EDUCATING STUDENTS WITH DYSLEXIA:
WHAT DOES THE LAW SAY AND WHAT ARE THE ISSUES?

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I. **INTRODUCTION**

Although in 2005, former Governor Bob Riley designated October as Dyslexia Awareness month in Alabama, general education provisions of the Alabama Administrative Code were not in place until 2015. Recently, dyslexia has become one of the hottest topics in the area of special education law, not only in Alabama but also at a national level. This presentation will focus on what relevant law currently provides regarding the education of students with dyslexia and will provide a discussion of what the potential legal issues are related to the education of a child diagnosed with dyslexia.

II. **RELEVANT LEGISLATION**

A. **United States Senate Resolution 275**

Although dyslexia is specifically mentioned as a possible condition to consider for SLD eligibility under the IDEA regulations, Congress has recently taken special interest in dyslexia, evidenced by the Senate’s passage of a bipartisan Resolution (Senate Resolution 275) on October 9, 2015. The Resolution was supported by all 50 states of Decoding Dyslexia, Dyslexic Advantage, International Dyslexia Association, Learning Ally and the National Center for Learning Disabilities, among others.¹

Specifically, the Resolution stated the following:

Whereas dyslexia is—

(1) defined as an unexpected difficulty in reading for an individual who has the intelligence to be a much better reader; and
(2) due to a difficulty in getting to the individual sounds of spoken language, which affects the ability of the individual to speak, read, spell, and often, learn a language;

Whereas dyslexia is the most common learning disability and affects 80 percent to 90 percent of all individuals with a learning disability;

Whereas an individual with dyslexia may have weakness in decoding or reading fluency and strength in higher level cognitive functions, such as reasoning, critical thinking, concept formation, or problem solving;

Whereas great progress has been made in understanding dyslexia on a scientific level, including the epidemiology and cognitive and neurobiological bases of dyslexia; and

Whereas early diagnosis of dyslexia is critical for ensuring that individuals with dyslexia receive focused, evidence-based intervention that leads to the promotion of self-awareness and self-empowerment and the provision of necessary accommodations so as to ensure school and life success.

Resolved, that the Senate—

¹ The Resolution can be found at the following link: http://www.cassidy.senate.gov/imo/media/doc/CassidyMikulski%20Dyslexia%20Resolution.pdf.
calls on Congress, schools, and State and local educational agencies to recognize that dyslexia has significant educational implications that must be addressed; and
designates October 2015 as “National Dyslexia Awareness Month”

B. Alabama State Board of Education Action

In the Alabama Administrative Code (AAC), the term dyslexia is found in both the general education and special education rules chapters.

1. The AAC general education rule provisions

On October 8, 2015, the Alabama State Board of Education adopted revisions to the AAC’s General Education provisions, Chapter 290-3-1.02. Specifically, the instructional services provisions that set forth the requirement for Problem Solving Teams (PSTs) were amended as follows (amendments made are underlined):

(19) Problem Solving Teams (PST). By August 15, 2011, all public schools in Alabama will be required to implement the PST model.

(a) Definitions.

(1) The Problem Solving Teams (PST) is a model to guide general education intervention services for all students who have academic and/or behavioral difficulties. The PST is central to the school’s successful implementation of the Response to Instruction (RtI) framework.

(2) Response to instruction (RtI). Response to instruction (RtI) refers to an instructional framework that promotes a well-integrated system connecting general, gifted, supplemental, and special education services in providing high-quality, standards-based instruction and intervention that is matched to students’ academic, social-emotional, and behavioral needs. RtI combines core instruction, assessment, and intervention with a multi-tiered system to increase student achievement and reduce behavior problems.

(b) Decisions regarding the number of PSTs needed by a school should be determined at the school level; however, a minimum of one PST per school is required to review data-based documentation regarding students’ progress regularly, advise teachers on specific interventions matched to student needs, and communicate with parents regarding student intervention needs being provided.

(c) The Problem Solving Teams will analyze screening and progress-monitoring data to assist teachers in planning and implementing appropriate instruction and evidence-based interventions for all students with academic and/or behavioral difficulties, including those students who exhibit the characteristics of dyslexia.

(d) The documentation requirements for a referral to special education found in the Alabama Administrative Code, Chapter 290-8-9.01(2) and (4) (Child Identification) and Chapter 290-8-9.03(10)(b)1, (10)(c)2.(ii), (10)(d)2.(I)(II)(ii) and (10)(d)4 (Disability Definitions, Criteria, and Minimum Required Evaluative
Components) must be collected and provided by the PST to rule out the lack of appropriate instruction in reading or math Education Chapter 290-3-1 Supp. 12/31/15 3-1-43 including the essential components of reading instruction or Limited English Proficiency (LEP), as the determining factor in the eligibility decision.

(e) Any student who is reevaluated and determined not eligible for special education services must be referred to the PST to determine the appropriate supplemental services to facilitate successful transition in the general education program.

(20) Dyslexia. Dyslexia is a specific learning challenge that is neurological 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.

(a) The Alabama State Department of Education will make available a dyslexia-specific training accredited by the International Dyslexia Association (IDA) to prepare individuals to implement multisensory structured language teaching techniques and strategies.

(b) Professional development regarding dyslexia and implications for the classroom teachers will be provided. This professional development should target dyslexia awareness training, dyslexia screening, dyslexia-specific classroom strategies, academic accommodations, and use of assistive technology.

(c) Students will be screened for characteristics of dyslexia using screening instruments currently in place for use in public schools.

(d) Based on the screening results, the problem solving teams will analyze screening and progress monitoring data to assist teachers in planning and implementing appropriate instruction and evidence-based interventions for all students with academic and/or behavioral difficulties, including those students who exhibit the characteristics of dyslexia. Guidance may include suggestions of appropriate tiered interventions, dyslexia specific interventions, academic accommodations as appropriate, and access to assistive technology. The dyslexia-specific intervention, as defined in AAC Rule 290-3-1-.02(20(f) and described in the Alabama Dyslexia Resource Guide, shall be provided by an individual who has expertise in providing dyslexia-specific interventions.

(e) The PST will notify the parents of the results of the dyslexia-specific screening, will provide parents with a copy of the goals of the dyslexia-specific
intervention plan, and with data-based documentation regarding the student’s progress on a regular basis. Independent dyslexia evaluations provided by a parent or guardian to the PST must be considered by the members of the PST.

(f) Dyslexia-specific intervention shall mean evidenced-based, specialized reading, writing, and spelling instruction that is multisensory in nature equipping students to simultaneously use multiple senses (vision, hearing, touch, and movement). Dyslexia-specific intervention employs direct instruction of systematic and cumulative content. The sequence must begin with the easiest and most basic elements and progress methodically to more difficult material. Each step must also be based on those already learned. Concepts must be systematically reviewed to strengthen memory. Components of dyslexic-specific intervention include instruction targeting phonological awareness, sound symbol association, syllable structure, morphology, syntax, and semantics.

(g) Dyslexia intervention refers to the teacher or individual who provides dyslexia-specific intervention. The dyslexia interventionist shall have successfully completed a certification training course or shall have completed training in the appropriate implementation of the evidence-based, dyslexia-specific intervention being provided.

(h) The Alabama State Department of Education working with Dyslexia Advisory Council appointed by the State Board of Education shall develop and maintain a dyslexia resource guide for the use of LEAs, public schools, teachers, and parents.

2. The AAC special education rule provisions

More often than not, a student with dyslexia who is found to be in need of special education services and related services will be found eligible as SLD, although eligibility in another category could be appropriate in a particular case. Relevant provisions in this regard include the following:

290-8-9-.03 Disability Definitions, Criteria, and Minimum Required Evaluative Components. Each public agency must develop and implement procedures to identify and evaluate children suspected of having a disability that adversely affects their educational performance and who, as a result, may need special education (specially designed instruction) and related services. The evaluations listed in this rule are the required minimum evaluations to be administered prior to determining initial eligibility for special education services. Professional judgment should be used to determine if the results of any of the required evaluations are reliable sources of information or if other assessment data may prove to be more accurate indicators of the child’s level of functioning. The IEP Team may determine, on a case-by-case basis, that other evaluations are needed. Vision and hearing screenings (traditional or functional, as appropriate) must be the first evaluations conducted for all children suspected of having a disability, unless otherwise indicated.
Specific Learning Disability.

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

This language tracks the language of the definition of specific learning disability in the IDEA regulations.

C. Federal Special Education Laws

1. The Individuals with Disabilities Education Act (IDEA)

As mentioned above, the IDEA’s regulations include a definition of Specific Learning Disability (SLD) that mentions dyslexia as a possible condition that might be included in the definition of SLD, along with perceptual disabilities, brain injury, minimal brain dysfunction, and developmental aphasia. 34 C.F.R. § 300.8(c)(10).

2. Section 504 of the Rehabilitation Act and the Americans with Disabilities Act

In addition to the IDEA, Section 504 and its sister statute, the Americans with Disabilities Act (ADA), cannot be forgotten in our discussions about dyslexia. This is so because the definition of disability under both is essentially the same, requiring: (1) a mental or physical impairment that (2) substantially limits a major life activity.

On August 11, 2016, the Department of Justice amended the ADA Title II regulations applicable to public schools. These regulations took effect on October 11, 2016. Importantly, the regulations expressly provide that a “physical or mental impairment” includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. 28 C.F.R. § 35.108 (emphasis added).
III. THE LEGAL ISSUES

A. School’s Use of the Term “Dyslexia”

Sometimes, teachers and others may be heard to say “we don’t test for or diagnose dyslexia” or “we don’t include dyslexia in IEPs—that’s not a term we use.” Clearly, all educators need to be trained to understand that while schools may not officially “diagnose” dyslexia or use that term, they are to screen for characteristics of it as part of the RtI process and, where a student is suspected or believed to be a student with a disability in need of special services under the IDEA or Section 504, the student must be fully and comprehensively evaluated to determine whether a disability exists and, if so, what special education and/or related services, if any, are needed to enable the student to be successful in the general education curriculum.

On October 23, 2015, the U.S. Department of Education’s Office of Special Education and Rehabilitative Services (OSERS) issued an important “Dear Colleague Letter” (DCL) in response to communications from stakeholders, including parents, advocacy groups and national disability organizations who were concerned that State and local educational agencies were reluctant to reference or use dyslexia, dyscalculia and dysgraphia in evaluations, eligibility determinations, or in developing IEPs under the IDEA. Dear Colleague Letter, 66 IDELR 188 (OSERS 2015).

In the DCL, OSERS clarified that there is nothing in the IDEA that would prohibit the use of terms like dyslexia in evaluation, eligibility determinations or IEP documents, though the law does not require their use either. The DCL explains that as part of the IDEA’s definition of “specific learning disability,” a student with dyslexia could qualify for special education services as a child with a specific learning disability. However, regardless of whether a child has dyslexia or any other condition included in the definition of SLD, a school district must still conduct an evaluation in accordance with the IDEA’s SLD regulations to determine whether the child meets the criteria for SLD or any of the other disabilities listed in the IDEA.

OSERS goes on to explain that for those students who may need additional academic and behavioral supports to succeed in a general education environment, schools may choose to implement a multi-tiered system of supports (MTSS), such as RtI or PBIS, noting that MTSS is a school-wide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce behavior problems.

OSERS notes that MTSS may also be used to identify children suspected of having a specific learning disability. With a multi-tiered instructional framework, schools identify students at risk for poor learning outcomes, including those with dyslexia; monitor their progress; provide evidence-based interventions; and adjust the intensity and nature of those interventions depending on a student’s responsiveness. Children who do not, or minimally respond to interventions must be referred for an evaluation to determine if they are eligible for special education and related services. Those children who simply need intense short-term interventions may continue to receive those interventions.
In sum, OSERS encouraged SEAs and LEAs to consider situations where it would be appropriate to use terms like dyslexia to describe and address a student’s unique, identified needs through evaluation, eligibility and IEIP documents. For example, there could be situations where an IEP Team could determine that personnel responsible for the IEP’s implementation would need to know about the condition underlying the child’s disability (e.g., that the child has a weakness in decoding skills as a result of dyslexia). Under the IDEA, a child’s IEP must be accessible to regular education teachers and any others who are responsible for implementation, and these personnel must be informed of their specific responsibilities related to implementing the IEP and the specific accommodations, modifications and supports that must be provided for the child. Thus, OSERS reiterated that there is nothing in the IDEA or its regulations that would prohibit IEP Teams from referencing or using dyslexia in a child’s IEP and that it might be useful to do so.

B. Child-Find Issues and Violations

While the 2015 AAC provisions regarding the provision of educational interventions to students with dyslexia in the RtI process are important and must be followed, the affirmative child-find duty under both IDEA and Section 504 cannot be ignored and must be balanced with those requirements. To say something like “we can’t do an evaluation for special education because the 12 weeks of interventions have not been completed” could have significant legal implications. This is because the legal duty to refer a student for an evaluation under the IDEA or Section 504 is not triggered based upon how long a student has been in the RtI process; rather, it is triggered when the school district has sufficient “reason to know” or “reason to suspect” that the child is a child with a disability in need of special education or 504 services.

Based upon existing case law, I have developed a running checklist of “referral red flags” that courts/agencies have found, in combination, sufficient to constitute a “reason to suspect a disability” that trigger the child-find duty.

**NOTE:** When using this checklist, it is very important to remember that not one of these “referral red flags” alone would typically be sufficient to trigger the child-find duty to evaluate a student for a disability and the need for services. However, the more of them that exist in a particular situation, especially those based upon RtI data, the more likely it is that the duty to refer a student for an evaluation would be triggered. Look out for indicators in these areas and “when there’s debate, evaluate!”

1. **Academic Concerns in School**

___ Failing or noticeably declining grades
___ Poor or noticeably declining progress on standardized assessments
___ Student negatively “stands out” from his/her same-age peers
___ Student has been in the Problem Solving/RtI process and progress monitoring data indicate little academic progress or positive response to interventions (e.g., the PST determines that the student’s RTI data indicate that intensive interventions that have been implemented are effective but require a level of intensity and resources to sustain academic growth or performance that is beyond that which is accessible through general
education resources or that the student’s response to interventions indicates that the student does not make adequate academic growth given effective core instruction and intensive, individualized, evidence-based interventions)

___ Student has been retained
___ For IDEA consideration, student has a 504 Plan and accommodations have provided little academic benefit

2. **Behavioral Concerns in School**

___ Numerous or increasing disciplinary referrals for violations of the code of conduct
___ Signs of depression, withdrawal, inattention
___ Truancy problems or increased absences
___ Student negatively “stands out” from his/her same-age peers
___ Student has been in the Problem Solving/RTI process and progress monitoring data indicate little behavioral progress or positive response to interventions (e.g., the PST determines that the student’s RTI data indicate that intensive interventions that have been implemented are effective but require a level of intensity and resources to sustain behavioral growth or performance that is beyond that which is accessible through general education resources or that the student’s response to interventions indicates that the student does not make adequate behavioral growth given effective core instruction and intensive, individualized, evidence-based interventions)
___ For IDEA consideration, student has a 504 Plan and/or BIP and accommodations have provided little behavioral benefit

3. **Outside Information Obtained**

___ Information that the child has been hospitalized (particularly for mental health reasons, chronic health issues, etc.)
___ Information that the child has received a DSM-5 or other diagnosis (ADHD, ODD, OCD, dyslexia, dysgraphia, etc.)
___ Information that child is taking medication
___ Information that child is seeing an outside counselor, therapist, physician, etc.
___ Private evaluator/therapist/doctor suggests the need for an evaluation or services

4. **Information from School Personnel**

___ Teacher/other service provider suggests a need for an evaluation or suggests counseling, special education or other services, etc.

5. **Parent request**

___ Parent requests an evaluation and some other checklist item(s) are present
C. Evaluating Specifically for Dyslexia

As OSEP said in its DCL discussed above, evaluations are to be conducted for overall SLD eligibility. However, there is a more recent letter from the Office of Special Education Programs (OSEP) that must be considered:

Letter to Unnerstall, 68 IDELR 22 (OSEP 2016). In follow up to the 2015 DCL regarding the use of the term dyslexia and others, it is re-emphasized that a school district is required to conduct a comprehensive evaluation as specified by IDEA regulations, which requires the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child. The information, which includes that provided by the parent, may assist in determining whether the child is a child with a disability and the content of the IEP to enable the child to be involved in and make progress in the general education curriculum. There is no requirement under IDEA that a disability label or “diagnosis” be given to each student receiving special education and related services, as long as the child receives needed special education and related services. In addition, there is no provision in the IDEA that gives a parent the right to dictate the specific areas that the school district must assess as part of the comprehensive evaluation. Rather, the district is only required to assess the child in particular areas related to the child’s suspected disability, as it determines appropriate. However, if a determination is made through the evaluation process that a particular assessment for dyslexia is needed to ascertain whether the child has a disability and the child’s educational needs, including those related to the child’s reading difficulties, then the school district must conduct the necessary assessments. We also note that an evaluation for dyslexia could be an evaluation by a licensed physician to determine a child’s medically related disability that results in the child’s need for special education and related services. If the school district decides that a medical evaluation or any other assessment is necessary to determine whether the child has a disability and his or her educational needs, the entire evaluation must be provided at no cost to the parents. In addition, parents who disagree with the district’s evaluation have the right to seek an IEE.

Relevant case law indicates that “label” does not matter, as long as the IEP is appropriate:

J.D. v. Crown Point Sch. Corp., 58 IDELR 125 (N.D. Ind. 2012). Deaf student’s receipt of FAPE was not contingent on his disability label. Rather, his IEP addressed his unique needs and conferred meaningful educational benefit, even though the IEPs did not contemplate whether the student also was SLD. Failing to properly label a student’s disability in his IEP will not deprive him of FAPE, as long as the student receives an appropriate education, his parents receive an opportunity to participate in the IEP process, and he is not deprived of educational benefits. Here, the district received extensive notice of the student’s cognitive deficits from his teachers and parents, which served to ensure that the district crafted IEPs that were tailored to address those deficits. In addition, records showed that in response to teacher and parent concerns, the district developed IEP goals and appropriate benchmarks and provided services geared toward increasing the student’s reading fluency. Though the district ultimately determined that the student was not eligible as SLD, it increased the special education services he received when the parents provided private evaluation results indicating that the student was dyslexic. Importantly, the student made steady progress with reading pursuant to the district’s attention to his cognitive
deficiencies. In addition, the increase in his standardized test scores from second to fourth grade proved that his IEPs likely conferred meaningful benefit.

W.W. v. New York City Dept. of Educ., 63 IDELR 66 (S.D. N.Y. 2014). The failure to explicitly mention a diagnosis of dyslexia in the IEP goals for an LD student is not fatal to the IEP because the IEP goals were adequately designed to address the student’s learning challenges, which include not only dyslexia, but also dyscalculia and dysgraphia.

D. Eligibility/Disability under the IDEA or Section 504

Many times, when a child receives a diagnosis of dyslexia (or any particular condition), there is an assumption on the part of the parent (or an evaluator) that the student is automatically considered to be a “child with a disability” in need of special education under the IDEA or Section 504. As a legal matter, that is not necessarily the case.

In my opinion, eligibility for IDEA services and an IEP requires three things: 1) a condition exists under the applicable rules based upon evaluative data (SLD, OHI, ASD, etc.); 2) the condition adversely affects educational performance; 3) to the degree that the student needs special education services.

Under Section 504, a disability determination requires two things: 1) a physical or mental impairment; 2) that substantially limits a major life activity. In addition, further findings must be made as to whether a student with a disability needs special services under 504 (and a 504 Plan) in order to meet the student’s educational needs as adequately as they are met for nondisabled students. Thus, a student with dyslexia may have a disability but may not need a 504 Plan where RtI interventions provided are successful.

It is important to note that the amended Title II ADA regulations that went into effect on October 11, 2016 also indicated that a gifted student with dyslexia, for example, could be found to be disabled under the ADA (and, therefore, under Section 504) based upon the condition, manner or duration under which the student performs a major life activity, such as reading. Specifically, the Department of Justice notes that:

(iii) In determining whether an individual has a disability under the “actual disability” or “record of” prongs of the definition of “disability,” the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in one or more major life activities, including, but not limited to, reading, writing, speaking, or learning because of the additional time or effort he or she must spend to read, write, speak, or learn compared to most people in the general population.

28 U.S.C. § 35.108(d)(3)(iii). However, the student who achieves very well, while disabled for anti-discrimination purposes under 504/ADA, may not need special services.
Some relevant cases on eligibility include:

Mr. and Mrs. Doe v. Cape Elizabeth Sch. Dist., 68 IDELR 61 (1st Cir. 2016). The district court erred when relying solely upon report cards and performance on statewide assessments in determining that the student was not SLD. While a student’s grades, classroom performance and standardized test scores are relevant in determining whether a student is SLD, the eligibility team cannot focus solely on academic measures. The team must consider the relationship between those academic measures and the alleged area of deficiency. Just as no single measurement or assessment can support a finding of SLD, neither can it be found to undermine a finding of a reading fluency deficiency when other evidence supports such a finding. This student received low or very low scores on assessments of reading fluency and, given that information, the district court erred in relying on her excellent grades and above-average performance on statewide assessments in determining that she did not have an SLD. The court, however, will not consider whether the student needs special education to receive educational benefit, as the district court did not address that question. This decision focuses only on whether the student has an SLD as defined by the IDEA. In order to be eligible for services, however, the student must also prove that she requires special education and related services as a result.

Department of Educ. v. Patrick P., 65 IDELR 285 (9th Cir. 2015) (unpublished). The ED did not err in finding the student with a diagnosis of dyslexia, among other things, ineligible for IDEA services. A child needs to satisfy two sets of criteria in order to receive services as an SLD student: first, the child must demonstrate either inadequate achievement or severe discrepancy between achievement and ability. Second, the child must demonstrate either insufficient progress or a pattern of strengths or weaknesses in performance consistent with SLD. The student here failed to meet the first criteria, as the student performed well in the classroom, was engaged in his classes and received good grades. Further, the student was only receiving Tier I accommodations that were available to all students attending his private school, regardless of their disability status. The district court’s decision is affirmed reversing the administrative hearing order in the parents’ favor.

E. Services/Programs Provided

Another common statement that could have legal implications is “but we don’t have programs for dyslexic children.” Of course schools do! Train teachers to understand that, for those students who have characteristics of dyslexia, services for those students may be in the form of appropriate RTI interventions or, for students who have been determined to have a disability (either under IDEA or Section 504), special education/related services or 504 services will be warranted. They may not be called “dyslexia services,” but they are services designed to meet the unique needs of the student to enable the student to progress in the general education curriculum.

In the OSERS’ 2015 DCL, it was noted that stakeholders had requested that OSERS provide SEAs and LEAs with a comprehensive guide to commonly used accommodations in the classroom for students with SLD, including dyslexia, dyscalculia and dysgraphia. OSERS responded that the IDEA does not dictate the services or accommodations to be provided to individual children based solely on the disability category in which the child has been classified,
or the specific condition underlying the child’s disability classification. Instead, OSERS referred to the Office of Special Education Program’s (OSEP) large network of technical assistance centers that develop materials and resources to support States, school districts and teachers to improve the provision of services to children with disabilities. OSERS concluded that the U.S. DOE does not mandate the use of, or endorse the content of, these products, services, materials, and/or resources.

There have been a number of court cases that have addressed specific services or reading methodologies for a student diagnosed with dyslexia, including some cases where the parents of a student diagnosed with dyslexia are seeking private school funding:

**Robinson v. Council Rock Sch. Dist., 2006 WL 1983180, 46 IDELR 38 (E.D. Pa. 2006).** Parents’ claim for private school tuition is denied. Though the student is diagnosed with dyslexia, expert’s recommendation that her dyslexia be “treated” through the use of a reading program such as Orton-Gillingham, Reading Master or Lindamood-Bell is rejected. A diagnosis of dyslexia does not without more trigger the applicability of the IDEA, she is only “disabled” in the area of written expression, and her IEP was geared toward helping her with writing; the IEP’s ineffectiveness in addressing her dyslexia is relevant only insofar as that condition contributes to the impairment in written expression. Significantly, student’s scores on standardized reading and writing assessments yielded positive results based upon the program she received in public school.

**Fairfax Co. Sch. Bd. v. Knight, 49 IDELR 122, 261 Fed. Appx. 606 (4th Cir. 2008).** The district’s experts, who testified that the school district had offered FAPE to a ninth-grader with dyslexia and other learning disabilities, were entitled to more deference. They had extensive experience in special education, as well as post-baccalaureate degrees in the field, whereas the parents’ experts did not have degrees in reading, education or special education. Thus, reimbursement for private schooling was not warranted.

**D.G. v. Cooperstown Cent. Sch. Dist., 55 IDELR 155, 2010 WL 4269127 (N.D. N.Y. 2010).** District offered FAPE where its own reading programs were research-based and were multisensory programs and would have conferred educational benefit to the student with dyslexia. “While [the student’s parent] may have preferred the district to employ the Wilson program, the district did not fail to provide [the student] a free appropriate public education by utilizing other proven methods.” Where FAPE was offered by the district, the parent is not entitled to tuition reimbursement for placement at The Gow School.

**Davis v. Wappingers Cent. Sch. Dist., 56 IDELR 248, 772 F.Supp.2d 500 (2d Cir. 2011) (unpublished).** In a private school reimbursement case, a three-step process governs whether parents are entitled to such reimbursement. First, the court asks whether the district has complied with the procedures set forth under the IDEA and then whether the IEP developed through those procedures is reasonably calculated to enable the child to received educational benefits. If these requirements are met, the court then engages in a third step and asks whether the private schooling obtained by the parents is appropriate to the child’s needs. Here, the parents of the SLD child with dyslexia could not show that the private school was appropriate because it did not address their son’s unique needs. The private school did not develop a
behavior plan to address the student’s attentional difficulties and although the student had significant auditory processing deficits, the primary method of instruction was for teachers there to read aloud to students. In addition, the school’s only strategy for addressing the student’s organizational and work completion skills involved breaking down assignments. Finally, the school’s academic dean testified that the school’s language tutorial alone generated one and ½ hours of daily assignments for the student. Thus, even where the district denied FAPE, the parents are not entitled to private school tuition reimbursement.

M.C. v. Katonah/Lewisboro Union Free Sch. Dist., 58 IDELR 196 (S.D. N.Y. 2012). Because the parent clearly knew that the proposed program contemplated the provision of specialized reading instruction, the fact that it was not specified on the IEP that she would be receiving that instruction in a special class did not make the IEP inappropriate. Thus, the parent is not entitled to reimbursement for the unilateral private placement of the student with dyslexia. The parent’s argument that the IEP should have been more specific in light of the student’s dyslexia and significant reading deficits is rejected. The Second Circuit has not adopted the “four corners” rule requiring that courts look only to the explicit content of the IEP when determining its appropriateness. Rather, looking beyond the document itself, the parent was clearly aware of the availability of specialized reading services at the public school and the item’s absence “did not interfere with the parent’s ability to judge the appropriateness of [the IEP].”

Kathryn F. v. West Chester Area Sch. Dist., 62 IDELR 177 (E.D. Pa. 2013). Student’s progress in reading from 2009 to 2012 is evidence that she received FAPE, even though the parents believed that the dyslexic student would have made more progress if the district had started using the Wilson reading method in 9th grade rather than adding Wilson tutoring to the student’s IEP in 11th grade. The district had no obligation to maximize the student’s educational benefit and progress made using the district’s Read Naturally program was appropriate.

Annette K. v. State of Hawaii, 60 IDELR 278 (D. Haw. 2013). In Hawaii, ESY is considered necessary for FAPE where the benefits the student gains during the regular school year would be significantly jeopardized if he were not provided an educational program over the summer. In this case, it was clear that the student with severe dyslexia lost ground quickly every time there was a break in instruction. Indeed, the principal noted that the student was able to make progress in his reading, but “hours, days, weeks later, it’s like you’re starting fresh.” In addition, the student’s private reading tutor echoed the same concern, indicating that when she saw him less than 3-5 times per week, she had to spend significant time backtracking.

W.D. v. Watchung Hills Reg. High Sch. Bd. of Educ., 62 IDELR 299 (D. N.J. 2014), aff’d, 65 IDELR 63 (3d Cir. 2015) (unpublished). While the parent of a teenager with dyslexia and ADHD might have wanted the district to provide detailed information about her son’s proposed reading program, the district’s failure to discuss education methodologies or teacher qualifications did not entitle her to relief under the IDEA. The district did not impede the parent’s participation in the IEP process, and while districts must develop IEPs that are designed to confer a meaningful educational benefit, they have no obligation to maximize a student’s potential. This “basic floor of opportunity” standard also applies to the information the district members of the IEP team are required to share with the parents of students with disabilities. Thus, while the parent requested information about the educational methodologies the district
intended to use and the qualifications of the teachers who would provide her son’s instruction, the district had no obligation to provide those details, and the parent has not shown that, in this specific instance, this lack of information would sufficiently restrict the student’s right to access educational benefits and opportunities or the parent’s right to meaningfully participate. Even if the failure to provide the information the parent requested amounted to a procedural violation of the IDEA, it would be harmless. In addition, the parent’s failure to provide appropriate notice of the student’s unilateral private placement barred her reimbursement request.

I.S. v. School Town of Munster, 64 IDELR 40 (N.D. Ind. 2014). While districts generally have no obligation to specify a particular methodology in a student’s IEP, where a particular one is inappropriate, the district must take steps to ensure that it is excluded from possible instructional techniques. Here, the Read 180 methodology had proved to be highly ineffective for the dyslexic student the previous school year and the district’s possible continuation of it made the IEP substantively inappropriate. Because the IEP failed to specify an appropriate methodology or exclude the Read 180 program, which would have produced no benefit, it was not tailored to his unique needs or likely to produce progress instead of regression. The IEP was written in a way that would allow for the use of Read 180 which did not address the student’s most significant needs in the areas of decoding and encoding.