD; this then influenced organizations (e.g., LDA, CEC, NJCLD) and federal legislation (1975) to define LD; numerous definitions were used in the 80's but they had certain commonalities:
 - ❖ neurologically based or a disorder in processing
 - ❖ the processing disorder causes learning problems
 - ❖ the learning problems are manifested in weaknesses in academic skills

Federal
definition of SLD
PL 94-142

- 1975 – Education for all Handicapped Children Act
 - *Categories:* MR, Hard of Hearing, Deaf, SI, VH, SED, OI and SLD
- Definition of SLD then, same as now, except for use of ID to replace MR

IDEA definition of
SLD
Sec. 300.8 (c) (10)

- Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

IDEA definition of
SLD
Sec. 300.8 (c) (10)

- Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

3 major
components of
SLD definition

- The presence of a psychological processing disorder,
- an inability to learn an academic skill, and
- the assumption that the learning deficit is the direct result of the processing disorder.
- **BUT**, the definition does not explicitly state how the condition is identified nor does it give diagnostic criteria for the condition.
- Each state can delineate criteria and methods for determining conditions; this gives each state flexibility for SLD identification within the models allowed (RtI and PSW).

RtI Model
34 CFR
300.309(a)(2)(i)

- “The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when **using a process based on the child’s response to scientific, research-based intervention**; or ...”

PSW Model
34 CFR
300.309(a)(2)(ii)

- The child exhibits a **pattern of strengths and weaknesses** in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305

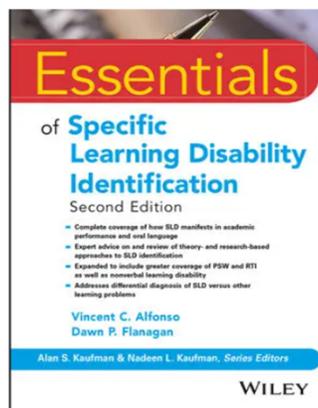
RtI
PSW

- Both paragraphs in the CFR are vague and do not delineate how to determine RtI or PSW
- There is no “rule” about how to make an SLD decision based on either model
- It is up to each state to provide guidance or make rules for the determination of SLD
- There is also a body of literature on these models

Essentials of Specific Learning Disability Identification, 2nd Edition

Vincent C. Alfonso, Dawn P. Flanagan

ISBN: 978-1-119-31384-7 | May 2018 | 640 pages



TEA has created a guidance document for SLD evaluation

Guidance for the Comprehensive Evaluation of Specific Learning Disabilities



OCTOBER 2023

6 RESPONSE TO INTERVENTION (RTI) OR A PATTERN OF STRENGTHS AND WEAKNESSES (PSW)

IDEA specifies that criteria adopted by a state for determining whether a child has an SLD must not require the use of severe discrepancy between intellectual ability and achievement; must permit the use of a process based on the child's response to scientific, research-based intervention; and may permit the use of other alternative research-based procedures.

In Texas, the student **must** either demonstrate an insufficient response to scientific, research-based intervention or exhibit a pattern of strengths and weaknesses (PSW) as one of the components considered to determine whether the child meets the eligibility criteria of SLD. LEAs may use either method as part of evaluating and identifying an SLD. The use of a severe discrepancy between IQ and achievement method is not used to determine the presence of an SLD in Texas.

Guidance for SLD
TEA Document
p.19 and p.22

Although Texas allows PSW as a method of SLD criteria and identification, it does not specify that a particular model for analyzing and interpreting data (i.e., pattern seeking) must be used. There are different ways that a PSW approach can be conceptualized. TEA does not endorse nor recommend a specific model of PSW. If using a specific PSW model for data analysis, teams cannot rely on single scores or calculations to make determinations. Formula-based decisions are often unreliable and should not be used as the primary or sole basis for determination. Predetermined cut scores (boundaries of proficiency or categories) should not be used as the sole source for determining strengths and weaknesses. Regardless of the assessment tools, confidence intervals should be used and take into account the measurement error of the tests and permit the expression of a range of scores, not a set cut-point.

LDA documents

- **Evaluation and Identification of LD:** “cognitive processing deficits are agreed to be a hallmark of Learning Disabilities; it is essential that processing abilities associated with the acquisition and use of skill sets involving oral language, reading, writing and math, be assessed using valid and reliable instruments...the model of the structure of the intellect that is widely accepted by researchers and practitioners in the field is the Cattell-Horn-Carroll Theory(CHC) ...” “underachievement is a symptom of LD but it is not sufficient as a sole criterion for identification”
- **Best Practices in the Use of Cognitive Assessment in LD Identification:** “The correspondence between weaknesses in academic skills and related cognitive processes together with strengths in cognitive abilities and processes is a common pattern of performance in students with SLID.”

McHale- Small, M., Tridas, E., S., Cárdenas-Hagan, E., Allsopp, D.H., van Ingen Lauer, S., Scott, K., & Elbeheri, G. (2023). Specific Learning Disabilities Principles and Standards.

Learning Disabilities Association of America.
ldaamerica.org

Specific Learning Disabilities Evaluation Principles and Standards



Monica McHale-Small, Eric Tridas, Elsa Cárdenas-Hagan, David Allsopp, Sarah van Ingen Lauer, Kristina Scott and Gad Elbeheri

Table 2. Comparison of components included in SLD definitions/diagnostic criteria across different professional organizations and governmental agencies around the world.

Note. Darker shaded blocks indicate a feature listed in diagnostic criteria. Lighter shading indicates criteria noted in diagnostic considerations or narrative accompanying the diagnostic criteria.

	Neuro-Biological Origin	Academic Impairment	Possible Other Functioning Impairment	Psychological/Cognitive Processing Deficits	Lack of Response to Appropriate Intervention	Distinct from Global Cognitive Impairment	Academic Deficits Not Primarily Due To Sensory Impairment	Academic Deficits Not Due to Emotional Difficulties	Unexpected Failure to Achieve Academically	Includes Subtypes
IDEA	X	X		X	X	X	X	X	X	
DSM-5-TR (U.S.)	X	X	X	X	X	X	X	X	X	X
ICD 11 (U.N.)	X	X	X	X	X	X	X	X	X	X
NJCLD	X	X		X			X	X		
ADCET (Australia)	X	X	X	X		X	X		X	
UK Gov Office for Science	X	X	X	X		X	X	X	X	X
LDAC (Canada)	X	X	X	X	X	X	X	X	X	X
LDA	X	X	X	X	X	X	X	X	X	X
NICHD	X	X		X	X	X	X	X		X
NASP (USA)	X	X	X	X	X	X	X	X	X	

NASP Position Statement

- SLDs are endogenous in nature; characterized by neurologically based deficits in cognitive processes
- Cognitive processing deficits are specific and interfere with the acquisition of academic skills
- SLDs are heterogeneous – no single defining academic or cognitive deficit is common to all types of SLDs
- SLD is largest category of students identified under IDEA
- Majority of students identified with SLD have a disability in reading

Flanagan, Ortiz, &
Alfonso. (2013)
Essentials of
Cross-Battery
Assessment-Third
Edition

- (p.227-228) “At the very core of the concept of LD is the assumption that, if not for the presence of an underlying cognitive deficiency which is affecting acquisition or development of a specific academic skill, an individual would be able to learn that skill satisfactorily because he or she displays the capacity to do so in other cognitive and academic skill areas...a historical review of the concept of LD reveals that identification of SLD has almost always included a consideration of an individual’s overall cognitive ability as well as his or her unique pattern of strengths and weaknesses...”

Mather, N., McHale-Small,
M., Allsopp, D.H., & van
Ingen-Lauer, S.V. (2024)
Access article at:
ldaamerica.org

LDAnalyses
From the Learning Disabilities
Association of America

NEWS PROFESSIONAL RESOURCES PROFESSIONALS

**We Need to Keep (but Revise) the Specific
Learning Disability Construct in IDEA**

Mather, et. al. SLD Construct

- Classification of SLD based solely on low achievement is not consistent with the construct of SLD
- “While an important process in determining which students are in need of a comprehensive evaluation, RTI should not be included as a way to diagnose SLD.” (p. 5)
- “a PSW approach is most consistent with our past and current understanding of SLD.” (p. 5)
- The two basic concepts that are in most definitions of SLD and have endured over time are Unexpectedness and PSW.

Considerations

- We definitely agree that low achievement based on multiple sources of data is the first criterion for SLD determination
- We definitely agree that:
 - the student should have been provided with quality instruction,
 - scientific research-based intervention (SRBI) should have been provided
 - progress monitoring would have occurred and the data indicated the student did not respond
- BUT, what criterion are we using to judge lack of response? What about issues of fidelity, of the degree to which the student was engaged, of the appropriateness of the intervention to that student’s difficulty...? And our 19 TAC 89.1011 says there is no requirement for length of intervention prior to referral.

Considerations

- We also agree with ruling-out exclusionary factors.
- BUT, then what? Low Ach- Failure to Respond – not due to other factors = SLD???. **This is where we disagree.**
- We agree with the LDA and NASP positions regarding the need for related cognitive processing and academic deficits in accordance with the definition of SLD.
- There are numerous research studies documenting cog-ach relationships
- We believe RtI is part of the process of identification, but not the whole process. Remember, the **I** in Rt**I** stands for instruction or intervention, not identification.

Focus of this Presentation

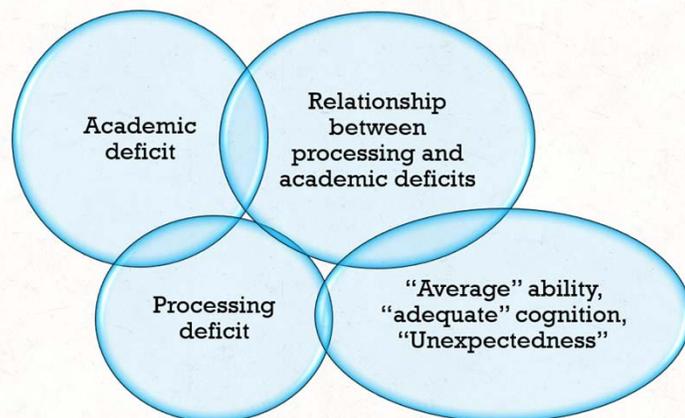
PSW



5 Methods for PSW

- Flanagan, Ortiz, & Alfonso: **DD/C** (Dual Discrepancy/Consistency with X-BASS)
- Schultz & Stephens: **C-SEP** (Core-Selective Evaluation Process)
- Dehn: **PSWM & PPA** (Processing Strengths & Weaknesses Model & Psychological Processing Analyzer)
- Hale & Fiorello: **C/DM** (Concordance-Discordance Model) & Cognitive Hypothesis Testing (CHT)
- Naglieri: **DCM** (Discrepancy/Consistency Method)

All Methods Converge on 4 Components



6

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The TEA SLD
Guidance
Document
(10/23)

- Has expanded the concept of PSW
- Emphasizes the use of multiple data sources to establish the academic deficit criterion for SLD
- Discourages the use of predetermined profiles or cut-off scores

Why not cut-scores?

- Academic and cognitive abilities are distributed along a continuum. There is no natural cut-point. Thresholds are arbitrary.
- Categorical vs. Dimensional – you are making a categorical decision (yes-no) for a dimensional disorder
- Measurement Error – SeM; “buffer zones” (Schneider)
- Observed vs. True Score – True score is hypothetical construct

All SLD identification methods have problems with reliability. If a formula or firm threshold is used, a student identified with one method may not be identified with SLD using another method or even another set of tests. The issue of low agreement is a universal concern when identifying learning disabilities using psychometric tests with fixed cut points. In addition, different measures are correlated, and the measures themselves are slightly unreliable, so it becomes difficult to assess exactly where an individual resides relative to a fixed cut point. This is true whether the cut point is the score on an achievement test, such as everyone who reads below the 15th percentile has SLD. It is also true if we use a 16-point IQ-achievement discrepancy or a threshold of 60 words read correctly on an oral reading probe in an RTI method. Our ability to assess precisely where the student's true score is relative to this firm threshold is not reliable. Even with the same student, different tests or the same tests on different measurement occasions will generate a range of scores around the 15th percentile, a 16-point discrepancy, or reading 60 words per minute. If we have multiple tests of the same type of achievement and they are consistently below these thresholds, we can be more confident that the student's true score is below the threshold. Even better, we could express the unreliability of the test as the standard error of measurement and specify a confidence interval, so that a range of scores could indicate the presence of SLD. We could also incorporate other data supports that might inform the judgment of the ARD team, such as previous academic and classroom performance, grades, observations of the child, and the parents' and teacher's perceptions of the student's performance.

Texas Education Agency (October 2023). *Guidance for the Comprehensive Evaluation of Specific Learning Disabilities*. pp.14-15

Crafting the FIE

- Academic Achievement – multiple sources of data to confirm the presence of a significant academic deficit; other non-deficient academic areas should also have data
- Cognitive Processing – multiple sources of data to confirm the presence of a processing deficit; the deficit in processing is related to the deficit in achievement
- Evidence of adequate ability to learn; Unexpectedness
- Data are present to rule out that other factors are “primarily” contributing to low achievement, even if other factors and/or co-occurrence are present

Sources of Data for Achievement

Informal	Criterion-referenced	Curriculum-based	Norm-referenced
<ul style="list-style-type: none">• Work samples• Grades• Interviews• Observations	<ul style="list-style-type: none">• Benchmarks• STAAR• Universal screening data	<ul style="list-style-type: none">• Progress monitoring data obtained in an intervention	<ul style="list-style-type: none">• KTEA-3• WIAT-4,• WJ-IV ACH, etc.

Comparisons

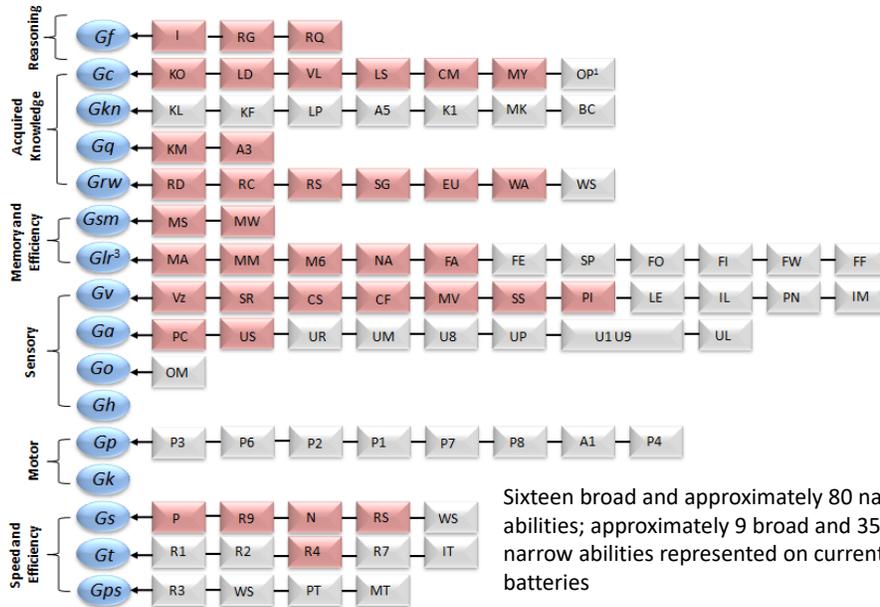
- **Criterion-referenced:** compares the student to a performance standard/criterion; competency-based; usually an academic subject or skill area
- **Norm referenced:** standardized on a clearly defined representative group; compare student's functioning to this norm group/standardization sample
- **Curriculum-based:** set of procedures using direct methods to observe and record performance in a curriculum or intervention; used to measure progress so comparison to self as well as curriculum or intervention standards; repeated measurements of academic skills to monitor progress

Cognitive Processing

- Select instruments that measure the various processes associated with academic skill acquisition
- There are many tests that can be selected here, ranging from general measures of intellectual functioning (e.g., WISC-V, WJ-IV COG) to specific measures of a particular process (e.g., phonological awareness, orthographic processing)
- The most widely accepted model for cognitive processes is C-H-C theory
- The most common processes assessed are: Gc (language-related, vocabulary, knowledge); Gf (problem-solving using logic and reasoning); Gwm (working memory); Gs (processing speed, performing simple tasks quickly and efficiently); Gv (visual processing, including visuospatial ability); Ga (auditory processing, including phonological processing skills); Gl (learning efficiency, encoding new information); Gr (retrieval fluency, retrieval of previously learned information)

Current and Expanded Cattell-Horn-Carroll (CHC) Model of Cognitive Abilities
(adapted from Schneider & McGrew, 2012) – Reviewed in Unit I

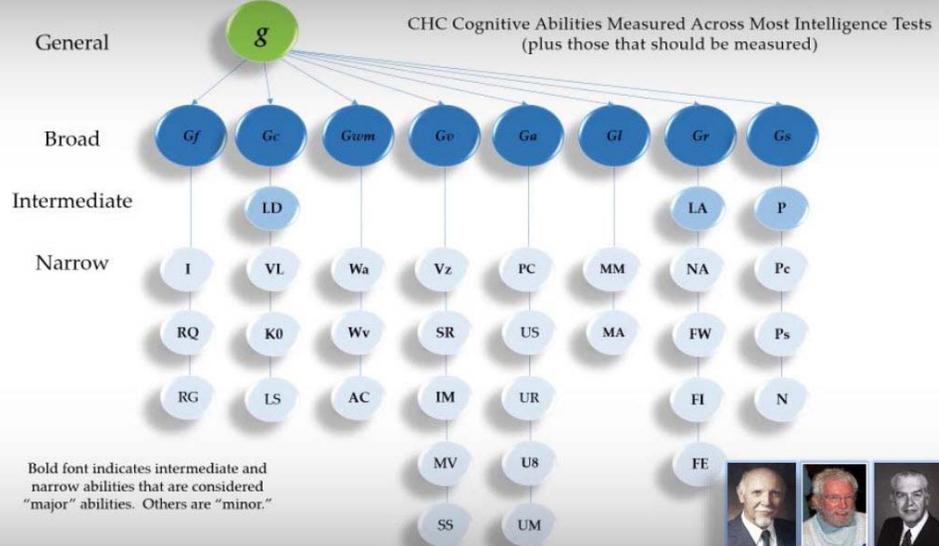
Image used with permission of D. Flanagan



Sixteen broad and approximately 80 narrow abilities; approximately 9 broad and 35 narrow abilities represented on current batteries

Flanagan, D. (2019). CHC Theory, PSW for SLD Classification, and the Assessment-Intervention Connection. Presented at 2019 Hou-Met Conference, Houston, TX.

Image used with permission of D. Flanagan



Bold font indicates intermediate and narrow abilities that are considered "major" abilities. Others are "minor."



CHC Theory Revised: A Visual Graphic Summary of Schneider and McGrew's 2018 Chapter in Flanagan & McDonough's (Eds.) *Contemporary Intellectual Assessment*, fourth edition. NY: Guilford. Posted on McGrew's MindHub May 11, 2018

COG-ACH RELATIONSHIPS

- Many cognitive tasks are not process pure
- There is a large evidence base of COG-ACH relationships
- Use of CHC theory in COG-ACH relationships
- CHC abilities have been shown to have a differential impact on reading, writing and math
 - Gf: Math; Ga:Read Decod; Gc:Read Comp
- Some broad abilities affect many areas of learning – Gc and Gwm – Domain-General

COG-ACH RELATIONSHIPS: READING

Academic Skill	Cog Process	Narrow Abilities
Basic Reading/ Decoding	Phono Awareness Phono Memory Rapid Naming Ortho Decoding	Ga:PC Ga:UM Gr:NA OP
Reading Fluency	Rapid Naming Orthographical Processing Processing Speed	Gr:NA OP; Ortho Mapping Gs (with ortho/ling units)
Reading Comprehension	Language List Comp Working Memory Executive Function	Gc: VL, MY, CM, LS, KO Gwm Gf:I, RG (Language Based)

COG-ACH RELATIONSHIPS: MATH

- Generally, Number Representation and Number Sense affect math
- Math Calculation: Gr:NA (numerical stimuli), G1 (fact retrieval) and Gs (numerical stimuli)
- Math Problem Solving: Gf:I, RG, and RQ; Gc has effects on MPS

PROCESSES ASSOCIATED WITH WRITING AND WRITTEN EXPRESSION

Motor & OP	Conventions	Composition
Graphomotor / Handwriting	Capitalization	Gc in general
Orthography	Punctuation	Vocab, Syntax, Morphology
	Grammar	Exec Func
Legibility	Spelling	Reasoning
Speed / Efficiency		Working Memory
		Prior Knowledge

Probabilistic not Deterministic

- Do not assume a perfect prediction between cognitive processes and academic skill deficits
- Not all academic weaknesses have corresponding cognitive weaknesses
- Cognitive processing weaknesses do not guarantee that there will be academic weaknesses – they simply *raise the risk* (Flanagan & Schneider, 2016)

Convergence and Contradiction

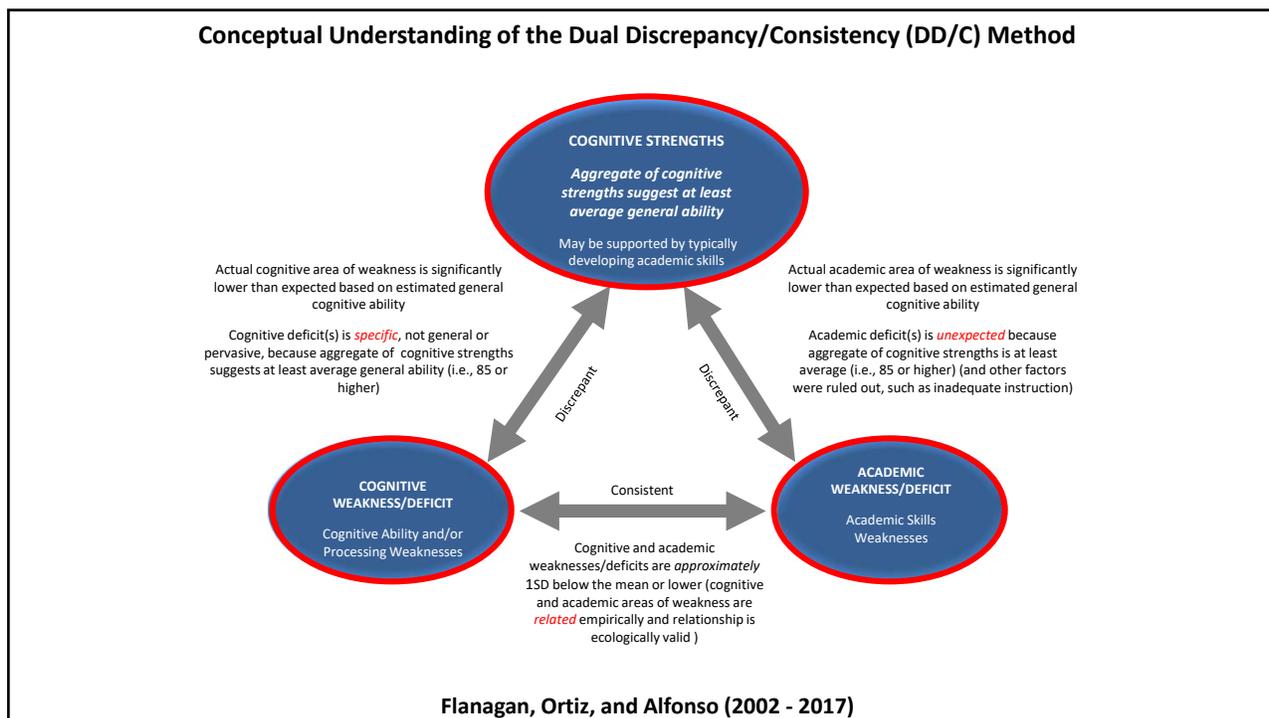
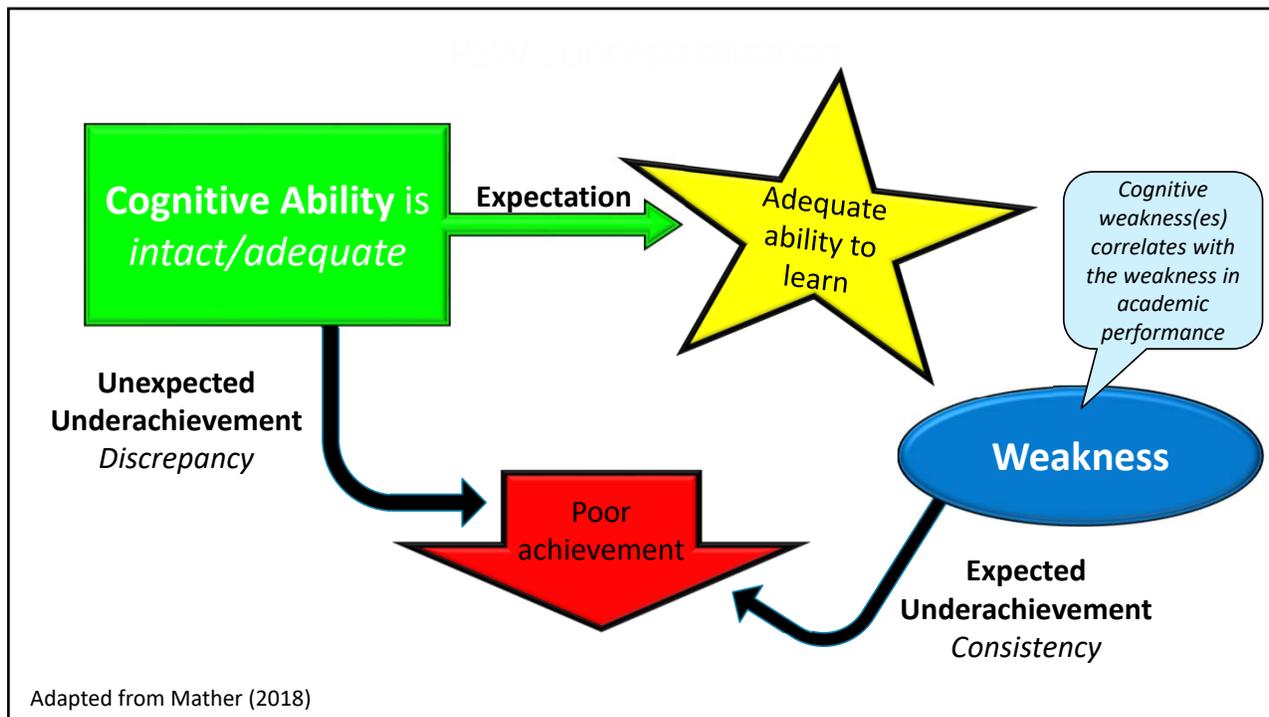
- The major issue in all evaluations is the degree to which your decisions are accurate.
- Multiple measures improve accuracy when:
 - There is convergence of data
 - Different sources support same conclusion
- What to do when multiple measures are contradictory?
 - For example: standard score data are below average but criterion-referenced and informal data (grades, teacher reports, work samples) are average and indicate on-grade-level performance; OR
 - Standard score data are average but criterion-referenced and informal data (grades, teacher reports, work samples) are below average and indicate below grade-level performance

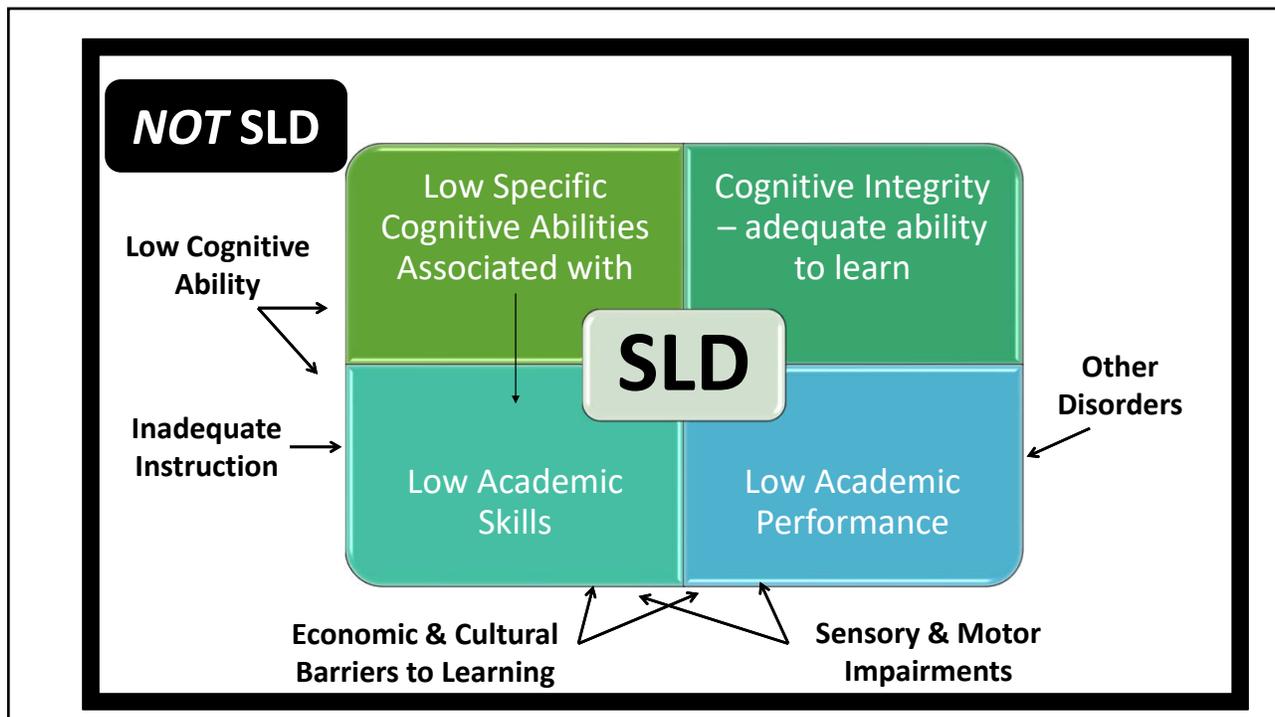
Contradictions?

- Conduct an error analysis to determine how the scores were obtained. Is the score an over- or under-representation of the skill?
- Investigate the conditions under which a certain score or level or performance was obtained?
- Did non-test and/or non-skills factors compromise the score/outcome? Did the student put forth effort throughout the assessment?
- Once all considerations and analyses have been done, determine the validity of the data. You will then know the degree of confidence you can place in the data and in your decision.

Unexpectedness

- The construct of unexpectedness is typically explained in reference to an individual's intelligence or oral language or verbal abilities.
- The deficit in learning is unexpected given other indices that the individual should be learning better in that academic skill. For example, the student has the intellectual and linguistic skills to be a better reader, but reading is deficient.
- In Mather, et. al (2024, LDA article), unexpected is not identical to unevenness. Uneven is about specificity of the deficit.
- Differences between skills in a profile (e.g., reading > math) does not necessarily equate with a SLD, but there should be unevenness in the academic profile.
- The question is Why? Your FIE will answer that question!





The FIE

- When SLD is suspected, how is the FIE crafted?
- Who is on the team? What tests are used?
- What procedures are used?
 - R (extensive review of academic history, including intervention history and results)
 - I (interviews with parents, teachers, interventionists, private providers if applicable, student)
 - O (for SLD, an observation in the area of difficulty is required)
 - T (ensure comprehensive assessment of the area of difficulty and associated cognitive processes; also assess areas that are intact)
- SLD has high rates of comorbidity – how are you accounting for this in your FIE?

Co-occurring Conditions

- SLD is a neurodevelopmental disorder and can coexist with many other conditions.
- Most common co-occurring condition: ADHD (estimates of approximately 50% of SLD and ADHD comorbidity)
- Other conditions: Emotional (anxiety, depression), Language disorders and Behavior disorders

Who is on the Evaluation Team?

- Typically the evaluation team consists of an Educational Diagnostician (DIAG) or Licensed Specialist in School Psychology/School Psychologist (SCHPSYC) and other members as needed
- When considering the areas of Oral Expression and/or Listening Comprehension as an SLD, then a Speech Language Pathologist (SLP) should be on the team
- When considering Dyslexia, the following must be on the team: a licensed dyslexia therapist, a professional who holds the most-advanced dyslexia-related certification, or a professional who meets the applicable training requirements required by the SBOE.
- A teacher is typically on the team (e.g., the general education teacher and (if applicable) the teacher involved in delivering interventions)

The required
Observation
34 Code of Federal
Regulations § 300.310

- (a) *The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the **child's academic performance and behavior** in the areas of difficulty.*

- **RECOMMENDED OBSERVATION FRAMEWORK**

- Instructional Delivery – whole group, small group, use of visual aids or other strategies/materials
- Educational Environment – seating, number of students, distractions
- Grade level of instruction
- Task/Lesson Presented
- Academic Competence – mastery of content, need for support, performance in relation to peers
- Behavior – academic engagement, attention to task, disruptive behavior, sustained orientation to lesson

Observation
Example

- **Reading:** Mary was observed in a small group during a 1st grade lesson on sound blending. The teacher was seated at a table with 4 students. Mary was attentive during the lesson, did not display any disruptive behaviors, and was engaged. The teacher presented a card depicting a letter and went through a routine: b says /b/, j says /j/ and all students, including Mary, recited this with her. A blend was then put on an erase board: sp. The teacher asked what did this sound like? Two students responded correctly. Mary did not respond, but she did repeat this with the group. The letters in were added to make the word spin, and again the teacher asked for the first blend, sp, then second blend, in. Mary repeated the sp blend and did not say the in blend. The teacher illustrated by drawing a line connecting the blends but did not say the whole word. When called upon to say the word, Mary looked at it on the board, said sounds aloud, repeated the /p/ sound and pronounced the word as *spipin*. After each student had an opportunity to respond (2 students said it correctly), the group practiced the word 3 times. Academic difficulties were observed, but no behavioral difficulties were indicated.

Observation
Example (when
ADHD is also
being
investigated)

- **Math:** Students were instructed as a group on order of operations (PEMDAS) and then solved 2 problems with teacher guidance. A worksheet with 10 problems was given for students to complete. A time sampling procedure was conducted for the 15-minute observation period. Mark was on-task 40% of the observation and needed redirection 7 times in the 15-minute time allowed. Mark needed assistance with the task (did appropriately ask for help and teacher reviewed directions). He completed 7 problems and 3 were incorrect. Off-task behaviors observed included: looking around the room, fidgeting, drumming pencil on desk, stood up at desk (4x), and put head on desk (3x). Both academic and attentional difficulties were observed.

Dyslexia = SLD
TEA Dyslexia
Handbook, 2024
p.34

If, through the evaluation process, it is established that the student meets the criteria for dyslexia, then the student meets the first prong of eligibility under the IDEA (identification of condition). In other words, the identification of dyslexia, using the process outlined in this chapter, meets the criterion for the condition of a specific learning disability. Dyslexia is an SLD and should be noted as the SLD.

What does this mean?

- SLD is the disability category under IDEA, Dyslexia is the type of SLD
- Our software programs have already added Dyslexia to the list of types of SLD
- Previously, recommended identifying Dyslexia as part of SLD this way:
 - SLD BRS/Dyslexia or SLD RF/Dyslexia
- NOW, you would conclude SLD-Dyslexia
- HOWEVER, we strongly encourage you to identify why the student meets the criteria for Dyslexia – is it due to basic reading skills or reading fluency? Is it due to poor word recognition and/or poor decoding or can the student read and decode accurately but has a deficit in fluency?

Suggestion

- SLD Dyslexia (BRS) or SLD Dyslexia (RF)
- Based on the analysis and synthesis of multiple data sources, it is concluded that Gregory meets the criteria for the educational disability condition of SLD – Dyslexia. Gregory has a significant deficit in Basic Reading Skills (word reading accuracy and decoding unfamiliar words). This impairment is due to a weakness in phonological processing, specifically as related to segmenting and manipulating phonemes and applying phonetic skills to form sound-symbol associations. Gregory's reading skills are unexpected based on his intellectual abilities and other academic skills.

Figure 3.4. Areas for Evaluation

Academic Skills	Cognitive Processes	Possible Additional Areas
<ul style="list-style-type: none"> • Letter knowledge (name and associated sound) • Reading words in isolation • Decoding unfamiliar words accurately • Reading fluency (rate, accuracy, and prosody are assessed) • Reading comprehension • Spelling 	<ul style="list-style-type: none"> • Phonological/phonemic awareness • Rapid naming of symbols or objects 	<ul style="list-style-type: none"> • Vocabulary • Listening comprehension • Verbal expression • Written expression • Handwriting • Memory for letter or symbol sequences (orthographic processing) • Mathematical calculation/reasoning • Phonological memory • Verbal working memory • Processing speed

Dyslexia Handbook
August, 2024

pp. 31, 33-34

Figure 3.7. Questions to Determine the Identification of Dyslexia

- Do the data show the following characteristics of dyslexia?
 - 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? (Please be mindful that 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?

Figure 5.2. Areas for Evaluation of Dysgraphia

Academic Skills	Cognitive Processes	Possible Additional Areas
<ul style="list-style-type: none"> • Letter formation • Handwriting • Word/sentence dictation (timed and untimed) • Copying of text • Written expression • Spelling • Writing fluency (both accuracy and fluency) 	<ul style="list-style-type: none"> • Memory for letter or symbol sequences (orthographic processing) 	<ul style="list-style-type: none"> • Phonological awareness • Phonological memory • Working memory • Letter retrieval • Letter matching

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Figure 5.3. Questions to Determine the Identification of Dysgraphia

- Do the data show the following characteristics and consequences of dysgraphia?
 - Illegible and/or inefficient handwriting with variably shaped and poorly formed letters
 - Difficulty with unedited written spelling
 - Low volume of written output as well as problems with other aspects of written expression
- Do these difficulties (typically) result from a deficit in graphomotor function (hand movements used for writing) and/or storing and retrieving orthographic codes (letter forms)?
- Are these difficulties unexpected for the student's age in relation to the student's other abilities and the provision of effective classroom instruction?

Crafting your FIE for other areas

- While we do not have charts for evaluating SLD in reading comprehension or math, the procedure is the same:
- Assess academic skills
- Assess associated cognitive processes
- Have evidence of unexpectedness and unevenness

Suggestion

- Select a PSW approach/method that is recognized for SLD determination and has been researched (publications)
- Such an approach will be consistent with the terminology used in IDEA, “relevant to the determination of SLD,” and the SLD definition of “a disorder in basic psychological processes”
- Follow the requirements of the chosen approach – all PSW methods require multiple sources of data
- Use clinical judgment in forming conclusions from the method selected
- Ensure that your data and interpretations of the multiple sources of data are accurate



Litigation Issues

- **DUE PROCESS CASES
AND LESSONS
LEARNED**

STUDENT V. CLEAR CREEK ISD, DOCKET NO. 262-SE-0522

(2023)

1

Factual Background

The Student transferred to the District at the beginning of grade in the 2018-2019 school year as a student with the special education eligibility of OHI for ADHD.

Student was due for a reevaluation in the fall of 2020. A review of existing evaluation data (REED) was conducted on September 2020. The parent requested additional disabilities to be explored, including SLD and speech impairment. The District agreed to complete updated assessments, including cognitive, achievement and language.

2

The District used a pattern of strengths and weaknesses analysis to determine whether Student met eligibility criteria for any SLD. The evaluation analyzed Student's weaknesses in writing and spelling in relation to Student's other cognitive abilities. Likewise, the evaluation analyzed Student's weaknesses in reading fluency and spelling in relation to Student's cognitive abilities and determined that Student has mild dyslexia. In reading fluency, Student's rate was good, but Student's accuracy was lower than expected. The evaluation recommended that Student be found eligible for special education in the category of SLD in reading fluency. The evaluation recommended that Student did not meet the criteria to also be considered an SLD in written expression.

With respect to SLD, the 2020 evaluation had closely analyzed the student's pattern of strengths and weaknesses to detect mild dyslexia with specific weakness in accuracy. The ARD Committee agreed to tailored, specially designed instruction to target Student's specific weakness, rather than a standard dyslexia program that would require Student to be removed from general education for more time per week. During the 2020- 2021 school year, this tailored intervention supported the student' to master the reading fluency goal in only half a year and make great progress in reading on grade level by the end of the year.

At the beginning of 2021-2022 school year, the ARD Committee met to consider Student's specific weaknesses identified in data collection by the case manager and proposed new goals targeting fluency and phonological awareness. These goals continued in the IEP developed in December 2021. The student made steady progress on these new goals and ultimately mastered them within a year. Additionally, the student's overall reading made accelerated progress during the 2021-2022 school year as measured by the STAAR exams and Student's report cards, ending the year above grade-level on some reading standards. Student's 2021-2022 IEPs addressed Student's dyslexia methodically and was carefully tailored based on Student's assessment and performance.

5

Over the course of two years, the parents provided the district with three private evaluations. With respect to the last private evaluation, the district considered the evaluation, but did not accept it. This outside evaluator was providing tutoring remotely to the student.

The parent filed for a due process hearing asserting that the District denied the student a FAPE by failing to devise and implement appropriate IEPs for Student in the 2021-2022 school year.

6

Court's Findings

The Hearing Officer concluded that the Student's IEPs were appropriately individualized based on Student's unique needs. All of the IEPs developed for the 2021-2022 school year were appropriately individualized on the basis of Student's performance and assessment in the area of dyslexia.

7

Lessons Learned

- Using a pattern of strengths and weaknesses is an appropriate method to determine SLD.
- A student's program must be individualized based upon a student's unique needs.
- The standard dyslexia program is not always appropriate for all students with dyslexia.
- An IEP team is only required to consider outside assessments. The ARD committee does not have to accept an outside report.
- Make sure to reference in the deliberations that the ARD committee considered the outside evaluation.
- If the outside evaluation was conducted before the school's evaluation, make sure to reference it in the district evaluation report.

8

K.S. V. REISEL ISD, NO. 20-50003

(5th Cir. 2021)

9

Factual Background

The student navigated elementary and high school in RISD with mixed academic success and a checkered disciplinary record. Apart from third grade, which he completed at a different school, the student attended RISD for his entire education. While attending third grade at another school district, his mother obtained a private psychological evaluation which provided that the student was performing in the average range of intellectual functioning, but that there were possible learning disabilities in reading and written expression. The outside evaluator recommended that the student should be considered for special education services for a learning disability and possibly emotional disturbance. The report, however, was not provided to the district until March of 2016, when the student was in eleventh grade.

10

When the student returned to the district in the fourth grade, he did not stand out academically. His grades and standardized test scores were generally average, and he did not fail consistently in any one subject. The student passed all of his middle-school classes with average to above-average grades. He passed the STAAR in reading, math, writing, and science as a fourth and fifth grader. Although he narrowly failed the state standardized exams for sixth-grade reading, seventh-grade writing, and eighth-grade social studies, the student subsequently passed both his seventh- and eighth-grade reading tests—with his score on the latter nearly earning him “Advanced” achievement status.

In high school, the student continued to have a mixed academic track record. In ninth grade, he failed Biology I and Algebra I, but passed the standardized state exams in both subjects. Conversely, he initially failed his English I and II standardized exams by a few points (which he later passed) while passing his corresponding ninth- and tenth-grade high school courses. Besides tenth grade World Geography and a semester of Geometry, the student otherwise passed his high school classes and other state standardized assessments.

In March of 2016, at the parent's request, the district referred the student for a full individual and initial evaluation. An FIE was conducted and it concluded that the student met the special education criteria for specific learning disabilities in math calculation and math problem solving, as well as in reading fluency. An ARD meeting was held and accommodations and goals were put in place as well as consultation by a special education teacher.

The parent disagreed with the evaluation and with his IEP asserting that they were not appropriate.

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Court's Findings

The hearing officer ruled in favor of the district. The parents appealed to district court. The judge upheld the hearing officer. Thereafter, the parents appealed the decision to the 5th Circuit Court of Appeals. The 5th Circuit affirmed the district's court's decision.

In finding for the school district, the Court of Appeals noted that the parent neither expressed concern in writing to supervisory or administrative personnel nor had a teacher formally requested an evaluation of the student before March 22, 2016. Just eight weeks after the parent request, the district completed a full individual evaluation.

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The parents argued that the district was on notice that the student might have been suffering from a disability long before the parent's request. They asserted that the student displayed a combination of academic failures and behavioral outbursts over the course of many years which should have required the district to evaluate earlier than it did.

The court found otherwise, citing that the student was an average student. He did not founder perennially in any given discipline—let alone across the board. After his evaluation, the school concluded that he had specific learning disabilities in reading fluency, math comprehension, and math problem solving. His educational record prior to the district's 2016 evaluation displays no consistent pattern of failure that would have given the district reason to suspect that the student had a disability in reading or mathematics that required specialized instruction and related services.

15

Lessons Learned

- A student's failure in a class does not necessarily rise to the level of suspecting a disability.
- When determining whether the school should have suspected that the student had a disability is based on the totality of the information and whether a pattern of difficulties exists.
- If a teacher expresses concerns regarding a student's performance, that might give rise to notice of suspecting a disability.
- While a school cannot depend on a parent to refer the student to special education to meet the Child Find obligations, a parent's failure to timely provide information that would aid in that determination does affect whether a school can be challenged for failure to identify.

16

STUDENT V. KLEIN ISD, DOCKET NO. 224-SE-0418

17

Factual Background

In May of 2015, the Student's mother requested that the Student be screened for dyslexia due to the Student's issues with reading. In November of 2015, the District completed a dyslexia screener. Using the Woodcock Johnson IV and samples of Student's work and standardized tests, the District tested the four primary characteristics and two secondary characteristics of dyslexia. The Student was found to be in the average range in the primary dyslexia characteristics of Letter-Word Identification, Word Attack, and Spelling.

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The Student also scored within 10 words above or below the 50th percentile in the primary characteristic of Fluency. In the secondary characteristics, the Student scored in the low range in reading comprehension and in the average range in writing composition. The District concluded that Student did not meet criteria for dyslexia, but also noted that teachers should monitor the Student's progress in reading comprehension in the future. The assistant principal then had a meeting with the Student's parents to clarify the reasons for not evaluating the Student for special education and related services.

The assistant principal explained that the Student was passing the Student's classes and making progress with the RTI interventions, and therefore, the Student did not require an evaluation for special education. She also stated that the Student would continue receiving RTI services and the District would look into Section 504 accommodations for the Student to help with reading.

The Student's reading did not significantly improve, including failing the STAAR exam from the initial dyslexia screener until the parent requested special education testing in 2017. At the request of the parents, the District completed its FIIE in January 2018. The parties came together to discuss the evaluation in an ARD meeting on February 2018.

The evaluation showed that, while the Student's reading comprehension was an area of weakness, the Student scored in the average range on letter and sight word identification and on word attack, which measures a student's ability to apply phonic and structural analysis to pronunciation of unfamiliar words. The evaluation recommended that the Student met eligibility criteria for special education as a student with a Specific Learning Disability in reading comprehension, with specific weaknesses in comprehension/knowledge, fluid reasoning, long term memory, and processing speed.

The Student's mother and father attended the meeting with the Student's aunt. The meeting lasted several hours and was described as "exhausting." The aunt insisted to the ARD Committee that the Student should qualify as a student with dyslexia. The aunt presented the outside evaluation conducted in October of 2017 to support her claim that the Student had dyslexia. The ARD Committee accepted the outside evaluation and identified Student as a student with dyslexia, despite the fact that the outside evaluation had never stated the Student had dyslexia under any definition accepted in the United States, but rather European criteria.

The ARD Committee felt pressure to identify the Student as a student with dyslexia and provide the Student with dyslexia interventions due to the contentious nature of the ARD meetings. However, the District did not believe the Student had dyslexia or required dyslexia interventions.

The ARD Committee knew the Student's Specific Learning Disability was in the area of reading comprehension. Nevertheless, the ARD Committee also qualified the Student as a student requiring special education and related services for a Specific Learning Disability in the areas related to dyslexia and provided in the IEP for the Student to receive dyslexia services in the general education environment.

Thereafter, the parent filed for hearing asserting, among other things, Child Find and that the District failed to provide an appropriate program.

23

Court's Findings

The Hearing Officer found that the District had reason to suspect the Student needed special education and related services by at least April 27, 2017. The Student had been receiving Section 504 services since 2015, so the District was aware that the Student had a disability. During the 2016-17 school year, the District should have suspected the Student needed special education and related services as a result of the disability because the Student's reading did not improve during the course of the year. The Hearing Officer held that the District, however, did not monitor the Student's reading comprehension deficit closely enough to consider testing Student for special education until the fall of 2017, and then only at the request of Student's parents.

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The decision cited that a child's right to a FAPE should not depend upon the vigilance of a child's parents. The District should have proactively sought to evaluate the Student for special education eligibility before the Student's parents requested an evaluation. A child experiences an "egregious loss of educational opportunity" when the child should be identified as a student eligible for special education and is not so identified. In this case, the Student should have been evaluated at least by April 2017. The Hearing Officer found that the District violated its child find obligations.

The Hearing Officer further found that even though all the testing showed that the Student's deficits were in reading comprehension, the District, at the insistence of the aunt, adopted the view that the Student's primary area of need was in the area of dyslexia. No evaluation data supported identifying the Student as having dyslexia. The District's FIE, Petitioner's expert, and Petitioner's outside dyslexia services provider all did not identify the Student with dyslexia.

The only specialized reading program the District provided was its dyslexia program, which did not address the Student's reading comprehension issues. The District also placed the Student into a co-teach classroom 3.5 hours per week to assist with providing the Student's accommodations. Placement in the co-teach classroom was an effort to accommodate, but not remediate, Student's reading comprehension issues. Therefore, the Hearing Officer found that the District did not provide the Student with a program that was individualized on the basis of assessment and performance and focused on the Student's difficulties in reading comprehension.

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The Hearing Officer stated that absent a bad faith exclusion of a student's parents or refusal to listen to them, a school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. The Hearing Officer further emphasized that IDEA does not require a school district, as part of collaborating with a student's parents, to accede to a parent's demands. The right to meaningful input does not mean a student's parents have the right to dictate an outcome, because parents do not possess a "veto power" over a school district's decisions. Based on these failures, the Hearing Officer ordered that the school provide the Student reading instruction for 45 minutes a day focused on reading comprehension and related skills in a one to one setting or in a group of no more than six students at least four school days a week. He further ordered 108 hours of compensatory services.

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Lessons Learned

- Placating the parent does not mean you will avoid litigation.
- The ARD committee members must make decisions that they believe are appropriate for the student.
- Vigilantly monitoring a student's progress is imperative.
- A district cannot wait for a parent to refer the student to special education.
- When a parent refers the student to special education, the district must timely respond.
- Not all difficulties in reading are due to dyslexia.

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WILLIAM V. COPPERAS COVE ISD, CASE NO. 6:17-CV-002 01- ADA-JCM

(Dec. 2018)

30

Factual Background

The Student entered the District in 2015 as a first-grader being served under special education as a student with a speech impairment in the area of articulation. The parent requested that her child be evaluated for a Specific Learning Disability on April 18, 2016. The District formally responded on April 28, 2016 with a Prior Written Notice that the District would not conduct SLD testing for the Student, but would test him specifically for dyslexia. The parent met with the District's special education director on April 29, 2016 to request SLD testing, in addition to dyslexia testing.

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However, the director concluded that the data only supported dyslexia screening. In May of 2016, the District's screening confirmed that the Student had dyslexia. On May 31, 2016, the ARD determined that the Student would receive dyslexia services daily for the next year, would be given extra time to complete assignments, receive additional instruction as needed, receive on-task reminders, and have materials read to him, among other assistance.

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The Student began receiving assistance under the Wilson Reading System to improve reading and spelling skills. An FIE was completed on November 16, 2016, and the District reported the following results: (1) The Student no longer met eligibility requirements for speech; and (2) The Student did not meet the eligibility requirements for an SLD. A Cross-Battery Assessment System showed all of the Student's global cognitive abilities were in the average range. The Cross-Battery found average or above average scores in all areas but reading. It also showed that the Student's reading scores were consistent with his dyslexia and showed improvement concurrent with the District's provided dyslexia services. After receiving the results, the parent requested a due process hearing.

33

Court's Findings

The Hearing Officer issued a decision in favor of the District on all issues. The Hearing Officer found that the District correctly denied the Mother's initial request for an evaluation because the District had no reason to suspect the Student had an SLD which might result in a need for special education services. Under Texas law, prior to referral for an FIE, students experiencing difficulty in the general education classroom should be considered for support services available to all students, such as tutorial, remedial, compensatory, RTIs, and other academic or behavior support services. If a student continues to experience difficulty after the provision of interventions, district personnel must refer the student for an FIE.

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The Hearing Officer held that although the Student was behind in reading, the Student had made nearly a year's progress in reading levels since the beginning of the year as a result of RTIs and other academic support services. The District had no reason to suspect the Student had a cognitive weakness that needed to be addressed with special education services for the Student's reading skills to continue to improve. The parents appealed the Hearing Officer's decision.

Contrary to the Hearing Officer, the District Court found that the District violated the IDEA by finding the Student did not qualify as a student with a SLD. However, the Court found that this procedural violation did not cause any injury to the child and no denial of FAPE.

According to the District Court, IDEA's statutory language explicitly includes dyslexia as a disorder included as an SLD. The District diagnosed the Student with dyslexia; therefore, the District violated the IDEA by determining in its assessment that the Student no longer met the eligibility requirements for an SLD and thus was no longer entitled to special education or an IEP. The Court noted that IDEA does not require school districts to classify students by a disability or create an appropriate label to identify a student with a disability.

The Court found that the District did procedurally violate the IDEA by incorrectly applying the statutory definition of SLD and revoking both the Student's status as a child with a disability and his eligibility for special education services and an IEP as a result. However, since the District continued providing the Student with the same dyslexia services as it did before its determination, the reclassification did not result in the loss of any educational opportunities. Therefore, the procedural error, while technically incorrect under the IDEA, did not cause an injury because the Student was not denied educational opportunities as a result of the violation.

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Lessons Learned

- The label does not drive the services provided; rather, it is the needs of the student that drive programming.
- Monitoring for progress is essential for defending a program provided.
- Using methodologies that can reflect appropriate growth is important.
- Timely respond to a parent's request for testing.
- With the same facts, two forums came to different conclusions, but still ruled in favor of the school's program because of the student's success.

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