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UPDATE OF THE LAW AND STUDENTS WITH DYSLEXIA: IDENTIFICATION AND INTERVENTION <sup>a1</sup>

This is an update of an article <sup>1</sup> that provided, in the form of an annotated outline, a comprehensive yet concise compilation of the (a) federal laws, (b) state laws, and (c) court decisions <sup>2</sup> concerning students with dyslexia in K–12 public schools. <sup>3</sup> The added material is underlined to show the updating information. The two twin focal areas are eligibility, or identification, and services, or interventions, especially but not exclusively school districts' obligation to provide a free appropriate public education (FAPE) under the federal laws specified herein. The highly litigated subject of methodology is a primary example and subset of the FAPE category.

The document contains three successive sections: (1) federal legislation and regulations; (2) state legislation and regulations; and (3) court decisions. The entries provide illustrative annotations, with detailed footnotes according to standard legal citation style. The author's personal comments are designated in italics; the overall perspective is that of an impartial legal observer, not a dyslexia expert or advocate. In any event, this material is not intended as **\*604** legal advice; the reader should examine the cited sources in consultation with legal counsel for his or her independent interpretation and application.

**I. Federal Legislation and Regulations**A. Section 504 of the Rehabilitation Act (§ 504) and the Americans with Disabilities Act (ADA) <sup>4</sup>

For **eligibility** for free appropriate public education (FAPE), the definition of individual with a disability <sup>5</sup> requires three essential elements, interpreted under the new standards of the Americans with Disabilities Act Amendments Act (ADAAA) <sup>6</sup>:

1. physical or mental impairment—listing “specific learning disabilities” as one of the examples <sup>7</sup> and, in the accompanying commentary with analogy to the IDEA, dyslexia as one of the specific learning disabilities <sup>8</sup>

2. substantially limiting—determined without mitigating measures, such as assistive technology, learned behavioral or adaptive neurological modifications, and reasonable accommodations or auxiliary aids/services
3. a major life activity—listing “reading” among the examples as a result of the ADA<sup>9</sup>

*Thus, having necessarily met the first of the three essential elements, a student with dyslexia does not automatically qualify under § 504. However, the ADA increases the possibility, upon an individualized determination of the other two elements, of eligibility.*

For FAPE, § 504, requires “special or regular education and related aids and services that are (i) designed to meet individual educational needs of [individuals with disabilities] as adequately as the needs of [nondisabled] persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34 [educational setting—LRE], 104.35 [evaluation and placement], and 104.46 [procedural safeguards, including an impartial hearing].”<sup>10</sup> *Thus, if the student is eligible, the \*605 school district may serve the student either under the overlapping coverage of the IDEA if the student meets its generally narrowed definition of disability or solely under § 504. For formal dispute resolution, the parent may resort to the administrative investigatory and adjudicatory avenues under § 504/ADA<sup>11</sup> and—if the student is double-covered—the corresponding avenues under the IDEA.*<sup>12</sup>

#### B. Individuals with Disabilities Education Act (IDEA)

For **eligibility** for FAPE, the definition of child with a disability<sup>13</sup> requires two essential elements:

1. meeting the criteria of one or more specified classifications, including “specific learning disability” (SLD)<sup>14</sup>
2. “by reason thereof,” needing special education

*Thus, a student with dyslexia is not automatically eligible under the IDEA; s/he must meet either the remaining criteria of SLD, depending on whether the state uses a severe discrepancy or response to intervention model (RTI),<sup>15</sup> or the criteria of another IDEA classification,<sup>16</sup> and need special education as a result.*

For **FAPE**, the IDEA requires special education and, if necessary, related services that meets a two-pronged standard:

\*606 1. procedural compliance: strict via the state's complaint resolution process<sup>17</sup> but a relatively relaxed, harmless-error approach—with a parental participation exception—via the adjudicative process<sup>18</sup>

2. substantive sufficiency: “reasonably calculated to enable the child to receive educational benefits?”<sup>19</sup>

*Thus, disputes as to whether a district has met its FAPE obligation are subject to different, individualized formal resolution depending on the avenue<sup>20</sup> and the individual aspects in the forum.<sup>21</sup>*

## II. State Laws

Under the concept of “cooperative federalism,”<sup>22</sup> it is generally understood that state laws may add to, not take away from, the districts' obligations (or, conversely, the students' rights) under these federal laws. Thus far, a handful of states have enacted legislation or issued regulations specific to K–12 students with dyslexia.<sup>23</sup> These laws vary in their strength and specificity. They apply to state education agencies (SEAs) and, through them, to local education agencies (LEAs).<sup>24</sup>

\*607 *Here is what I found in order of what appears to their relative strength in terms of scope and legal force:*

### STRONG:

Arkansas recently enacted legislation requiring each LEA to provide (a) dyslexia screening using DIBELS in grades K–2; (b) RTI and for students with resulting markers of dyslexia; (c) a dyslexia evaluation where RTI indicates the possibility of dyslexia; (d) defined dyslexia therapy where the evaluation indicates the need for such; and (e) the necessary accommodation or equipment under § 504 if the identified student has “functional difficulties in the academic environment due to dyslexia.” The legislation also requires the SEA to have at least one dyslexia specialist and to assure that each teacher in the state has defined dyslexia professional awareness. Finally, the legislation also includes requirements for dyslexia-related teacher preservice training, a resource guide, and regulations.<sup>25</sup>

**Louisiana** similarly has a series of statutes, regulations, and guidelines. First, one statute requires screening of K–3 students for various specified “impediments to a successful school experience,” including “dyslexia and related disorders.”<sup>26</sup> Second, another statute requires the SEA, upon appropriations, to select and monitor at the LEA level “pilot program[s] to provide for universal screening of students in

prekindergarten through third grade for characteristics of dyslexia and related disorders.”<sup>27</sup> Third, the most significant legislation is not limited to any particular grade level and requires testing and remediation for dyslexia.<sup>28</sup> The state has issued Bulletin 1903 entitled REGULATIONS AND GUIDELINES FOR IMPLEMENTATION OF THE LOUISIANA LAW FOR THE EDUCATION OF DYSLEXIC STUDENTS .<sup>29</sup>

\*608 New Jersey also recently enacted legislation requiring the state education department to issue regulations incorporating the IDEA definition of dyslexia and to mandate (1) two hours per year of intervention/ accommodation training to K–3 general education teachers and all special education teachers and specified specialists (e.g., ELL teachers and S/L therapists); (2) dyslexia screening by the end of grade 2; (3) comprehensive assessment of the screening–identified students, and (4) “appropriate evidence–based intervention strategies” to the resulting students identified with dyslexia.<sup>30</sup>

**Texas** starts with a set of statutes. One requires LEAs to administer a reading diagnosis instrument at grades K–2 and to notify the parent of children determined, on the basis of results, “to be at risk for dyslexia or other reading difficulties” and to implement for these children “an accelerated reading instruction program.”<sup>31</sup> A second one, without limitation to any grade level, requires LEAs to provide testing and treatment for “dyslexia and related disorders.”<sup>32</sup> A third one, which requires the SEA to develop criterion referenced assessment instruments in basic skills, also requires the development of alternate assessments for certain students with dyslexia or a related disorder who qualify under § 504.<sup>33</sup> A fourth one authorizes use of state funding allotment for compensatory education to “a program for treatment of students who have dyslexia or a related disorder.”<sup>34</sup> Finally, Texas regulations require each LEA to implement “procedures for identifying a student with dyslexia or a related disorder and for providing appropriate instructional services to the student” in accordance with the “‘DYSLEXIA HANDBOOK: PROCEDURES CONCERNING DYSLEXIA AND RELATED DISORDERS,’ a set of flexible guidelines for local districts that may be modified by [the state board of education] only with broad–based dialogue that includes input from educators and professionals in the field of reading and dyslexia and related disorders from across the state.”<sup>35</sup>

**\*609 MODERATE:**

**New Mexico** requires an RTI–type approach for students who “demonstrate [] characteristics of dyslexia” that includes referral to a student assistance team and the team’s use of “timely, appropriate, systematic, scientific, research–based interventions,” progress monitoring, and—at the third–tier—evaluation for special education eligibility.<sup>36</sup>

**MODERATE/WEAK:**

**Connecticut** requires the following: (A) “On and after July 1, 2006, any program of teacher preparation leading to professional certification shall include, as part of the curriculum, instruction in literacy skills and processes that reflects current research and best practices in the field of literacy training. Such instruction shall (1) be incorporated into requirements of student major and concentration, and (2) on and after July 1, 2015, include the detection and recognition of, and evidence-based interventions for, students with dyslexia”<sup>37</sup>; (B) “Not later than January 1, 2015, the Department of Education shall add ‘SLD–Dyslexia’ under ‘Specific Learning Disabilities’ in the ‘Primary Disability’ section of the individualized education program form used by planning and placement teams for the provision of special education and related services to children requiring special education and related services”<sup>38</sup>; and (C) establishment of the state Office of Early Childhood, Expanding Opportunities for Early Childhood Education and Concerning Dyslexia and Special Education.<sup>39</sup>

**Mississippi** requires the SEA to adopt “pilot programs” at the LEA level for assessment and appropriate services for students with “dyslexia and related disorders” who do not qualify for special education services.<sup>40</sup> A separate law establishes a choice program, including vouchers for nonpublic schools, for children with a diagnosis of dyslexia in grades 1–6.<sup>41</sup>

**Pennsylvania** also recently required a pilot program that will have the participation of at least three school districts for a three-year period, including evidence-based kindergarten screening, evidence-based core reading program and interventions, and an evaluation.<sup>42</sup>

**\*610 WEAK:**

**California** encourages district professional development programs with a focus on SLD, “including dyslexia and related disorders” according to required state guidelines.<sup>43</sup>

**Colorado** authorizes (i.e., permits) the SEA to provide technical assistance and training to LEAs “concerning issues faced by students with literacy challenges, including dyslexia,” with an annual report to the state board of education and to the legislative education committees.<sup>44</sup>

**Florida** authorizes a three-year demonstration program for parental awareness of early childhood signs of “learning problems and learning disabilities, including...dyslexia.”<sup>45</sup>

**Illinois** requires the SEA to issue regulations incorporating the international definition of dyslexia, and subject to funding, to establish an advisory committee to develop training modules.<sup>46</sup>

**Iowa** requires the early literacy interventions center to provide, “subject to an appropriation of funds by the general assembly,” professional development for LEA personnel in strategies that formally address dyslexia, defined in accordance with the International Classification of Diseases 10th edition (ICD 10).<sup>47</sup>

**Kentucky** defines dyslexia and requires web-based access to teachers of screening strategies and instructional tools.<sup>48</sup>

**Ohio** defines dyslexia and dyslexia specialist and authorizes training by dyslexia specialists for teachers in grades K–4.<sup>49</sup>

**Washington** requires the SEA to develop, “[w]ithin available resources,” an educator training program and a handbook for teachers and parents of students with dyslexia.<sup>50</sup>

NEGLIGIBLE:

**Missouri** requires the state education department to issue guidelines for reading intervention plans that “may include...screening for and treatment of auditory dyslexia.”<sup>51</sup>

**Tennessee** defines dyslexia and requires institutions of higher education “within available resources” to report to the legislature by 3/1/15 preservice training in dyslexia.<sup>52</sup>

**Virginia**, in its special education regulations, defines dyslexia but merely use the term, akin the IDEA, solely in the context of SLD identification.<sup>53</sup>

*\*611 Thus, as largely exemplified in New Jersey,<sup>54</sup> parents and advocates of students with dyslexia need to consider lobbying for stronger state laws, based on the Louisiana–Texas model and with clearer coordination with the IDEA and § 504,<sup>55</sup> if they view legislation or regulations as the appropriate course of action for more extensive district efforts at identification and intervention.*

### III. Court Decisions

#### A. Under § 504/ADA:

**Eligibility:** The case law is limited to one brief decision where the court ruled that the child was not eligible under § 504 prior to the ADA.<sup>56</sup>

**FAPE:** Similarly, the case law concerning interventions is, thus far, sparse and largely district-friendly.<sup>57</sup>

## B. Under the IDEA:

**Eligibility:** The case law concerning SLD eligibility is extensive,<sup>58</sup> but that concerning the diagnosis of dyslexia is rare.<sup>59</sup>

**\*612 FAPE:** Per the applicable standards,<sup>60</sup> the dyslexia-specific FAPE cases were based on procedure,<sup>61</sup> substance,<sup>62</sup> or both.<sup>63</sup> A substantial segment **\*613** concerned tuition reimbursement, especially for SLD-specialized private schools.<sup>64</sup> Finally, the case law for students with dyslexia is limited for the overlapping issue of placement in the least restrictive environment (LRE) and largely adverse to the plaintiff-parents.<sup>65</sup>

**\*614** Much of the FAPE case law concerns Orton-Gillingham methodology. A systematic study found 64 decisions from 1980 through 2005, with slightly more than half of them at the IDEA hearing or review officer level and with the highest concentration during the late 1990.<sup>66</sup> Parents won, either partially or completely, only 23% of these cases, in notable part attributable to the deference that courts accord to districts when the issue is methodology.<sup>67</sup>

In many IDEA cases, the student's dyslexia is one of several diagnoses or is incidental rather than critical to the FAPE issue, such as whether § 1983 is available to obtain money damages under the IDEA or § 504,<sup>68</sup> whether parents had viable claims against the district's legal counsel and state's review officer,<sup>69</sup> or whether the parents were entitled to attorneys' fees.<sup>70</sup> Other cases focus on rather technical adjudicative issues under the IDEA and § 504.<sup>71</sup>

*Thus, litigation is typically a matter of the eligibility, FAPE, and other provisions of the IDEA, which are not specific to dyslexia per se. Given the outcomes trend and their particular concerns, parents of students with dyslexia should be careful about pursuing litigation, as compared to other avenues of legal recourse and dispute resolution.<sup>72</sup> The factors of this cost-benefit analysis specific to litigation under these federal laws include the effectiveness of the selected attorney, the factual contours of the case in relation to the applicable federal law, and the culture/competence of the defendant district. In any event, unlike the parents' concern, dyslexia will not typically be the key to the case outcome.*

## C. State Law

Relevant court decisions based on state common law or legislation/regulations have been negligible.<sup>73</sup>

\*615 Consequently, absent stronger state laws or innovative judicial precedents, state adjudicative claims do not significantly change the litigation landscape.

## Footnotes

- <sup>a1</sup> *Education Law Into Practice* is a special section of the EDUCATION LAW REPORTER sponsored by the Education Law Association. The views expressed are those of the author and do not necessarily reflect the views of the publisher or the Education Law Association. Cite as 318 Ed.Law Rep. [603] (August 13, 2015).
- <sup>aa1</sup> Dr. Zirkel is University Professor of Education and Law, Lehigh University, Bethlehem, PA. He is a Past President of the Education Law Association.
- <sup>1</sup> Perry A. Zirkel, *The Law and Students with Dyslexia: Identification and Intervention*, 276 Ed. Law Rep. 560 (2012).
- <sup>2</sup> The following more marginal or less available legal sources are only briefly mentioned incidental to these primary sources of law: (1) § 504 or ADA policy interpretations and letters of findings of the Office for Civil Rights (OCR); (2) IDEA policy interpretations of the Office of Special Education Programs (OSEP); (3) hearing/review officer decisions under the IDEA or § 504/ADA; and (4) complaint investigation reports under the IDEA state complaint resolution process. The items in the first two categories specific to dyslexia are relatively few and targeted to the IDEA. See, e.g., *Houston Indep. Sch. Dist.*, 65 IDELR ¶ 52 (OCR 2014); Letter to Anonymous, 22 IDELR 460 (OSEP 1994); Letter to Wilson, 22 IDELR 20 (OSEP 1994); Letter to Anonymous, 21 IDELR 70 (OSEP 1994); Letter to D'Amato, 17 IDELR 466 (OSEP 1991); Letter to Arons, 16 IDELR 1028 (OSEP 1990) (explaining that IDEA focuses on SLD eligibility and FAPE, not dyslexia or a particular dyslexia methodology).
- <sup>3</sup> Thus, it does not extend to employees or other non-students in the K–12 context. Similarly, it does not extend to students in, or other related aspects of, postsecondary education (e.g., certification or training programs for teachers).
- <sup>4</sup> For a comprehensive and current two-volume reference, see PERRY A. ZIRKEL, SECTION 504, THE ADA AND THE SCHOOLS (2011) (available from LRP Publications—). § 504 extends obligations to parochial and other private schools that receive federal financial assistance, such as Title I compensatory reading services, and the ADA further extends these nondiscrimination obligations to other, secular private schools even without federal financial assistance; however, the focus here is on K–12 students in public schools.
- <sup>5</sup> § 504: 29 U.S.C. § 705(20); 34 C.F.R. § 104.3(j). ADA: 42 U.S.C. § 12102(1); 28 C.F.R. §§ 35.104 and 36.104. OCR has made clear that the other two prongs of the definition—“record of” and “regarded as”—are rarely applicable to students (as compared to employees) and not the basis for FAPE. See, e.g., Office for Civil Rights, Frequently Asked Questions (2009), <http://www.ed.gov/about/offices/list/ocr/504faq.html>; Senior Staff Memorandum 19 IDELR 894 (OCR 1992).
- <sup>6</sup> The ADAAA went into effect on January 1, 2009. For an overview, see, e.g., Perry A. Zirkel, *What Does the Law Say?: New Section 504 Student Eligibility Standards*, 41 TEACHING EXCEPTIONAL CHILD. 68 (Mar./Apr. 2009).
- <sup>7</sup> § 504: 34 C.F.R. § 104.3(j)(2)(i). ADA: 28 C.F.R. §§ 35.104 and 36.104.
- <sup>8</sup> Appendix A to Part 104: Analysis of the Final Regulation, 45 Fed. Reg. 30936 (May 9, 1980).
- <sup>9</sup> However, by way of contrast, the recognized areas of SLD under the IDEA are narrower, specifically including three reading components. See *infra* note 14.
- <sup>10</sup> 34 C.F.R. § 104.33(b)(1). Showing the overlap of the IDEA, the next subsection provides that implementation of an IEP under the IDEA is one means of complying with this FAPE requirement. *Id.* § 104.33(b)(2).
- <sup>11</sup> The investigatory avenue under § 504 and the ADA for K–12 students is the complaint process of OCR. The generally available dyslexia-related rulings are sparse and with mixed outcomes. Compare *Dallas (TX) Indep. Sch. Dist.*, 16 EHLR 902 (OCR 1990) (inappropriate evaluation), with *Wake Cnty. (NC) Sch.*, 42 IDELR ¶ 177 (OCR 2004) (appropriate evaluation); cf.



*Stafford (TX) Mun. Sch. Dist.*, 37 IDELR ¶132 (OCR 2002) (discontinuation of dyslexia portion of the IEP was not significant change in placement).

- 12 Perry A. Zirkel & Brooke L. McGuire, *A Roadmap to Legal Dispute Resolution for Students with Disabilities*, 23 J. SPECIAL EDUC. LEAD. 100 (2010). For students only covered by § 504, the adjudicative avenue starts with an impartial hearing, and the administrative–investigative avenue is OCR's complaint process. For students eligible under the IDEA, and thus double–covered, the additional adjudicative and investigatory avenues are the impartial hearing process and the complaint resolution process of the state education agency. *Id.*
- 13 20 U.S.C. § 1402(3)(A); 34 C.F.R. § 300.8(a).
- 14 The definition lists dyslexia as one of the disorders in basic psychological processes. 20 U.S.C. § 1402(30); 34 C.F.R. § 300.8(c)(10)(i). The eight recognized areas for eligibility include basic reading skill, reading fluency skills, reading comprehension, written expression, and mathematics calculation. *Id.* at § 300.9(a)(1). For a comprehensive analysis, see PERRY A. ZIRKEL, THE LEGAL MEANING OF SPECIFIC LEARNING DISABILITY FOR SPECIAL EDUCATION ELIGIBILITY (2006) (available from the Council for Exceptional Children—www.cec.sped.org). For successive updates, see Perry A. Zirkel, *The Legal Meaning of Specific Learning Disability for Special Education Eligibility: The Most Recent Case Law*, 43 COMMUNIQUÉ 10 (June 2015); Perry A. Zirkel, *The Legal Meaning of Specific Learning Disability for Special Education Eligibility: The Latest Case Law*, 41 COMMUNIQUÉ 10 (Jan./Feb. 2013); Perry A. Zirkel, *The Legal Meaning of Specific Learning Disability for Special Education Eligibility*, 42 TEACHING EXCEPTIONAL CHILD. 62 (May/June 2010).
- 15 For analyses of state laws, see, e.g., Laura Boynton Hauerwas, Rachel Brown & Amy N. Scott, *Specific Learning Disability and Response to Intervention: State–Level Guidance*, 80 EXCEPTIONAL CHILD. 101 (2013); Perry A. Zirkel & Lisa Thomas, *State Laws and Guidelines for Implementing RTI*, 43 TEACHING EXCEPTIONAL CHILD. 60 (Sept./Oct. 2010). For analysis extending beyond state laws, including OSEP policy letters and case law, see Perry A. Zirkel, *RTI and the Law*, 268 Ed. Law Rep. 1 (2011).
- 16 The other recognized classifications include speech/language impairment, emotional disturbance and other health impairment. 34 C.F.R. § 300.8.
- 17 For a legal overview of this process, see, e.g., Perry A. Zirkel, *Legal Boundaries for the IDEA's Complaint Resolution Process: An Update*, 313 Ed. Law Rep. 1 (2015).
- 18 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2):  
In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—  
(i) Impeded the child's right to a FAPE;  
(ii) Significantly impeded the parent's opportunity to participate in the decision–making process regarding the provision of a FAPE to the parent's child; or  
(iii) Caused a deprivation of educational benefit.
- 19 *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034, 458 U.S. 176, 206–07, 73 L.Ed.2d 690, 5 Ed.Law Rep. 34 (1982). For the status of this substantive standard under subsequent amendments of the IDEA, see, e.g., Perry A. Zirkel, *Is It Time for Elevating the Standard for FAPE under IDEA?*, 79 EXCEPTIONAL CHILD. 503 (Dec. 2013); Perry A. Zirkel, *Have the Amendments to the Individuals with Disabilities Education Act Razed Rowley and Raised the Substantive Standard for “Free Appropriate Public Education”?* 28 J. NAT'L ASSN ADMIN. L. JUDICIARY 396 (2008). The standard may vary depending on state law and federal jurisdictions.
- 20 For the alternate avenues, see Zirkel & McGuire, *supra* note 12.
- 21 Such aspects include the particular child, the child's parents, the district, the investigator/adjudicator, and the attorneys, if any, on each side. For impartial hearings, the Supreme Court has interpreted the IDEA as putting the burden of proof in FAPE cases on the challenging party, i.e., the parent. *Schaffer v. West*, 126 S.Ct. 528, 546 U.S. 49, 163 L.Ed.2d 387 (2005). The laws in a minority of states put this burden on the district. See, e.g., Perry A. Zirkel, *Who Has the Burden of Persuasion in Impartial Hearings under the Individuals with Disabilities Education Act?*, 13 CONN. PUB. INT. L.J. 1 (2011).

- 22 *See, e.g., Bay Shore Union Free Sch. Dist. v. Kain*, 485 F.3d 730, 733–34, 220 Ed.Law Rep. 190 (2d Cir. 2007); *Evans v. Evans*, 818 F.Supp. 1215, 1223, 82 Ed.Law Rep. 492 (N.D. Ind. 1993).
- 23 For a specific canvassing of state statutes, which broadly includes proposed tangential laws, *see* Martha Youman & Nancy Maher, *Dyslexia Laws in the USA*, 63 ANNALS OF DYSLEXIA 133 (2013). More generally, states have recently issues statutes and regulations specifying their choice for the approach for determining SLD eligibility—permitting or prohibiting severe discrepancy and requiring or permitting RTI. *See* Zirkel & Thomas, *supra* note 15 and accompanying text.
- 24 The scope here is limited to local and state education agencies with respect to K–12 schools, not institutions of higher education. It does not extend to Wyoming's dyslexia law that its highest court held to be unconstitutional. *Powers v. State*, 318 P.3d 300, 301 Ed.Law Rep. 1029 (Wyo. 2014).
- 25 ARK. CODE ANN. §§ 6-41-06—6-41-610.
- 26 LA. REV. STAT. ANN. tit. § 17:392.1. The other two specified impairments are ADHD and “social and environmental factors that put a child ‘at risk.’ ” *Id.* The legislation specifies the following levels of the screening results: (1) no need; (2) need for services to ameliorate “the effect of a possible learning disorder”; (3) need for services to ameliorate “the effect of a possible at-risk factor”; and (4) need for referral for a special education eligibility evaluation. *Id.*
- 27 LA. REV. STAT. ANN. tit. § 17:24.11. The various specifications include a final report to the legislative education committees and remediation and intervention strategies that “[t]o the maximum extent possible,...utilize a multi-tiered model structured to provide research-based instruction in a general education setting.”
- 28 LA. REV. STAT. ANN. tit. § 17:7(11). The specified remediation is “an appropriate multi-sensory, intensive phonetic, synthetic to analytic phonics, linguistic, meaning based, systematic, language based regular education program.” *Id.* The examples offered for “related disorders” are “developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.” *Id.* For a related statute that also requires such testing by a school building level committee, *see* LA. REV. STAT. ANN. tit. § 17:2112(A)(2).
- 29 <http://www.rapides.k12.la.us/sped/bulletins.htm>. First established in 1993 and revised in 1999, the regulations, also found at LA. ADMIN. CODE, tit. 28, §§ 101 *et seq.*, recognize diagnostic difficulties as follows:  
Many of the characteristics associated with dyslexia are found in children with other specific learning disabilities or with speech and spoken language disorders. Some of the characteristics may be present in certain young children in the course of normal development. When these characteristics are not age-appropriate and interfere with learning, they may be symptoms of a language or learning disorder, including dyslexia, and the child may need specialized instruction in academic or related areas. *Id.* § 101. The guidelines for implementation of the third statute provide, *inter alia*, specify various LEA responsibilities, including knowledgeable school building level committees, specialized teacher training (including “Multisensory Structured Language Programs”), and “a program for students identified as demonstrating characteristics of dyslexia according to the assessment and programming process.” *Id.* §§ 501, 503, and 505. They also provide details for the assessment process, the interventions, procedural safeguards, and possible referral for a special education evaluation. *Id.* §§ 507 and 701. Similarly, they specify the components and scope of the Multisensory Structured Language Program. *Id.* § 901. Finally, this bulletin includes regulations for the implementation of the first statute, including training requirements for screening specialists. *Id.* §§ 1301 and 1303.
- 30 N.J. STAT. ANN. §§ 18A:6-131, 18A:46-55 and 18A:40-5.2—18A:40-5.4.
- 31 TEX. (EDUC.) CODE ANN. §§ 28.006(c) and 28.006(g).
- 32 *Id.* § 38.003.
- 33 *Id.* § 39.023(a) and 39.023(n).
- 34 *Id.* § 42.152(c-1).
- 35 19 TEX. ADMIN CODE § 74.28. This regulation, which the state board of education amended in 2010, requires, *inter alia*, notifying parents of students eligible under § 504 of “all services and options available to the student under that federal statute.” *Id.* § 74.28(e). The regulation also specifies that “[t]eachers who screen and treat these students must be trained

in instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in [the Handbook].” *Id.* § 74.28(c). In circular fashion, the 2010 revision of the Handbook refers to this regulatory subsection as indicating that in the § 504 evaluation “individuals/professionals who administer assessments have training in the evaluation of students for dyslexia and related disorders.” TEXAS EDUCATION AGENCY, THE DYSLEXIA HANDBOOK 14 (2010).

36 [N.M. STAT. ANN. § 22–13–32](#). Incidentally, New Mexico's special education regulations include a definition of dyslexia. N.M. CODE R. § 6.31.2.7(B)(6).

37 [CONN. GEN. STAT. § 10–145a](#).

38 [CONN. GEN. STAT. § 10–76d](#).

39 [CONN. GEN. STAT. § 10–145a](#) and [14–39 §§ 4 et seq.](#)

40 [MISS. CODE ANN. § 37–23–15](#). Originally passed in 1994 and most recently amended in 2007, this law specifies that the services be “remediation in an appropriate, multi–sensory, systematic language–based regular education program or programs, as determined by the school district, such as the Texas Scottish Rite Hospital Dyslexia Training Program.” *Id.* The SEA has issued a Dyslexia Handbook ([www.mde.k12.ms.us/acad/id/curriculum/.../dyslexiahandbook.PDF](http://www.mde.k12.ms.us/acad/id/curriculum/.../dyslexiahandbook.PDF)), which largely limits any additional identification and services to § 504 and the IDEA. In relation to the Handbook, the SEA has a dyslexia program that provides technical assistance to local school districts (<http://www.mde.k12.ms.us/acad/id/curriculum/laer/dyslexia.html>).

41 [MISS. CODE ANN. §§ 37–173–1—37–173–31](#).

42 [PENN. CONS. STAT. §§ 17–701–C—17–705–C](#).

43 [CAL. EDUC. CODE §§ 52853\(a\)\(3\) and 56245](#); *see also id.* § 56337.5 (general or special education strategies according to the state guidelines).

44 [COLO. REV. STAT. § 22–2–133](#). This legislation, which went into effect on August 1, 2008, requires such activities to fit the RTI model per its state special education law. *Id.*

45 [FLA. STAT. § 411.26](#).

46 [105 ILL. COMP STAT. ANN. 5/2–3.160](#).

47 [IOWA CODE § 278.68](#).

48 [KY. REV. STAT. ANN. § 158.305](#).

49 [OHIO REV. STAT. § 3319.80](#).

50 [WASH. REV. CODE ANN. § 28A.300.530](#). This statute requires for this purpose “consultation with the school districts that participated in the Lorraine Wojahn dyslexia pilot program, and with an international nonprofit organization dedicated to supporting efforts to provide appropriate identification of and instruction for individuals with dyslexia.” *Id.*

51 [MO. REV. STAT. § 167.268](#).

52 [TENN. CODE ANN. § 49–6–3004](#) (2014).

53 8 VA. ADMIN. CODE § 20–81–10.

54 *See, e.g.,* Decoding Dyslexia—New Jersey, <http://decodingdyslexianj.org/nj-legislation/>

55 An additional key issue is whether adjudicative or investigative avenues, akin to those under the IDEA and/or § 504, should be part of the enforcement framework of such state laws. For development of this issue in a related area, see, e.g., PERRY A. ZIRKEL, THE LAW ON GIFTED EDUCATION (2003) (available from the National Research Center on the Gifted and Talented at the University of Connecticut); Perry A. Zirkel, *State Laws for Gifted Education*, 27 ROEPER REV. 228 (2005).

- 56 *Janet G. v. State of Haw. Dep't of Educ.*, 410 F.Supp.2d 958, 206 Ed.Law Rep. 624 (D. Haw. 2005) (alternatively, no allegation or evidence of discrimination based on disability).
- 57 *Campbell v. Bd. of Educ.*, 58 Fed.Appx. 162, 174 Ed.Law Rep. 826 (6th Cir. 2003) (district's provision of Project Read, rather than Orton Gillingham, program did not violate § 504); *Grant v. St. James Parish Sch. Bd.*, 273 F.3d 1102 (5th Cir. 2001) (implementation of Louisiana's five-step process for assessment and accommodations/interventions was not a violation of § 504 or the IDEA); *cf. Miller v. Bd. of Educ.*, 565 F.3d 1232, 244 Ed.Law Rep. 528 (10th Cir. 2009) (failure to distinguish elements of § 504/ADA claim from those of IDEA claim). *But cf. Myslow v. New Milford Sch. Dist.*, 2006 WL 473735 (D. Conn. 2006) (preserving for trial § 504 and ADA claims that district failed to recognize and provide appropriate interventions for dyslexia, as distinct from ADHD).
- 58 *See supra* note 14.
- 59 *See, e.g., Michael P. v. Dep't of Educ.*, 656 F.3d 1057, 272 Ed.Law Rep. 869 (9th Cir. 2011) (ruling, in arguably limited circumstance, that requiring exclusive reliance on the severe discrepancy model of identifying SLD violated the IDEA); *Draper v. Atlanta Indep. Sch. Dist.*, 518 F.3d 1275, 230 Ed.Law Rep. 545 (11th Cir. 2008) (approving denial-of-FAPE remedy stemming from misdiagnosis); *Doe v. Cape Elizabeth Sch. Dep't*, 64 IDELR ¶ 272 (D. Me. 2014) (ruling that child was no longer eligible as SLD); *M.B. v. S. Orange-Maplewood Bd. of Educ.*, 55 IDELR ¶ 18 (D.N.J. 2010) (ruling in favor of continued eligibility based on district's reliance on single tool for severe discrepancy); *J.P. v. Anchorage Sch. Dist.*, 260 P.3d 285, 271 Ed.Law Rep. 1077 (Alaska 2011) (ruling that the child was ineligible but that the parents were entitled to reimbursement of their independent educational evaluation). *cf. V.M. v. Sparta Twp. Bd. of Educ.*, 63 IDELR ¶ 184 (D.N.J. 2014) (ruling that SLD evaluation of student with dyslexia was procedural error); *Meridian Joint Sch. Dist. No. 2 v. D.A.*, \_\_\_ F.3d \_\_\_ (9th Cir. 2015) (ruling that parents' were not entitled to attorneys' fees because although they obtained IEE at public expense the student with possible dyslexia and dysgraphia was not eligible under the IDEA); *Kathryn F. v. W. Chester Area Sch. Dist.*, 62 IDELR ¶ 177 (E.D. Pa. 2013) (ruling that failure to diagnose dyslexia of eligible child did not constitute denial of FAPE).
- 60 *See supra* notes 17–19 and accompanying text.
- 61 *Compare W.D. v. Watchung Hills Reg'l High Sch. Bd. of Educ.*, 602 Fed.Appx. 563, 317 Ed.Law Rep. 596 (3d Cir. 2015); *W.R. v. Union Beach Bd. of Educ.*, 414 Fed.Appx. 499, 267 Ed.Law Rep. 550 (3d Cir. 2011); *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 257 Ed.Law Rep. 39 (3d Cir. 2010) (in district's favor), with *Davis v. Wappingers Cent. Sch. Dist.*, 431 Fed.Appx. 12, 271 Ed.Law Rep. 814 (2d Cir. 2011) (in parent's favor but lost at next step of tuition reimbursement analysis).
- 62 *Compare Bougades v. Pine Plains Cent. Sch. Dist.*, 376 Fed.Appx. 95, 259 Ed.Law Rep. 483 (2d Cir. 2010); *Fairfax Cnty. Sch. Bd. v. Knight*, 261 Fed.Appx. 606, 231 Ed.Law Rep. 697 (4th Cir. 2008); *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 181 Ed.Law Rep. 370 (2d Cir. 2003); *Landau v. Long Beach Unified Sch. Dist.*, 947 F.2d 950 (9th Cir. 1991); *C.P. v. Krum Indep. Sch. Dist.*, 64 IDELR ¶ 78 (E.D. Tex. 2014); *W.W. v. New York City Dep't of Educ.*, 63 IDELR ¶ 66 (S.D.N.Y. 2014); *Dawn G. v. Mabank Indep. Sch. Dist.*, 63 IDELR ¶ 63 (N.D. Tex. 2014); *T.E. v. Cumberland Valley Sch. Dist.*, 62 IDELR ¶ 204 (M.D. Pa. 2014); *S.A. v. Weast*, 898 F.Supp.2d 869, 291 Ed.Law Rep. 241 (D. Md. 2012); *Ganje v. Depew Union Free Sch. Dist.*, 60 IDELR ¶ 43 (W.D.N.Y. 2012); *C.H. v. Nw. Indep. Sch. Dist.*, 815 F.Supp.2d 977, 277 Ed.Law Rep. 268 (E.D. Tex. 2011); *Hailey M. v. Matayoshi*, 57 IDELR ¶ 124 (D. Haw. 2011); *D.G. v. Cooperstown Cent. Sch. Dist.*, 746 F.Supp.2d 435, 265 Ed.Law Rep. 154 (N.D.N.Y. 2010); *C.B. v. Pittsford Cent. Sch. Dist.*, 54 IDELR ¶ 149 (W.D.N.Y. 2010); *Schreiber v. E. Ramapo Cent. Sch. Dist.*, 700 F.Supp.2d 529, 258 Ed.Law Rep. 231 (S.D.N.Y. 2010); *High v. Exeter Twp. Sch. Dist.*, 54 IDELR ¶ 17 (E.D. Pa. 2010); *Viola v. Arlington Cent. Sch. Dist.*, 414 F.Supp.2d 366 (S.D.N.Y. 2006); *Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302*, 46 IDELR ¶ 102 (C.D. Ill. 2006); *Antonaccio v. Arlington Cent. Sch. Dist.*, 281 F.Supp.2d 710, 181 Ed.Law Rep. 584 (S.D.N.Y. 2003); *Banks v. Danbury Bd. of Educ.*, 238 F.Supp.2d 428 (D. Conn. 2002); *Nein v. Greater Clark Cnty Sch. Corp.*, 95 F.Supp.2d 961, 144 Ed.Law Rep. 214 (S.D. Ind. 2000); *Wall v. Mattituck-Cutchogue Sch. Dist.*, 945 F.Supp. 501, 114 Ed.Law Rep. 834 (S.D.N.Y. 1996); *Porter v. Illinois State Bd. of Educ.*, 6 N.E.3d 424, 303 Ed.Law Rep. 476 (Ill. Ct. App. 2014); *cf. Weston v. Kansas City Missouri Sch. Dist.*, 57 IDELR ¶ 284 (W.D. Mo. 2011) (possible dyslexia) (in district's favor), with *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981, 266 Ed.Law Rep. 71 (8th Cir. 2010); *J.M. v. Morris Sch. Dist. Bd. of Educ.*, 58 IDELR ¶ 48 (D.N.J. 2011); *I.S. v. Sch. Town of Munster*, 64 IDELR ¶ 40 (S.D. Ind. 2014); *D.B. v. Bedford Sch. Dist.*, 708 F.Supp.2d 564, 259 Ed.Law Rep. 608 (W.D. Va. 2010); *Fisher v. Bd. of Educ.*, 856 A.2d 552, 191 Ed.Law Rep. 825 (Del. 2004); *cf. M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842, 309 Ed.Law Rep. 155 (9th Cir. 2014); *K.A.B. v.*

*Downingtown Area Sch. Dist.*, 61 IDELR ¶ 159 (E.D. Pa. 2013); *I.T. v. Dep't of Educ.*, 59 IDELR ¶ 219 (D. Haw. 2012) (in limited part); *Flowers v. Martinez*, 19 IDELR ¶ 898 (N.D. Cal. 1993) (inconclusively) (in parent's favor).

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Compare *G.M. v. Drycreek Joint Elementary Sch. Dist.*, 595 Fed.Appx. 698, 315 Ed.Law Rep. 88 (9th Cir. 2014); *G.N. v. Bd. of Educ.*, 309 Fed.Appx. 542, 243 Ed.Law Rep. 635 (3d Cir. 2009); *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 202 Ed.Law Rep. 617 (2d Cir. 2005); *Cronkite v. Long Beach Unified Sch. Dist.*, 30 IDELR 510 (9th Cir. 1999); *J.S. v. New York City Dep't of Educ.*, \_\_\_ F.Supp.3d \_\_\_ (S.D.N.Y. 2015); *C.P. v. Krum Indep. Sch. Dist.*, 65 IDELR ¶ 78 (E.D. Tex. 2015); *W.W. v. New York City Dep't of Educ.*, 63 IDELR ¶ 33 (S.D.N.Y. 2014); *Kathryn F. v. W. Chester Area Sch. Dist.*, 62 IDELR ¶ 177 (E.D. Pa. 2013); *D.A. v. Fairfield–Suisun Unified Sch. Dist.*, 62 IDELR ¶ 17 (E.D. Cal. 2013); *K.K. v. Alta Loma Sch. Dist.*, 60 IDELR ¶ 159 (C.D. Cal. 2013); *DiRocco v. Bd. of Educ.*, 60 IDELR ¶ 99 (S.D.N.Y. 2013); *Nickerson–Reti v. Lexington Pub. Sch.*, 893 F.Supp.2d 276, 290 Ed.Law Rep. 79 (D. Mass. 2012); *Dzugas–Smith v. Southold Union Free Sch. Dist.*, 59 IDELR ¶ 8 (E.D.N.Y. 2012); *J.D. v. Crown Point Sch. Corp.*, 58 IDELR ¶ 125 (N.D. Ind. 2012); *C.H. v. Nw. Indep. Sch. Dist.*, 815 F.Supp.2d 977, 277 Ed.Law Rep. 268 (E.D. Tex. 2011); *M.F. v. Irvington Union Free Sch. Dist.*, 719 F.Supp.2d 302, 261 Ed.Law Rep. 601 (S.D.N.Y. 2010); *J.G. v. Briarcliff Manor Union Free Sch. Dist.*, 682 F.Supp.2d 387, 255 Ed.Law Rep. 647 (S.D.N.Y. 2010); *James D. v. Bd. of Educ.*, 642 F.Supp.2d 804, 250 Ed.Law Rep. 194 (N.D. Ill. 2009); *Gavrity v. New Lebanon Cent. Sch. Dist.*, 53 IDELR ¶ 152 (N.D.N.Y. 2009); *Pierce v. Mason City Sch. Dist. Bd. of Educ.*, 48 IDELR ¶ 7 (S.D. Ohio 2007); *Schroll v. Bd. of Educ.*, 48 IDELR ¶ 105 (C.D. Ill. 2007); *Livingston v. DeSoto Cnty. Sch. Dist.*, 782 F.Supp. 1173, 72 Ed.Law Rep. 790 (N.D. Miss. 1992); *Porter v. Illinois State Bd. of Educ.*, 6 N.E.3d 424, 303 Ed.Law Rep. 476 (Ill. Ct. App. 2013) (in district's favor), with *Hall v. Vance Cnty. Bd. of Educ.*, 774 F.2d 629, 27 Ed.Law Rep. 1107 (4th Cir. 1985); *Evans v. Bd. of Educ.*, 921 F.Supp. 1184, 109 Ed.Law Rep. 113 (S.D.N.Y. 1996) (in parent's favor).

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See, e.g., *M.C. v. Katonah/Lewisboro Union Free Sch. Dist.*, 528 Fed.Appx. 64, 298 Ed.Law Rep. 129 (2d Cir. 2013); *Matrejek v. Brewster Cent. Sch. Dist.*, 293 Fed.Appx. 20, 239 Ed.Law Rep. 344 (2d Cir. 2008); *Fairfax Cnty. Sch. Bd. v. Knight*, 261 Fed.Appx. 606, 231 Ed.Law Rep. 697 (4th Cir. 2008); *James v. Upper Arlington City Sch. Dist.*, 228 F.3d 764, 147 Ed.Law Rep. 840 (6th Cir. 2000); *Davis v. Wappingers Cent. Sch. Dist.*, 431 Fed.Appx. 12, 271 Ed.Law Rep. 814 (2d Cir. 2011); *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 181 Ed.Law Rep. 370 (2d Cir. 2003); *A.W. v. Bd. of Educ. of Wallkill Cent. Sch. Dist.*, 65 IDELR ¶ 211, (N.D.N.Y. 2015); *B.C. v. Pine Plains Cent. Sch. Dist.*, 971 F.Supp.2d 356, 302 Ed.Law Rep. 1078 (S.D.N.Y. 2013); *Scarsdale Union Free Sch. Dist. v. R.C.*, 60 IDELR ¶ 195 (S.D.N.Y. 2013); *DiRocco and Bd. of Educ.*, 60 IDELR ¶ 99 (S.D.N.Y. 2013); *R.S. v. Lakeland Cent. Sch. Dist.*, 56 IDELR ¶ 211 (S.D.N.Y. 2011); *Wood v. Kingston Sch. Dist.*, 55 IDELR ¶ 132 (N.D.N.Y. 2010); *Gavrity v. New Lebanon Cent. Sch. Dist.*, 53 IDELR ¶ 152 (N.D.N.Y. 2009); *Viola v. Arlington Cent. Sch. Dist.*, 414 F.Supp.2d 366 (S.D.N.Y. 2006); *Carmel Cent. Sch. Dist. v. V.S.*, 373 F.Supp.2d 402, 199 Ed.Law Rep. 666 (S.D.N.Y. 2005); *Banks v. Danbury Bd. of Educ.*, 238 F.Supp.2d 428 (D. Conn. 2002); *Arlington Cent. Sch. Dist. v. D.K.*, 37 IDELR ¶ 277 (S.D.N.Y. 2002) (Kildonan); *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 257 Ed.Law Rep. 39 (3d Cir. 2010); *Ganje v. Depew Union Free Sch. Dist.*, 60 IDELR ¶ 43 (W.D.N.Y. 2012); *D.G. v. Cooperstown Cent. Sch. Dist.*, 746 F.Supp.2d 435, 265 Ed.Law Rep. 154 (N.D.N.Y. 2010); *C.B. v. Pittsford Cent. Sch. Dist.*, 54 IDELR ¶ 149 (W.D.N.Y. 2010); *City Sch. Dist. v. Darlene S.*, 45 IDELR ¶ 90 (W.D.N.Y. 2006) (Gow); *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 202 Ed.Law Rep. 617 (2d Cir. 2005); *Linda W. v. Indiana Dep't of Educ.*, 200 F.3d 504, 141 Ed.Law Rep. 86 (7th Cir. 1999); *Wall v. Mattituck–Cutchogue Sch. Dist.*, 945 F.Supp. 501, 114 Ed.Law Rep 834 (S.D.N.Y. 1996) (Landmark); *Landau v. Long Beach Unified Sch. Dist.*, 947 F.2d 950 (9th Cir. 1991) (Landmark—summer only); *Hall v. Vance Cnty. Bd. of Educ.*, 774 F.2d 629, 27 Ed.Law Rep. 1107 (4th Cir. 1985) (Oakland); *Conklin v. Anne Arundel Sch. Dist.*, 946 F.2d 306, 70 Ed.Law Rep. 351 (3d Cir. 1991) (Oakland and Summit); *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981, 266 Ed.Law Rep. 71 (8th Cir. 2011) (Groves); *J.S. v. New York City Dep't of Educ.*, \_\_\_ F.Supp.3d \_\_\_ (S.D.N.Y. 2015) (Lang); *J.M. v. Morris Sch. Dist. Bd. of Educ.*, 58 IDELR ¶ 48 (D.N.J. 2011) (Winston); *J.G. v. Briarcliff Manor Union Free Sch. Dist.*, 682 F.Supp.2d 387, 255 Ed.Law Rep. 647 (S.D.N.Y. 2010) (Windward); *D.B. v. Bedford Sch. Dist.*, 708 F.Supp.2d 564, 259 Ed.Law Rep. 608 (W.D. Va. 2010) (Vistas); *James D. v. Bd. of Educ.*, 642 F.Supp.2d 804, 250 Ed.Law Rep. 194 (N.D. Ill. 2009) (Hyde Park); *Pierce v. Mason City Sch. Dist. Bd. of Educ.*, 48 IDELR ¶ 7 (S.D. Ohio 2007) (Trinity); *Antonaccio v. Arlington Cent. Sch. Dist.*, 281 F.Supp.2d 710, 181 Ed.Law Rep. 584 (S.D.N.Y. 2003) (Pine Ridge); *Livingston v. DeSoto Cnty. Sch. Dist.*, 782 F.Supp. 1173, 72 Ed.Law Rep. 790 (N.D. Miss. 1992) (Bodine); cf. *Hailey M. v. Matayoshi*, 57 IDELR ¶ 124 (D. Haw. 2011) (Lindamood Bell clinic); *Bougades v. Pine Plains Cent. Sch. Dist.*, 376 Fed.Appx. 95, 259 Ed.Law Rep. 483 (2d Cir. 2010) (school not named). The courts granted tuition reimbursement in relatively few of all these cases—*C.B. v. Special Sch. Dist.*, *Hall v. Vance Cnty Bd. of Educ.*; *D.B. v. Bedford Sch. Dist.*; *City School Dist. v. Darlene S.*; cf. *Wood v. Kingston Sch. Dist.* (90%).

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See, e.g., *B.E.L. v. State of Haw. Dep't of Educ.*, 63 F.Supp.3d 1215, 317 Ed.Law Rep. 830 (D. Haw. 2015); *Douglas W. v. Greenfield Pub. Sch.*, 164 F.Supp.2d 157, 157 Ed.Law Rep. 648 (D. Mass. 2001).

- 66 Tessie E. Rose & Perry A. Zirkel, *Orton–Gillingham Methodology for Students with Reading Disabilities*, 41 J. SPECIAL EDUC. 171 (2007). However, the selection criterion was a broad definition of Orton–Gillingham methods rather than a student identified with dyslexia.
- 67 *Id.* This deference started with the Supreme Court's dicta in *Board of Education v. Rowley*, 458 U.S. at 207, reasoning that courts should leave the choice of “educational method...to state and local educational agencies.”
- 68 *See, e.g., A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791, 220 Ed.Law Rep. 502 (3d Cir. 2007); *G.M. v. Dry Creek Joint Elementary Sch. Dist.*, 595 Fed.Appx. 698, 315 Ed.Law Rep. 88 (9th Cir. 2014).
- 69 *See, e.g., B.D.S. v. Southold Union Free Sch. Dist.*, 52 IDELR ¶ 293 (S.D.N.Y. 2009).
- 70 *See, e.g., A.P. v. N. Burlington Cnty. Reg'l Bd. of Educ.*, 54 IDELR ¶ 322 (D.N.J. 2010); *Nicholas M. v. Dep't of Educ.*, 53 IDELR ¶ 19 (D. Haw. 2010); *Dzugas–Smith v. Southold Union Free Sch. Dist.*, 55 IDELR ¶ 135 (E.D.N.Y. 2010); *Myslow v. Avery*, 40 IDELR ¶ 123 (D. Conn. 2003).
- 71 *See, e.g., Ron J. v. McKinney Indep. Sch. Dist.*, 46 IDELR ¶ 222 (E.D. Tex. 2006).
- 72 Among the additional or alternative avenues of legal recourse is funding legislation. *See, e.g.,* <http://www.interdys.org/LEARNact.htm>. Of course, informal action, emphasizing collaboration, trust, and professional norms, is another, less restrictive option.
- 73 *See, e.g., Wood v. Katy Indep. Sch. Dist.*, 57 IDELR ¶ 193 (S.D. Tex. 2011), *further proceedings*, 59 IDELR (S.D. Tex. 2012) (inconclusive ruling re parents' FAPE claim against school district predicated on Texas Dyslexia Act and IDEA); *Myslow v. New Milford Sch. Dist.*, 2006 WL 473735 (D. Conn. 2006) (rejection parents' negligence and intentional–tort claims); *D.S.W. v. Fairbanks N. Star Borough Sch. Dist.*, 628 P.2d 554 (Alaska 1981) (rejecting claim of negligent identification and interventions).

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