

**411 Ed. Law Rep. 903**

West's Education Law Reporter

July 6, 2023

Education Law into Practice

Perry A. **Zirkel**, Ph.D., J.D., LL.M.<sup>aa1</sup>

Copyright © 2023 by Thomson Reuters/West - No Claim to Original U.S. Government Works; Perry A. Zirkel, Ph.D., J.D., LL.M.

**IDENTIFICATION AND INTERVENTION OF STUDENTS WITH DYSLEXIA: THE LATEST LEGAL UPDATE<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 two twin focal, but not exclusive, 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. Conversely, court decisions limited to adjudicative issues, such as stay-put,<sup>4</sup> the statute of limitations,<sup>5</sup> and exhaustion,<sup>6</sup> are excluded.

**\*904** 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 updated material since the last version of the article is in **bold font**.<sup>7</sup> 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 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<sup>8</sup>****A. Section 504 of the Rehabilitation Act (§ 504) and the Americans with Disabilities Act (ADA)**

For eligibility for a free appropriate public education (FAPE), the definition of an individual with a disability<sup>9</sup> requires three essential elements, interpreted under the new standards of the Americans with Disabilities Act Amendments Act (ADAAA)<sup>10</sup> and its subsequent regulations:<sup>11</sup>

1. physical or mental impairment -- listing "specific learning disabilities" as one of the examples<sup>12</sup> and, in the accompanying commentary with an analogy to the IDEA, dyslexia as one of the specific learning disabilities,<sup>13</sup> with recent reinforcement by express inclusion as an example in the ADA Title II regulations<sup>14</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>15</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.*

**\*905** 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>16</sup>

*Thus, if the student is eligible, the 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>17</sup> and--if the student is “double-covered”--the corresponding avenues under the IDEA.<sup>18</sup>*

## **B. Individuals with Disabilities Education Act (IDEA)<sup>19</sup>**

For eligibility for FAPE, the definition of a child with a disability<sup>20</sup> requires two essential elements:

1. meeting the criteria of one or more specified classifications, including “specific learning disability” (SLD)<sup>21</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 **\*906** discrepancy or response to intervention model (RTI),<sup>22</sup> or the criteria of another IDEA classification,<sup>23</sup> and need special education as a result.*

For FAPE, the IDEA requires special education and, if necessary, related services that meet a primarily two-pronged standard:<sup>24</sup>

1. procedural compliance: strict via the state's complaint resolution process<sup>25</sup> but a relatively relaxed, harmless-error approach--with a parental participation exception--via the adjudicative process<sup>26</sup>

2. substantive sufficiency: "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."<sup>27</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>28</sup> and the individual aspects in the forum.<sup>29</sup>*

## II. State Laws

Under the concept of "cooperative federalism,"<sup>30</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>31</sup> These laws vary in their strength and specificity. They apply to state education agencies (SEAs) and, through them, \*907 to local education agencies (LEAs),<sup>32</sup> sometimes with teacher preparation requirements for institutions of higher education (IHEs) or certification, which is separate from provisions for SEA or LEA technical assistance (TA).

*The following summary of state laws is organized into approximate categories of their relative strength in terms of the overall scope and legal force. As the entries in bold font show, the general direction is for increased strength, which has resulted in upward changes in position within this summary:<sup>33</sup>*

Strong:

Alabama requires an advisory council, SEA resource guide, extensive SEA professional development,<sup>34</sup> LEA K-3 screening, and an individual intervention plan via problemsolving teams;<sup>35</sup> also has established a certification "dyslexia therapist endorsement"<sup>36</sup> and membership on a literacy task force.<sup>37</sup>

Arkansas requires coverage in teacher preparation programs;<sup>38</sup> SEA dyslexia specialist,<sup>39</sup> **a network of dyslexia therapists (with training materials and annual meeting),**<sup>40</sup> a resource guide,<sup>41</sup> awareness TA,<sup>42</sup> and enforcement;<sup>43</sup> LEA K-2 screening with two levels of screening after more general screening and with Level II **per the SEA guide,**<sup>44</sup> RTI for students identified at Level I and seemingly § 504 if identified at Level II,<sup>45</sup>

parent information for students identified at either level,<sup>46</sup> annual LEA report to SEA;<sup>47</sup> at least one dyslexia interventionist per LEA.<sup>48</sup>

**\*908** Indiana requires an SEA updated resource guide,<sup>49</sup> staff specialist,<sup>50</sup> and professional development for all teachers;<sup>51</sup> LEA K-2 screening with an SEA-approved instrument<sup>52</sup> specified interventions via RTI,<sup>53</sup> trained reading specialist,<sup>54</sup> parent information,<sup>55</sup> and annual reports,<sup>56</sup> inclusion in IDEA evaluation and IEP,<sup>57</sup> nominal teacher preparation coverage.<sup>58</sup>

Louisiana provides for ancillary certification as a dyslexia therapist and dyslexia practitioner;<sup>59</sup> established pilot programs;<sup>60</sup> requires SEA guidance<sup>61</sup> and, via prescribed school-level committee, LEA K-3 screening,<sup>62</sup> assessment,<sup>63</sup> resulting remedial services,<sup>64</sup> professional information training,<sup>65</sup> and public notice.<sup>66</sup>

Mississippi requires SEA adoption of “pilot programs” for testing and appropriate services for students with “dyslexia and related disorders” who do not qualify for special education services;<sup>67</sup> SEA-specified inservice training for all licensed LEA educators and paraprofessionals,<sup>68</sup> LEA screening with state-approved instrument during kindergarten (spring) and grade 1 (fall), with specified subsequent evaluation option and resulting eligibility for LEA dyslexia program or for state dyslexia scholarship at another LEA or a nonpublic school<sup>69</sup> and, **for students with dyslexia diagnosis, IDEA \*909 and § 504 evaluations of student and interventions including RTI tier 3 services;**<sup>70</sup> also provides for administrator and dyslexia therapist (per separate certification) for LEA services.<sup>71</sup>

Tennessee requires the SEA to establish a specified state advisory council and to provide inservice training, **K-3 teacher preparation, and universal dyslexia screener;** requires LEAs to conduct specified dyslexia screening and interventions within the mandatory RTI framework<sup>72</sup> **and Individual Learning Plans-Dyslexia (ILP-D) for K-3 students who meet specified criteria.**<sup>73</sup>

Texas requires certification for dyslexia therapists and dyslexia practitioners with an advisory committee;<sup>74</sup> teacher preparation requirements;<sup>75</sup> SEA training opportunities for continuing education credit;<sup>76</sup> SEA compliance enforcement of LEA screening and intervention requirements;<sup>77</sup> LEA screening at the end of kindergarten and grade 1, § 504 or IDEA evaluation, and resulting “treatment” per detailed SEA handbook;<sup>78</sup> LEA parent information;<sup>79</sup> annual reporting;<sup>80</sup> a certified “dyslexia therapist” at each regional education service center;<sup>81</sup> also has established extra funding for specified qualifications, including an IEP or 504 plan<sup>82</sup> and grants, expiring on 9/1/21, for innovative separate K-3 program;<sup>83</sup> a statewide committee to develop a classroom technology plan;<sup>84</sup> and alternate assessments via § 504.<sup>85</sup>

Moderate:

**Delaware requires K-3 screening in reading with an SEA-approved MTSS universal screener, which includes the identification of students “with characteristics of dyslexia.”**<sup>86</sup>

Florida includes dyslexia in the requirements for reading certification,<sup>87</sup> LEA-required professional development activities,<sup>88</sup> **interventions in grades K-3 upon diagnosis of dyslexia,**<sup>89</sup> and, only upon an IEP or 504 plan, in the McKay voucher program.<sup>90</sup>

Georgia requires an SEA handbook (per detailed specifications), SEA professional development, **K-3 screening with SEA-approved tool for children with resulting \*910 interventions;**<sup>91</sup> and also has established a certification “dyslexia endorsement”<sup>92</sup> and coverage in teacher preparation programs.<sup>93</sup>

**Idaho requires an SEA handbook, professional development, and screening instrument; LEA K-5 dyslexia screening and evaluation, interventions, and professional development.**<sup>94</sup>

Maine requires K-2 screening for teacher-identified children and a SEA dyslexia coordinator to provide professional development to LEA personnel.<sup>95</sup>

Missouri requires SEA guidelines, screening and reasonable classroom support per the guidelines, and two hours of LEA inservice training regarding dyslexia and related disorders;<sup>96</sup> and also specifies dyslexia as one of five categories (via either IEP or medical diagnosis) eligible for voucher-type scholarships.<sup>97</sup>

Montana requires SEA guidance, K-2 screening, and, for identified students, best practice interventions.<sup>98</sup>

Nebraska requires (1) specified literacy instruction for all students identified as exhibiting characteristics of dyslexia except those who are on IEPs, (2) a SEA technical assistance document, and (3) coverage in teacher preparation programs.<sup>99</sup>

Nevada requires an SEA resource guide, training for at least one K-3 teacher at each school, LEA K-3 screening and resulting RTI,<sup>100</sup> and also norm-referenced assessment as part of IDEA evaluation for SLD in specified circumstances<sup>101</sup> and, if IDEA-eligible, specific standards for resulting IEP.<sup>102</sup>

New Hampshire requires (a) SEA to provide a trained reading specialist and a resource guide for TA to LEAs for identifying and assisting students with dyslexia, dyscalculia, and dysgraphia, and (b) LEAs to provide screening, parental notification, and interventions to students with “potential indicators or risk factors of dyslexia and related disorders.”<sup>103</sup>

\***911** New Jersey requires (a) SEA PD of 2 hrs./yr. for K-3 and other designated teachers,<sup>104</sup> (b) SEA guidance and screening instruments,<sup>105</sup> (b) dyslexia screening by the end of grade 2, and (c) comprehensive assessment of the screening-identified students and resulting “appropriate evidence-based intervention strategies.”<sup>106</sup>

New Mexico requires SEA technical assistance, LEA professional development, grade 1 screening, and “appropriate classroom interventions” or referral to RTI.<sup>107</sup>

Ohio authorizes training by dyslexia specialists for teachers in grades K-4;<sup>108</sup> **requires a state dyslexia committee to develop, with the SEA, (a) a guidebook, (b) professional development, and (c) a universal screener for grades K-5;**<sup>109</sup> **and requires LEAs to specified conduct K-6 dyslexia screening and professional development in dyslexia K-12.**<sup>110</sup>

Rhode Island requires coverage in approved IHE programs for preparing certified elementary teachers and reading specialists starting in 2021-22;<sup>111</sup> a funded commission to explore the feasibility of 2 lab schools for students with dyslexia and other learning disabilities;<sup>112</sup> a learning lab for training teachers and parents;<sup>113</sup> SEA website resources for best practices<sup>114</sup> and professional development services for elementary teachers;<sup>115</sup> screening upon entry and dyslexia-targeted assistance “when appropriate” within required literacy services.<sup>116</sup>

South Carolina requires state-provided professional development, LEA screening in grades K-1 and, as needed, in grade 2 “to the extent funding is provided or that approved screening tools are available at no cost,” and tier-based interventions for the identified students.<sup>117</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>118</sup> and, starting with the 2021-22 school year, grades K-2 dyslexia screening and MTSS interventions to those “who display indications of, or areas of weaknesses associated with dyslexia.”<sup>119</sup>

**Wyoming** requires screening and an evidence-based intervention program in grades K-3, annual reporting to the SEA, and specified statewide longitudinal reading assessments in grades K-2.<sup>120</sup>

\*912 Between Moderate and Weak:

Arizona provides for SEA opportunities for training and CEU, renewal credit,<sup>121</sup> and an exemption from the third-grade retention requirement;<sup>122</sup> a SEA dyslexia specialist<sup>123</sup> and dyslexia handbook;<sup>124</sup> required part of initial P-12 certifications<sup>125</sup> and renewal;<sup>126</sup> at least one K-3 LEA teacher with dyslexia training per school;<sup>127</sup> **and SEA development of a K-1 dyslexia screening plan.**<sup>128</sup>

Connecticut requires (a) all teacher preparation programs to include at least 12 hours of instruction in dyslexia identification and interventions,<sup>129</sup> (b) a practicum in dyslexia identification and interventions for specified certifications relating to reading and special education;<sup>130</sup> (c) **an SEA Office of Dyslexia and Reading Disabilities for teacher preparation/certification compliance and task force recommendations,**<sup>131</sup> a designated SEA staff member to provide dyslexia TA,<sup>132</sup> and SEA-developed or -approved screening assessments for students in grades K-3 who are below proficiency in reading;<sup>133</sup> and (d) LEA inservice training that includes dyslexia identification and interventions.<sup>134</sup>

Iowa requires **a dyslexia board (task force);**<sup>135</sup> teacher preparation to include dyslexia;<sup>136</sup> SEA dyslexia consultant<sup>137</sup> and **advanced dyslexia specialist endorsement;**<sup>138</sup> **specified LEA personnel to complete the center's dyslexia overview module.**<sup>139</sup>

Kansas has established a task force on dyslexia **and an SEA dyslexia handbook,**<sup>140</sup> provided coverage for at-risk programs and services,<sup>141</sup> **and recently added dyslexia as a separate classification in its special education law.**<sup>142</sup>

Minnesota requires the SEA's employment of a dyslexia specialist and an annual report from each LEA summarizing efforts to screen and identify K-3 students with (a) dyslexia or (b) convergence insufficiency disorder;<sup>143</sup> **teacher preparation;**<sup>144</sup> **and LEA K-3 dyslexia screening for children reading below grade level.**<sup>145</sup>

\*913 North Dakota established a pilot program for early screening and intervention for four years starting in 2019-20.<sup>146</sup>

Oklahoma has limited provisions within teacher preparation requirements<sup>147</sup> and has established a pilot program for dyslexia training for higher education faculty;<sup>148</sup> **requires SEA handbook, universal screener, and “as funds are available” professional development;**<sup>149</sup> and requires LEA awareness training one time per year<sup>150</sup> **and K-2 dyslexia screening.**<sup>151</sup>

Oregon requires specified dyslexia instruction in elementary teacher preparation programs;<sup>152</sup> an SEA dyslexia specialist; SEA training opportunities, including at least one online; specified LEA dyslexia training for at least one teacher in each K-5 school; and, dyslexia screening, via one of the SEA-identified tests, upon enrolling in kindergarten or first grade.<sup>153</sup>

Pennsylvania required a pilot program that will have the participation of at least eight LEAs for a five-year period (starting in 2019), including evidence-based kindergarten screening, an evidence-based core reading program and interventions, and an overall evaluation.<sup>154</sup>

#### **Weak:**

Alaska **requires a statewide K-3 screening tool in reading that includes dyslexia identification.**<sup>155</sup>

California encourages LEA professional development programs with a focus on SLD, “including dyslexia and related disorders”<sup>156</sup> and requires LEA guidelines for identification and remediation;<sup>157</sup> also encourages increased emphasis in IHE teacher preparation programs<sup>158</sup> and a joint state university neurodiversity learning center.<sup>159</sup>

Colorado includes it as one of the requirements for reading specialist certification<sup>160</sup> and authorizes the SEA to provide TA and PD to LEAs “concerning issues faced by students with literacy challenges, including dyslexia,” with an annual report to the state board of education and the legislative education committees.<sup>161</sup>

Kentucky requires the SEA to provide teachers web-based access to instructional tools within state mandate for RTI approach to SLD, **a dyslexia toolkit, and support for optional LEA K-3 screening;**<sup>162</sup> **and teacher preparation.**<sup>163</sup>



\*914 Massachusetts requires the SEA, “subject to appropriation,” to “issue guidelines to assist LEAs in developing screening procedures or protocols for students that demonstrate one or more potential indicators of a neurological learning disability, including, but not limited to, dyslexia.”<sup>164</sup>

Utah has established a pilot program for early multi-tiered interventions for students with dyslexia.<sup>165</sup>

Virginia requires (a) inclusion of dyslexia coverage in IHE teacher preparation programs generally<sup>166</sup> and reading specialists specifically,<sup>167</sup> (b) dyslexia awareness training for initial and renewal licensing of teachers,<sup>168</sup> and (c) if the LEA employs reading specialist(s), at least one with dyslexia training.<sup>169</sup>

#### **Negligible:**

Illinois requires an SEA handbook<sup>170</sup> and “refer[ral]” for an IDEA evaluation of “each child identified or suspected of having dyslexia.”<sup>171</sup>

Maryland requires the inclusion of dyslexia on an early warning checklist on each LEA website.<sup>172</sup>

Michigan includes a limited proviso in its early literacy funding conditioning intermediate LEAs' potential expenditure for screening tools to use the results for student identification.<sup>173</sup>

New York has an initial certification requirement for literacy teaching<sup>174</sup> and a limited SEA guidance requirement for dyslexia, dysgraphia, and dyscalculia, including clarification that LEAs may reference these terms in the evaluation, eligibility determinations, and IEPs under the IDEA.<sup>175</sup>

North Carolina provided for SEA information for educators and parents, ongoing SEA professional development, and LEA review of screening instruments but only in the form of an uncodified session law.<sup>176</sup>

Vermont requires at least one member on a state advisory council on literacy.<sup>177</sup>

West Virginia defines dyslexia and dyscalculia in reinforcing the pre-existing obligations under the SLD category of IDEA.<sup>178</sup>

Wisconsin requires the SEA to issue a regularly updated guidebook on dyslexia “and related conditions.”<sup>179</sup>

*Thus, as exemplified in New Jersey,<sup>180</sup> parents and advocates of students with dyslexia \*915 continue to lobby for stronger state laws, based on the Louisiana-Texas model and with clearer coordination with the IDEA and § 504,<sup>181</sup> apparently viewing legislation or regulations as the appropriate course of action for more extensive district efforts at identification and intervention.<sup>182</sup> However, to date these state laws, which typically lack a private right of action, have played a limited and largely indirect role in litigation under the IDEA and § 504/ADA.*

### III. Court Decisions

#### A. Under § 504/ADA:

Eligibility: The case law **specific to eligibility** is limited to one brief decision where the court ruled that the child was not eligible under § 504 prior to the ADA. <sup>183</sup> **However, a recent decision based on child find for a double-covered student was partially successful.**<sup>184</sup>

FAPE: Similarly, the case law concerning interventions is, thus far, sparse and largely district-friendly.<sup>185</sup>

*\*916 Thus, Section 504 thus far does not appear to be a fertile area for litigation of eligibility and services for students with dyslexia, although it may be useful leverage at the local level in weak IDEA cases, whether for district acquiescence or settlement.*

#### B. Under the IDEA:

Eligibility: The case law concerning SLD eligibility is extensive,<sup>186</sup> but cases concerning the diagnosis of dyslexia are rare **and usually subsumed with SLD eligibility.**<sup>187</sup>

*\*917 FAPE*: Per the applicable standards,<sup>188</sup> the dyslexia-specific FAPE cases were based on procedure,<sup>189</sup> substance,<sup>190</sup> or both.<sup>191</sup> A substantial segment concerned tuition reimbursement, *\*918* especially for SLD-

specialized private schools.<sup>192</sup> Finally, the case law for \*919 students with dyslexia is limited for the overlapping issue of placement in the least restrictive environment (LRE) and is largely adverse to the plaintiff-parents.<sup>193</sup>

Much of the FAPE case law concerns the Orton-Gillingham (O-G) 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 1990s.<sup>194</sup> Parents won, either partially or completely, only \*920 23% of these cases, in notable part attributable to the deference that courts accord to districts when the issue is methodology.<sup>195</sup> **A follow-up analysis limited to the judicial level found 72 OG-related decisions from 2006 through 2020, with a similar pronounced district-deferential outcomes distribution.**<sup>196</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>197</sup> whether parents had viable claims against the district's legal counsel and state's review officer,<sup>198</sup> or whether the parents were entitled to attorneys' fees.<sup>199</sup> Other cases focus on rather technical adjudicative issues under the IDEA and § 504.<sup>200</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 continuing pro-district 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>201</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, the nuances of 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>202</sup>

*\*921 Consequently, absent stronger state laws (including a private right of action) or innovative judicial precedents, state adjudicative claims do not significantly change the litigation landscape.*

### Footnotes

- a1 *Education Law Into Practice* is a special section of the Education Law Reporter published in collaboration with 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 411 *Educ. L. Rep.* 903 (July 6, 2023).
- aa1 Dr. Zirkel is University Professor Emeritus of Education and Law at Lehigh University, Bethlehem, PA. He is a Past President of the Education Law Association. His website is perryzirkel.com.
- Perry A. Zirkel is University Professor Emeritus of Education and Law at Lehigh University. His website is perryzirkel.com.
- 1 Perry A. Zirkel, *Update of the Law and Students with Dyslexia: Identification and Intervention*, 375 *Educ. L. Rep.* 608 (2020).
- 2 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) or the Office of Special Education and Rehabilitative Services (OSERS); 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. *E.g.*, Letter to Unnerstall, 68 IDELR ¶ 22 (OSEP 2016); Dear Colleague Letter, 66 IDELR ¶ 188 (OSERS 2015); 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). The third category is extensive but subordinate to court decisions. The fourth category is becoming more frequent and successful for parents, though often limited to procedural relief. *E.g.*, Medford Sch. Dist. 549C, 115 LRP 24916 (Or. SEA Apr. 22, 2015).
- 3 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). **Conversely, the coverage generically, albeit incidentally, extends to dysgraphia and dyscalculia.**
- 4 *E.g.*, **Doe v. E. Lyme Bd. of Educ.**, 790 F.3d 440, 319 *Educ. L. Rep.* 641 (2d Cir. 2015), *further proceedings*, 962 F.3d 649, 378 *Educ. L. Rep.* 42 (2d Cir. 2020); *Doe v. Portland Pub. Sch.*, 79 IDELR ¶ 72 (D. Me. 2021); *D.C. v. Klein Indep. Sch. Dist.*, 75 IDELR ¶ 128 (S.D. Tex. 2019).
- 5 *E.g.*, *Brady P. v. Cent. York Sch. Dist.*, 71 IDELR ¶ 215 (E.D. Pa. 2018).
- 6 *E.g.*, **Angela B. v. Dall. Indep. Sch. Dist.**, 76 IDELR ¶ 206 (N.D. Tex. 2020); *Avaras v. Clarkstown Cent. Sch. Dist.*, 75 IDELR ¶ 71 (S.D.N.Y. 2019).
- 7 For the last version, *see supra* note 1. This differentiation is useful for showing the trend in not only judicial rulings but also, perhaps more prominently, state legislation.
- 8 Because the focus here is on identification and interventions in P-12 schools, the coverage does not extend to federal statutes such as the Research Excellence and Advancements for Dyslexia (READ) Act, which provides for National Science Foundation research on dyslexia. 42 U.S.C. § 1862r-1 (2018).
- 9 § 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. *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).

- 10 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).
- 11 For public schools, the relevant regulations are for Title II of the ADA. 28 C.F.R. § 35.108 (2018). These regulations went into effect on October 11, 2016. *Id.*
- 12 § 504: 34 C.F.R. § 104.3(j)(2)(i).
- 13 Appendix A to Part 104: Analysis of the Final Regulation, 45 *Fed. Reg.* 30,936 (May 9, 1980).
- 14 28 C.F.R. § 35.108(b)(2) (2018).
- 15 However, by way of contrast, the recognized areas of specific learning disability under the IDEA are narrower, specifically including three reading components. *See infra* note 21.
- 16 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).
- 17 The investigatory avenue under § 504 and the ADA for K-12 students is the complaint process of the 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).
- 18 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 the 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.* For more specific information about these two IDEA avenues, *see* Perry A. Zirkel, *A Comparison of the IDEA's Dispute Resolution Processes--Complaint Procedures and Impartial Hearings: An Update*, 369 *Educ. L. Rep.* 550 (2019).
- 19 For a recent reminder of the possible eligibility of students with dyslexia and related conditions under the IDEA, *see* Dear Colleague Letter, 66 IDELR ¶ 188 (OSERS 2015).
- 20 20 U.S.C. § 1402(3)(A); 34 C.F.R. § 300.8(a).
- 21 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. 34 C.F.R. § 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: The Next Case Law update*, 49 *Communiqué* 18 (Mar./Apr. 2021); Perry A. Zirkel, *The Legal Meaning of Specific Learning Disability for Special Education Eligibility: The Latest Case Law*, 46 *Communiqué* 14 (May 2018); 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).

- 22 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 *Educ. L. Rep.* 1 (2011).
- 23 The other recognized classifications include speech/language impairment, emotional disturbance and other health impairment. 34 C.F.R. § 300.8.
- 24 More recently, courts have evolved two other dimensions of FAPE, which are not yet completely settled: failure to implement and capability to implement. *E.g.*, Perry A. Zirkel, *An Adjudicative Checklist of the Criteria for the Four Dimensions of FAPE under the IDEA*, 346 *Educ. L. Rep.* 18 (2017).
- 25 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 *Educ. L. Rep.* 1 (2015).
- 26 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.
- 27 *Andrew F. v. Douglas Cnty. Sch. Dist.* RE-1, 580 U.S. 386 (2017).
- 28 For the alternate avenues, *see* Zirkel & McGuire, *supra* note 18.
- 29 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. Weast*, 546 U.S. 49, 203 *Educ. L. Rep.* 29 (2005). The laws in a minority of states put this burden on the district. *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).
- 30 *E.g.*, *Bay Shore Union Free Sch. Dist. v. Kain*, 485 F.3d 730, 733-34, 220 *Educ. L. Rep.* 190 (2d Cir. 2007); *Evans v. Evans*, 818 F. Supp. 1215, 1223, 82 *Educ. L. Rep.* 492 (N.D. Ind. 1993).
- 31 For a specific canvassing of state statutes, which includes pending proposals, *see* Martha Youman & Nancy Mather, *Dyslexia Laws in the USA: A 2018 Update*, 44 *Perspectives on Language & Literacy* 10 (Summer 2018); Fernette Eide, *Dyslexia Laws 2021*, <https://www.dyslexicadvantage.org/dyslexia-laws-2018/>; *see also* <https://www.dyslexia.com/state-dyslexia-laws/>. More generally, states have recently issued 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 22 and accompanying text. **For research on the effects of dyslexia laws, see Brian Gearin et al., *A Multiple Streams Analysis of Recent Changes to State-Level Dyslexia Education Law*, 34 *Educ. Pol'y* 1036 (2020); B. Anne Barber Phillips & Timothy N. Odegard, *Evaluating the Impact of Dyslexia Laws on the Identification of Specific Learning Disability and Dyslexia*, 67 *Annals Dyslexia* 356 (2017).**

- 32 The scope here is limited to local and state education agencies with respect to K-12 schools, not institutions of higher education with the limited exception of state laws that provide teacher preparation requirements specific to dyslexia.
- 33 Unlike other compilations (*supra* note 31), this listing (a) is strictly limited to effective state legislation and regulations, not proposed legislation or state education agency guidance documents, and (b) differentiates, albeit only approximately, the strength of these laws. **For a chart-type analysis of state laws prior to the differentiated updates here, see Perry A. Zirkel, *Legal Developments for Students with Dyslexia*, 43 *Learning Disability Q.* 127, 131-33 (2020).**
- 34 Ala. Code §§ 16-6G-5(b) and 16-6-5(d); Ala. Admin. Code § 290-3-1-.02(19)-(20).
- 35 *Id.*
- 36 Ala. Code § 16-6G-6(a); Ala. Admin. Code § 290-3-2-.37.
- 37 Ala. Code § 15-6G-3.
- 38 Ark. Code Ann. § 6-41-609; Ark. Admin. Code § 005.08.9-12.00; *see also id.* 005.28.3-3-1.0.
- 39 Ark. Code Ann. § 6-41-607; Ark. Admin. Code § 005.08.9-9.00. The requirement extends to a minimum of one dyslexia specialist at each education service cooperative. *Id.*
- 40 **Ark. Code Ann. § 6-41-612.**
- 41 Ark. Admin. Code § 005.08.9-1.00 (function) and Ark. Code Ann. § 6-41-610; Ark. Admin. Code § 005.08.9-13.00 (committee).
- 42 Ark. Code Ann. § 6-41-608; Ark. Admin. Code § 005.08.9-11.00; *see also id.* 005.28.3-4-9.0 (certification endorsement).
- 43 **Ark. Code Ann. § 6-41-611;** Ark. Admin. Code § 005.08.9-14.00; *see also id.* 005.15.2 App. A (accreditation standards).
- 44 *Id.* §§ 005.08.9-4.00 and 005.08.9-5.00.
- 45 *Id.* § 005.08.9-5.00. For the scope of interventions, *see id.* § 005.08.9-7.00. **For reinforcement in the school accreditation requirements, see *id.* § 005.28.26 App. A, Std. 2-H.1.**
- 46 Ark. Code Ann. § 6-41-604; Ark. Admin. Code § 005.08.9-6.00. **For reinforcement in the school accreditation requirements, see *id.* § 005.28.26 App. A, Std. 2-H.2.**
- 47 Ark. Code Ann. § 6-41-606; Ark. Admin. Code § 005.08.9-8.00.
- 48 Ark. Admin. Code § 005.08.9-10.00. **For the broad-based definition of a dyslexia interventionist, see *id.* § 005.08.9-3.02.**
- 49 Ind. Code § 20-35.5-7-2.

- 50 *Id.* § 20-35.5-6-1(a).
- 51 *Id.* § 20-35.5-7-1.
- 52 *Id.* §§ 20-35.5-2-1-20-35.5-2-6 (level I); *see also id.* §§ 20-35.5-1-5 and 20-35.5-2-4 (permits defined level II screening, which shall comply with the SEA handbook), and 20-35.5-2-8 (requires parental consent for both levels).
- 53 *Id.* §§ 20-35.5-2-7 and 20-35.5-1-3; *see also id.* § 20-35.5-4-1 (illustrative scope).
- 54 *Id.* §§ 20-35.5-6-1(a), 20-35.5-1-2, and 20-35.5-1-6; *see also id.* § 20-35.5-6-3 (possible one-year SEA waiver).
- 55 *Id.* § 20-35.5-3-1.
- 56 *Id.* § 20-35.5-5-2 (on LEA website) and 20-35.5-5-1 (to SEA).
- 57 *Id.* §20-35.5-4-13.
- 58 *Id.* §20-35.5-3-5 (re possible need for IDEA referral).
- 59 La. Stat. Ann. § 17:392.2; *see also* La. Admin. Code tit. 28, Pt. CXXXI, § 349.
- 60 La. Stat. Ann. § 17.24.11.
- 61 La. Admin. Code tit. 28, Pt. XXXV, § 501.
- 62 La. Stat. Ann. § 392.1; La. Admin. Code tit. 28, Pt. XXXV, § 1301 and Pt. CXV, § 1123; *see also* La. Stat. Ann. 17.2112 (earlier enacted requirement of testing upon parent or staff referral); La. Admin. Code tit. 28, Pt. XXXV, § 1305 (list of screening instruments).
- 63 La. Admin. Code tit. 28, Pt. XXXV, § 701.
- 64 La. Stat. Ann. § 17.7(11); *see also* La. Admin. Code tit. 28, Pt. CLVII, §§ 301 (repetition) and Pt. XXXV, §§ 507 (decision process), 901 (specifications), and 1307 (materials list).
- 65 La. Admin. Code tit. 28, Pt. XXXV § 503.
- 66 *Id.* § 505.
- 67 Miss. Code Ann. § 37-23-15 (without specified number and subject to legislative funding).
- 68 *Id.* § 37-173-16(2).
- 69 *Id.* § 37-173-15. For the relatively detailed and extensive dyslexia scholarship program, *see id.* §§ 37173-1-37-173-29.



- 70 *Id.* § 37-173-16(1).
- 71 *Id.* § 37-173-21(2); *see also id.* 37-106-71 (forgivable loan program for IHE preparation in dyslexia therapy).
- 72 Tenn. Code Ann. §§ 49-1-229, 49-1-905(c)(3), 495-5619(a), and 49-6-3004.
- 73 **Tenn. Comp. R. & Regs. 0520-01-22-.02. The ILP-D includes academic goals, supports, and/or accommodations, plus exit criteria. *Id.* 0520-01-22-.01.**
- 74 16 Tex. Admin Code §§ 120.10-120.90; *see also* Tex. (Occup.) Code Ann § 403.101 *et seq.*
- 75 Tex. (Educ.) Code Ann. § 21.044(b)-(c).
- 76 Tex. (Educ.) Code Ann. § 38.0032; *see also id.* § 21.054(b).
- 77 *Id.* § 38.003 (extends to various specified “related disorders”).
- 78 *Id.*; 19 Tex. Admin Code § 74.28; *see also* Tex. (Educ.) Code Ann. § 28.006(c) and 29.006(g).
- 79 19 Tex. Admin Code § 74.28(l)-(m).
- 80 Tex. (Educ.) Code Ann. § 48.009(b)(1).
- 81 *Id.* § 8.061.
- 82 *Id.* § 48.103.
- 83 *Id.* §29.027.
- 84 *Id.* § 38.003.
- 85 *Id.* § 39.023(n).
- 86 **Del. Code Ann. tit. 14, § 158.**
- 87 Fla. Admin. Code r. 6A-4.0163.
- 88 Fla. Stat. § 1012.98(b)(11).
- 89 ***Id.* § 1008.25(a).**
- 90 *Id.* § 1002.39(1).

- 91 Ga. Stat. § 20-2-159.6; Ga. Admin. Code § 160-42-.39 (beginning in 2024-2025).
- 92 Ga. Stat. § 20-2-208.
- 93 *Id.* § 20-2-208.1.
- 94 **Idaho Code § 33-1811.**
- 95 20-A Me. Rev. Stat. § 4710-B. Additionally, Maine provides an exemption from its business tax for nonprofit organizations whose purpose is to offer literacy assistance to children with dyslexia. 36 Me. Rev. Stat. § 2557.
- 96 Mo. Rev. Stat. § 167.950. Another recent Missouri statute clarifies that the identification of dyslexia does not require an IEP unless the child meets IDEA eligibility requirements and establishes a task force to make recommendations to the legislature on a “statewide system for identification, intervention, and delivery of supports.” *Id.* § 633.420.
- 97 *Id.* § 161.825; Mo. Code Regs. Ann. tit. 5, §§ 10-2.010-10-2.030 (including dyslexia therapy).
- 98 Mont. Code Ann. § 20-7-469 (including little or no cost being one of the required guidance criteria for screening).
- 99 Neb. Rev. Stat. §§79-11,156-79-11,158.
- 100 Nev. Stat. §§ 388.439-388.447; *see also id.* §391.037 (enabling legislation for regulatory requirement for teachers and administrators); Nev. Admin. Code §§ 388.664 (required professional development for K-4 teachers), 388.662 (same for “learning strategist”).
- 101 Nev. Stat. § 388.441; Nev. Admin. Code § 388.420(5)(c) (if confirmed indicators, specified interventions, and need for additional screening).
- 102 Nev. Stat. § 388.443; *see also id.* § 388.419(6) (IEP form).
- 103 N.H. Rev. Stat. §§ 200:58-200:62.
- 104 N.J. Stat. Ann. §§ 18A:6-130-18A:6-131.
- 105 *Id.* § 18A:40-5.2; *see also id.* § 18A:40-5.1.
- 106 *Id.* §§ 18A:40-5.3-18A:40-5.4.
- 107 N.M. Stat. Ann. § 22-13-32.
- 108 Ohio Rev. Stat. § 3319.80.
- 109 *Id.* § 3323.25.

- 110 *Id.* §§ 3323.251 and 3319.077.
- 111 R.I. Stat. § 16-67.2-4.
- 112 *Id.* § 16-67.2-5.
- 113 *Id.* § 16-67.2-2.
- 114 *Id.* §§ 16-67.2-1 and 16-67.2-3(a).
- 115 *Id.* § 16-67-2(a).
- 116 *Id.*
- 117 S.C. Code Ann. §§ 59-33-510-59-33-550.
- 118 Wash. Rev. Code Ann. §28A.300.530. This statute requires for this purpose “consultation with the [LEAs] 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.*
- 119 *Id.* § 28A.320.260; *see also id.* § 28A.320.270 (mandatory reporting).
- 120 **Wyo. Stat. § 21-3-401.**
- 121 Ariz. Stat. § 15-219.
- 122 *Id.* § 15-701(A)(2)(b)(ii).
- 123 *Id.* §15-211(B).
- 124 *Id.* §15-249.10 (**authorized and subject to state board approval**).
- 125 *Id.* §15-501.1(C)(2)(b); Ariz. Admin. Code R-2-608(E)(1)(b)(ii); R-2-609(C)(1)(b)(ii), R7-2-609.01(B)(1)(b)(ii), R-2-610(C)(1)(b)(ii); R-2-611(D)(2)(b)(ii).
- 126 Ariz. Admin. Code R7-2-619(C).
- 127 Ariz. Stat. §15-211(C).
- 128 ***Id.* § 15-704.**
- 129 *Id.* § 10-145(e).

- 130 *Id.* § 10-145d(i).
- 131 ***Id.* § 10-14z.**
- 132 Conn. Gen. Stat. § 10-3d.
- 133 *Id.* § 10-14t.
- 134 *Id.* § 10-220a(a).
- 135 **Iowa Code § 256.32A.**
- 136 *Id.* § 256.16.
- 137 ***Id.* § 256.9(60).**
- 138 ***Id.* §§ 256.7(3)(c) and 272.2(22).**
- 139 ***Id.* § 279.72.**
- 140 Kan. Stat. Ann. §§ 72-8193 **and 72-3262.**
- 141 ***Id.* § 72-5153a.**
- 142 ***Id.* §§ 72-3404, 75-5399 (effective July 1, 2023).**
- 143 Minn. Stat. §§ 120B.12 and 120B.122.
- 144 ***Id.* § 122A.092.**
- 145 ***Id.* § 120B.12.**
- 146 N.D. Cent. Code § 15.1-32-26.
- 147 Ok. Stat. tit. 70, § 1210.508F.
- 148 *Id.* § 7001.
- 149 ***Id.* § 1210-520.**
- 150 *Id.* § 6-194(F).

- 151 *Id.* § **1210-520**.
- 152 Or. Admin. Code §§ 584-420-0345 and 584- 420-0016.
- 153 Or. Rev. Stat. § 326.726.
- 154 24 Pa. Cons. Stat. §§ 17-701-C - 17-705-C.
- 155 Alaska Stat. § **14.30.760**.
- 156 Cal. Educ. Code § 56245.
- 157 *Id.* §56335; *see also id.* § 56337.5(c) (SEA SLD guidelines).
- 158 *Id.* § 44227.7.
- 159 *Id.* §§ 92665-92669.
- 160 Colo. Admin. Code § 301-101:6.04.
- 161 Colo. Rev. Stat. § 22-2-133.
- 162 Ky. Rev. Stat. Ann. §§ 158.305(5)(b) **and 158.307**.
- 163 *Id.* § **164.304**.
- 164 71 Mass. Gen. Laws § 57-A.
- 165 Utah Stat. § 53A-15-106.
- 166 Va. Code Ann. § 22.1-298.4.
- 167 *Id.* §23.1-902.
- 168 *Id.* § 22.1-298.1(D)(6); 8 Va. Admin. Code §§ 20-23-40(I) and 20-23-110(F) (renewal).
- 169 Va. Code Ann. §§ 22.1-253.13:2(G).
- 170 105 Ill. Comp. Stat. Ann. 5/2-3.161(c).
- 171 23 Ill. Admin. Code § 226.125.

- 172 Md. Code Ann. ( Educ.) § 4-136(e)(2).
- 173 Mich. Comp. Laws § 388.1635 a(4)(c).
- 174 N.Y. Comp. CodesR. & Regs. tit. 8, § 52-21.
- 175 N.Y. Educ. Law § 305 (56).
- 176 <https://www.ncleg.gov/BillLookup/2017/H149>.
- 177 Vt. Stat. Ann. **tit. 16, § 2903a**.
- 178 W. Va. Code § 18-20-10.
- 179 Wis. Stat. § 115.28(56).
- 180 *E.g.*, Decoding Dyslexia-NJ, <http://decodingdyslexianj.org/nj-legislation/>.
- 181 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).
- 182 Thus far, similar to state laws specific to bullying in the school context, those specific to K--12 students with dyslexia typically lack a private right of action, *i.e.*, an individual right to sue.
- 183 *Janet G. v. Haw. Dep't of Educ.*, 410 F. Supp. 2d 958, 206 *Educ. L. Rep.* 624 (D. Haw. 2005) (alternatively, no allegation or evidence of discrimination based on disability).
- 184 **P.W. v. Leander Indep. Sch. Dist.**, 83 *IDELR* ¶ 71 (W.D. Tex. 2023) (ruling that student with dyslexia and various other diagnoses, including ADHD, plausibly claimed gross misjudgment in prolonged use of RTI to delay evaluation under the IDEA, thus denying defendant district's motion for summary judgment on parents' § 504 claim).
- 185 *Campbell v. Bd. of Educ. of Centerline Sch. Dist.*, 58 F. App'x 162, 174 *Educ. L. 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.*, 33 *IDELR* ¶ 212 (E.D. La. 2000), *aff'd mem.*, 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); **A.C. v. Henrico Cnty. Sch. Bd.**, 81 *IDELR* ¶ 255 (E.D. Va. 2022) (dismissing FAPE claim under § 504, though not the parallel claim under the IDEA, for failure to show gross misjudgment or bad faith); *cf.* *Katelyn O. v. Bureau of Special Educ. Appeals*, 72 *IDELR* ¶ 185 (D. Mass. 2018) (cessation of tutoring services resulted in limited compensatory relief, not tuition reimbursement); *A.F. v. Espanola Pub. Sch.*, 801 F.3d 1245, 322 *Educ. L. Rep.* 603 (10th Cir. 2015) (IDEA mediation settlement did not satisfy the IDEA exhaustion requirement in § 504/ADA FAPE claim); *Miller v. Bd. of Educ. of Albuquerque Pub. Sch.*, 565 F.3d 1232, 244 *Educ. L. Rep.* 528 (10th Cir. 2009) (failure to distinguish elements of § 504/ADA claim from those of IDEA claim); *Sky R. v. Haddonfield Friends Sch.*, 67 *IDELR* ¶ 180 (D.N.J. 2016) (dismissing ADA suit against religiously controlled private school based on statutory exemption). *But see Rogich v. Clark Cnty. Sch. Dist.*, 79 *IDELR* ¶ 252 (D. Nev. 2021) (granted summary judgement for parents of student with dyslexia on § 504/ADA claim for refusal to provide her with Orton-Gillingham methodology); *cf.* *Myslow v. New Milford Sch. Dist.*, 2006 WL

473735 (D. Conn. Feb. 28, 2006) (preserving for trial § 504 and ADA claims that district failed to recognize and provide appropriate interventions for dyslexia, as distinct from ADHD and that this failure amounted to gross misjudgment or bad faith). The coverage here does not extend to other § 504 or IDEA claims separate from FAPE, such as peer harassment. *E.g.*, *Sparman v. Blount Cnty. Bd. of Educ.*, 68 IDELR ¶ 202 (N.D. Ala. 2016) (ruling in district's favor due to lack of deliberate indifference).

186 *See supra* note 21.

187 *E.g.*, *Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048, 398 Educ. L. Rep. 593 (9th Cir. 2022) (failure to evaluate child under dyslexia, rather than SLD in determining that she was eligible under the IDEA, was not prejudicial procedural violation); *William V. v. Copperas Cove Indep. Sch. Dist.*, 826 F. Appx. 374, 383 Educ. L. Rep. 138 (5th Cir. 2020), cert. denied, 142 S. Ct. 72 (2021) (dyslexia diagnosis plus special education need qualifies student as SLD under IDEA but here amounted to harmless procedural violation due to continued services); *Lisa M. v. Leander Indep. Sch. Dist.*, 924 F.3d 205, 365 Educ. L. Rep. 769 (5th Cir. 2019) (ruling that 4th grader with dysgraphia needed special education in light of mixed evidence and sudden reversal of team's initial determination); *Michael P. v. Dep't of Educ.*, 656 F.3d 1057, 272 Educ. L. 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 Educ. L. Rep. 545 (11th Cir. 2008) (approving denial-of-FAPE remedy stemming from misdiagnosis); *R.Z.C. v. Northshore Sch. Dist.*, 71 IDELR ¶ 2 (W.D. Wash. 2017), *aff'd mem.*, 755 F. App'x 658, 363 Educ. L. Rep. 605 (9th Cir. 2018) (ruling that the mixed evidence, including teachers' un-coached opinions, showed need for special education); *Doe v. Cape Elizabeth Sch. Dep't*, 64 IDELR ¶ 272 (D. Me. 2014), *vacated and remanded for further consideration*, 832 F.3d 69, 335 Educ. L. Rep. 21 (1st Cir. 2016) (initially ruling that child was no longer eligible as SLD but remanded due to failure to more carefully evaluate alleged deficiency in reading fluency and the need for special education); *P.F. v. Ocean Twp. Bd. of Educ.*, 81 IDELR ¶ 261 (D.N.J. 2022) (ruling that diagnosis of dyslexia did not per se establish SLD and, in any event, eligibility necessitated adverse effect and need for special education); *J.R. v. Bd. of Educ. Iroquois Cent. Sch. Dist.*, 78 IDELR ¶ 280 (W.D.N.Y. 2021) (ruling that district's exiting student from IEP was harmless procedural violation because she no longer needed special education); *G.M. v. Martirano*, 78 IDELR ¶ 68 (D. Md. 2021) (ruling that student diagnosed with dyslexia did not qualify as SLD); *T.W. v. Leander Indep. Sch. Dist.*, 74 IDELR ¶ 12 (W.D. Tex. 2019) (ruling that high school student with dyslexia and a 504 plan did not qualify as needing special education under IDEA);

*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 Educ. L. Rep. 1077 (Alaska 2011) (ruling that the child was ineligible but that the parents were entitled to reimbursement of their independent educational evaluation); *Maus v. Wappingers Cent. Sch. Dist.*, 688 F. Supp. 2d 282, 256 Educ. L. Rep. 234 (S.D.N.Y. 2010) (ruling that student with dysgraphia and other diagnoses did not require special education); *cf. D.C. v. Klein Indep. Sch. Dist.*, 860 F. App'x 894, 395 Educ. L. Rep. 499 (5th Cir. 2021); *M.W. v. Rankin Cnty. Pub. Sch. Dist.*, 80 IDELR ¶ 136 (S.D. Miss. 2022) (child find violation with some remedy); *E.L. v. Bedford Cent. Sch. Dist.*, 81 IDELR ¶ 185 (S.D.N.Y. 2022) (child find violation but no remedy); *Avila v. Spokane Sch. Dist.*, 686 F. App'x 384 (9th Cir. 2017) (affirming ruling that district's evaluation covered all areas of suspected disability, here reading fluency inter alia even though not dyslexia subtests); *Meridian Joint Sch. Dist. No. 2 v. D.A.*, 792 F.3d 1054, 320 Educ. L. Rep. 8 (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); *Dawn M. v. Sch. Dist. of the Chathams*, 80 IDELR ¶ 49 (D.N.J. 2021) (denying partial child find claim for the scope of the evaluation not extending to dyslexia); *D.S. v. Bainbridge Island Sch. Dist.*, 78 IDELR ¶ 242 (W.D. Wash. 2021) (FAPE-denying child find violation for failing to evaluate for dysgraphia child who had an IEP for dyslexia); *Avaras v. Clarkstown Cent. Sch. Dist.*, 73 IDELR ¶ 50 (S.D.N.Y. 2018) (finding child find violation for year preceding the student's IEP); *R.M.M. v. Minn. Pub. Sch.*, 70 IDELR ¶ 64 (D. Minn. 2017) (ruling that district violated child find for student with dyslexia in private school); *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 that merited further proceedings to determine remedy); *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).

188 *See supra* notes 25-26 and accompanying text.

- 189 *Compare* *W.D. v. Watchung Hills Reg'l High Sch. Bd. of Educ.*, 602 F. App'x 563, 317 Educ. L. Rep. 596 (3d Cir. 2015); *W.R. v. Union Beach Bd. of Educ.*, 414 F. App'x 499, 267 Educ. L. Rep. 550 (3d Cir. 2011); *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 257 Educ. L. Rep. 39 (3d Cir. 2010); *A.V. v. Lemon Grove Sch. Dist.*, 69 IDELR ¶ 155 (S.D. Cal. 2017) (in district's favor), *with Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp. 3d 443, 336 Educ. L. Rep. 786 (N.D. Tex. 2016, *aff'd in part and rev'd in part*, 865 F.3d 303, 345 Educ. L. Rep. 666 (5th Cir. 2017) (parent's favor but successively reduced reimbursement); *Davis v. Wappingers Cent. Sch. Dist.*, 431 F. App'x 12, 271 Educ. L. Rep. 814 (2d Cir. 2011) (in parent's favor but lost at next step of tuition reimbursement analysis).
- 190 *Compare* ***A.B. v. Smith*, 83 IDELR ¶ 53 (4th Cir. 2023)**; ***C.K. v. Bd. of Educ. of Sylvania City Sch. Dist.*, 81 IDELR ¶ 212 (6th Cir. 2022)**; ***Minnetonka Pub. Schs. v. M.L.K.*, 42 F.4th 847, 405 Educ. L. Rep. 765 (8th Cir. 2022)**; ***G.D. v. Swampscott Pub. Schs.*, 27 F.4th 1, 400 Educ. L. Rep. 32 (1st Cir. 2022)**; ***Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048, 398 Educ. L. Rep. 593 (9th Cir. 2022)**; ***Amanda P. v. Copperas Cove Indep. Sch. Dist.*, 838 F. App'x 104 (5th Cir. 2021)**; ***P.P. v. Nw. Indep. Sch. Dist.*, 839 F. App'x 848, 387 Educ. L. Rep. 99 (5th Cir. 2020)**; *K.D. v. Downingtown Area Sch. Dist.*, 904 F.3d 248, 358 Educ. L. Rep. 98 (3d Cir. 2018); *Bougades v. Pine Plains Cent. Sch. Dist.*, 376 F. App'x 95, 259 Educ. L. Rep. 483 (2d Cir. 2010); *Fairfax Cnty. Sch. Bd. v. Knight*, 261 F. App'x 606, 231 Educ. L. Rep. 697 (4th Cir. 2008); *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 181 Educ. L. Rep. 370 (2d Cir. 2003); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 141 Educ. L. Rep. 62 (5th Cir. 2000); *E.S. v. Indep. Sch. Dist.*, 135 F.3d 566, 123 Educ. Law Rep 1083 (8th Cir. 1998); *Landau v. Long Beach Unified Sch. Dist.*, 947 F.2d 950 (9th Cir. 1991); ***J.D. v. Rye Neck Union Free Sch. Dist.*, 82 IDELR ¶ 150 (S.D.N.Y. 2023)**; ***S.F. v. Smith*, 81 IDELR ¶ 163 (D. Md. 2022)**; ***Mr. Doe v. Portland Pub. Schs.*, 81 IDELR ¶ 134 (D. Me. 2022)**; ***A.P. v. Sch. Bd. of Fairfax Cnty.*, 80 IDELR ¶ 277 (E.D. Va. 2022)**; ***Albuquerque Pub. Schs. Bd. of Educ. v. Armstrong*, 80 IDELR ¶ 42 (D.N.M. 2021)**, *aff'd mem.*, 82 IDELR ¶ 80 (10th Cir. 2022); ***J.W. v. Medford Lakes Sch. Dist.*, 79 IDELR ¶ 134 (D.N.J. 2021)**; *Amanda P. v. Copperas Cove Indep. Sch. Dist.*, 76 IDELR ¶ 154 (W.D. Tex. 2020); ***AR v. Katonah Lewisboro Union Free Sch. Dist.*, 75 IDELR ¶ 187 (S.D.N.Y. 2019)**; *Perkiomen Valley Sch. Dist. v. S.D.*, 405 F. Supp. 3d 620, 372 Educ. L. Rep. 264 (E.D. Pa. 2019); *R. F. v. S. Lehigh Sch. Dist.*, 74 IDELR ¶ 292 (E.D. Pa. 2019); *Mr. and Mrs. R. v. York Sch. Dep't*, 2019 WL 2245014 (D. Me. May 24, 2019);
- Candi M. v. Riesel Indep. Sch. Dist.*, 379 F. Supp. 3d 570, 367 Educ. L. Rep 282 (W.D. Tex. 2019); *Matthews v. Douglas Cnty. Sch. Dist.*, 73 IDELR ¶ 42 (D. Colo. 2018); *Avaras v. Clarkstown Cent. Sch. Dist.*, 73 IDELR ¶ 50 (S.D.N.Y. 2018); *S.M. v. Arlotto*, 73 IDELR ¶ 74 (D. Md. 2018); *Rosaria v. Madison City Bd. of Educ.*, 325 F.R.D. 429, 355 Educ. L. Rep. 1081 (N.D. Ala. 2018); *Avaras v. Clarkstown Cent. Sch. Dist.*, 70 IDELR ¶ 129 (S.D.N.Y. 2017) (based on Endrew F.); *Genn v. New Haven Bd. of Educ.*, 219 F. Supp. 3d 296, 342 Educ. L. Rep. 971 (D. Conn. 2016); *A.G. v. Bd. of Educ.*, 69 IDELR ¶ 210 (S.D.N.Y. 2017) (based on Endrew F. and PRR); *A.M. v. Lemon Grove Sch. Dist.*, 69 IDELR ¶ 155 (S.D. Cal. 2017); *Bohn v. Cedar Rapids Cmty. Sch. Dist.*, 69 IDELR ¶ 8 (N.D. Iowa 2016); *Wood v. Katy Indep. Sch. Dist.*, 163 F. Supp. 3d 396, 334 Educ. L. Rep. 98 (S.D. Tex. 2015); *J.N. v. S. Western Sch. Dist.*, 66 IDELR ¶ 102 (M.D. Pa. 2015); *W.W. v. N.Y.C. 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 Educ. L. Rep. 241 (D. Md. 2012); *Ganje v. Depew Union Free Sch. Dist.*, 60 IDELR ¶ 43, *adopted*, 60 IDELR ¶ 74 (W.D.N.Y. 2012); ***M.C. v. Katonah/Lewisboro Sch. Dist.*, 58 IDELR ¶ 196 (S.D.N.Y. 2012)**; *C.H. v. Nw. Indep. Sch. Dist.*, 815 F. Supp. 2d 977, 277 Educ. L. 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 Educ. L. 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 Educ. L. 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); *Robinson v. Council Rock Sch. Dist.*, 46 IDELR ¶ 38 (E.D. Pa. 2006); *Antonaccio v. Arlington Cent. Sch. Dist.*, 281 F. Supp. 2d 710, 181 Educ. L. Rep. 584 (S.D.N.Y. 2003); *Banks v. Danbury Bd. of Educ.*, 238 F. Supp. 2d 428 (D. Conn. 2002); *M.B. v. Arlington Cent. Sch. Dist.*, 36 IDELR ¶ 130 (S.D.N.Y. 2002); *Nein v. Greater Clark Cnty. Sch. Corp.*, 95 F. Supp. 2d 961, 144 Educ. L. Rep. 214 (S.D. Ind. 2000); ***Fritschle v. Adams*, 45 F. Supp. 2d 500, 135 Educ. L. Rep. 133 (D. Md. 1999)**; *Wall v. Mattituck-Cutchoogue Sch. Dist.*, 945 F. Supp. 501, 114 Educ. L. Rep. 834 (S.D.N.Y. 1996);
- Porter v. Ill. State Bd. of Educ.*, 6 N.E.3d 424, 303 Educ. L. Rep. 476 (Ill. Ct. App. 2014); *cf.* *Weston v. Kansas City Mo. Sch. Dist.*, 57 IDELR ¶ 284 (W.D. Mo. 2011) (possible dyslexia) (in district's favor), *with Falmouth Sch. Dep't v. Doe*, 44 F.4th 23, 406 Educ. L. Rep. 131 (1st Cir. 2022); ***D.C. v. Klein Indep. Sch. Dist.*, 860 F. App'x 894, 395 Educ. L. Rep. 499 (5th Cir. 2021)**; *A.N. v. Bd. of Educ. of Iroquois Cent. Sch. Dist.*, 801 F. App'x 35 (2d Cir. 2020); *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981, 266 Educ. L. Rep. 71 (8th Cir. 2010); ***Connor v. Kennett Consol. Sch. Dist.*, 82 IDELR ¶ 159 (E.D. Pa. 2023)**; ***G.S. v. Clarksville Montgomery Cnty. Sch. Sys.*, 81 IDELR ¶ 245 (M.D. Tenn. 2022)**; ***Beebe Sch. Dist. v. Does*, 80 IDELR ¶ 289 (E.D. Ark. 2022)**; ***M.W. v. Rankin Cnty. Pub. Sch. Dist.*, 80 IDELR ¶ 136 (S.D. Miss. 2022)**; ***Rogich v. Clark Cnty. Sch. Dist.*, 79 IDELR ¶ 252 (D. Nev.**



2021); *I.S. v. Sch. Town of Munster*, 64 IDELR ¶ 40 (S.D. Ind. 2014); *J.M. v. Morris Sch. Dist. Bd. of Educ.*, 58 IDELR ¶ 48 (D.N.J. 2011); *D.B. v. Bedford Sch. Dist.*, 708 F. Supp. 2d 564, 259 Educ. L. Rep. 608 (W.D. Va. 2010); *Fisher v. Bd. of Educ. of Christina Sch. Dist.*, 856 A.2d 552, 191 Educ. L. Rep. 825 (Del. 2004); *Straube v. Fla. Union Free Sch. Dist.*, 801 F. Supp. 1164, 78 Educ. L. Rep. 390 (S.D.N.Y. 1992); *cf. Special Sch. Dist. No. 1 v. R.M.M.*, 861 F.3d 769, 344 Educ. L. Rep. 766 (8th Cir. 2017) (private school student's right to FAPE under state law); *M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842, 309 Educ. L. Rep. 155 (9th Cir. 2014); **Downingtown Area Sch. Dist. v. D.S.**, 80 IDELR ¶ 159 (E.D. Pa. 2022); *Nicholas A. v. Norristown Area Sch. Dist.*, 69 IDELR ¶ 118 (E.D. Pa. 2017); *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).

191

*Compare A.A. v. Northside Indep. Sch. Dist.*, 951 F.3d 678, 375 Educ. L. Rep. 1 (5th Cir. 2020); *G.M. v. Drycreek Joint Elementary Sch. Dist.*, 595 F. App'x 698, 315 Educ. L. Rep. 88 (9th Cir. 2014); *G.N. v. Bd. of Educ. of Twp. of Livingston*, 309 F. App'x 542, 243 Educ. L. Rep. 635 (3d Cir. 2009); *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 202 Educ. L. Rep. 617 (2d Cir. 2005); *Cronkite v. Long Beach Unified Sch. Dist.*, 30 IDELR 510 (9th Cir. 1999); **C.M. v. Rutherford Cnty. Schs.**, 595 F. Supp. 3d 630, 409 Educ. L. Rep. 809 (M.D. Tenn. 2022); **B.B. v. District of Columbia**, 80 IDELR ¶ 214 (D.D.C. 2022); **A.D. v. District of Columbia**, 80 IDELR ¶ 184 (D.D.C. 2022); *Perkiomen Valley Sch. Dist. v. S.D.*, 405 F. Supp. 3d 620, 372 Educ. L. Rep. 264 (E.D. Pa. 2019); *C.B. v. Smith*, 74 IDELR ¶ 230 (D. Md. 2019); *Y.N. v. Bd. of Educ. of Harrison Cent. Sch. Dist.*, 73 IDELR ¶ 73 (S.D.N.Y. 2018); *Genn v. New Haven Bd. of Educ.*, 219 F. Supp. 3d 296, 342 Educ. L. Rep. 971 (D. Conn. 2016); *J.D. v. N.Y.C. Dep't of Educ.*, 66 IDELR ¶ 219 (S.D.N.Y. 2015); *C.P. v. Krum Indep. Sch. Dist.*, 64 IDELR ¶ 78 (E.D. Tex. 2015); *W.W. v. N.Y.C. 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); **C.H. v. Goshen Cent. Sch. Dist.**, 61 IDELR ¶ 19 (S.D.N.Y. 2013); *K.K. v. Alta Loma Sch. Dist.*, 60 IDELR ¶ 159 (C.D. Cal. 2013); *DiRocco v. Bd. of Educ. of Beacon Cnty. Sch. Dist.*, 60 IDELR ¶ 99 (S.D.N.Y. 2013); *Nickerson-Reti v. Lexington Pub. Sch.*, 893 F. Supp. 2d 276, 290 Educ. L. 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); *R.J. v. Keller Indep. Sch. Dist.*, 2011 WL 13233497 (N.D. Tex. Sept. 11, 2011); *C.H. v. Nw. Indep. Sch. Dist.* 815 F. Supp. 2d 977, 277 Educ. L. Rep. 268 (E.D. Tex. 2011); *M.F. v. Irvington Union Free Sch. Dist.*, 719 F. Supp. 2d 302, 261 Educ. L. Rep. 601 (S.D.N.Y. 2010); *J.G. v. Briarcliff Manor Union Free Sch. Dist.*, 682 F. Supp. 2d 387, 255 Educ. L. Rep. 647 (S.D.N.Y. 2010); *James D. v. Bd. of Educ. of Aptakisic-Tripp Cmty. Consol. Sch. Dist.*, 642 F. Supp. 2d 804, 250 Educ. L. Rep. 194 (N.D. Ill. 2009); *Gavrity v. New Lebanon Cent. Sch. Dist.*, 53 IDELR ¶ 152 (N.D.N.Y. 2009); *Pierce v. Mason Cnty. Sch. Dist. Bd. of Educ.*, 48 IDELR ¶ 7 (S.D. Ohio 2007); **Schroll v. Bd. of Educ. of Champaign Cmty. Unit Sch. Dist.**, 48 IDELR ¶ 155 (C.D. Ill. 2007); **Galina C. v. Shaker Reg'l Sch. Dist.**, 41 IDELR ¶ 3 (D.N.H. 2004); **Ms. M v. Portland Sch. Comm.**, 39 IDELR ¶ 33 (D. Me. 2003); *Livingston v. DeSoto CNTY. Sch. Dist.*, 782 F. Supp. 1173, 72 Educ. L. Rep. 790 (N.D. Miss. 1992); *Porter v. Ill. State Bd. of Educ.*, 6 N.E.3d 424, 303 Educ. L. Rep. 476 (Ill. Ct. App. 2013) (in district's favor), *with Hall v. Vance Cnty. Bd. of Educ.*, 774 F.2d 629, 27 Educ. L. Rep. 1107 (4th Cir. 1985); *Preciado v. Bd. of Educ. of Clovis Mun. Sch.*, 76 IDELR ¶ 67 (D.N.M. 2020); *Bd. of Educ. of Uniondale Union Free Sch. Dist. v. J.P.*, 2019 WL 4315975, *adopted*, 75 IDELR ¶ 98 (E.D.N.Y. 2019); *A.W. v. Bd. of Educ. of Wallkill Cent. Sch. Dist.*, 68 IDELR ¶ 164 (N.D.N.Y. 2016); *T.O. v. Summit City Bd. of Educ.*, 66 IDELR ¶ 16 (D.N.J. 2015); *Evans v. Bd. of Educ. of Rhinebeck Cent. Sch. Dist.*, 930 F. Supp. 83, 111 Educ. Law Rep 200 (S.D.N.Y. 1996) (in parent's favor).

192

*E.g.*, *H.C. v. Katonah/Lewisboro Union Free Sch. Dist.*, 528 F. App'x 64, 298 Educ. L. Rep. 129 (2d Cir. 2013); *Matrejek v. Brewster Cent. Sch. Dist.*, 293 F. App'x 20, 239 Educ. L. Rep. 344 (2d Cir. 2008); *Fairfax Cnty. Sch. Bd. v. Knight*, 261 F. App'x 606, 231 Educ. L. Rep. 697 (4th Cir. 2008); *James v. Upper Arlington Cnty. Sch. Dist.*, 228 F.3d 764, 147 Educ. L. Rep. 840 (6th Cir. 2000); *Davis v. Wappingers Cent. Sch. Dist.*, 431 F. App'x 12, 271 Educ. L. Rep. 814 (2d Cir. 2011); *Grim v. Rhinebeck Cent. Sch. Dist.*, 346 F.3d 377, 181 Educ. L. Rep. 370 (2d Cir. 2003); *A.W. v. Bd. of Educ. of Wallkill Cent. Sch. Dist.*, 68 IDELR ¶ 164 (N.D.N.Y. 2016); *B.C. v. Pine Plains Cent. Sch. Dist.*, 971 F. Supp. 2d 356, 302 Educ. L. Rep. 1078 (S.D.N.Y. 2013); *Scarsdale Union Free Sch. Dist. v. R.C.*, 60 IDELR ¶ 195 (S.D.N.Y. 2013); *DiRocco v. Bd. of Educ. of Beacon City Sch. Dist.*, 60 IDELR ¶ 99 (S.D.N.Y. 2013); **M.C. v. Katonah/Lewisboro Sch. Dist.**, 58 IDELR ¶ 196 (S.D.N.Y. 2012); *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.P.*, 373 F. Supp. 2d 402, 199 Educ. L. 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); *M.B. v. Arlington Cent. Sch. Dist.*, 36 IDELR ¶ 130 (S.D.N.Y. 2002); **Fritschle v. Adams**, 45 F. Supp. 2d 500, 135 Educ. L. Rep. 133 (D. Md. 1999); *Straube v. Fla. Union Free Sch. Dist.*, 801 F. Supp. 1164, 78 Educ. L. Rep. 390 (S.D.N.Y. 1992) (Kildonan); **G.D. v. Swamscott Pub. Sch.**, 27 F.4th 1, 400 Educ. L. Rep. 32 (1st Cir. 2022); *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 257 Educ. L. Rep. 39 (3d Cir. 2010); *C.B. v. Pittsford*

Cent. Sch. Dist., 54 IDELR ¶ 149 (W.D.N.Y. 2010); Cnty. Sch. Dist. v. Darlene S., 45 IDELR ¶ 90 (W.D.N.Y. 2006); *Cerra v. Pawling Cent. Sch. Dist.*, 427 F.3d 186, 202 Educ. L. Rep. 617 (2d Cir. 2005); *Linda W. v. Ind. Dep't of Educ.*, 200 F.3d 504, 141 Educ. L. Rep. 86 (7th Cir. 1999); *Wall v. Mattituck-Cutchogue Sch. Dist.*, 945 F. Supp. 501, 114 Educ. L. 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 Educ. L. Rep. 1107 (4th Cir. 1985) (Oakland); *Conklin v. Anne Arundel Sch. Dist.*, 946 F.2d 306, 70 Educ. L. Rep. 351 (3d Cir. 1991) (Oakland and Summit); *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981 (8th Cir. 2011) (Groves); **H.C. v. Katonah/Lewisboro Union Free Sch. Dist.**, 528 F. App'x 64, 298 Educ. L. Rep. 129 (2d Cir. 2013); **J.D. v. Rye Neck Union Free Sch. Dist.**, 82 IDELR ¶ 150 (S.D.N.Y. 2023); *J.G. v. Briarcliff Manor Union Free Sch. Dist.*, 682 F. Supp. 2d 387, 255 Educ. L. Rep. 647 (S.D.N.Y. 2010) (Windward); *A.N. v. Bd. of Educ. of Iroquois Cent. Sch. Dist.*, 801 F. App'x 35 (2d Cir. 2020); **J.R. v. Bd. of Educ. Iroquois Cent. Sch. Dist.**, 78 IDELR ¶ 280 (W.D.N.Y. 2021); *Ganje v. Depew Union Free Sch. Dist.*, 60 IDELR ¶ 43, *adopted*, 60 IDELR ¶ 74 (W.D.N.Y. 2012); **D.G. v. Cooperstown Cent. Sch. Dist.**, 746 F. Supp. 2d 435, 265 Educ. L. Rep. 154 (N.D.N.Y. 2010) (Gow); *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp. 3d 443, 336 Educ. L. Rep. 786 (N.D. Tex. 2016), *aff'd in part and rev'd in part*, 865 F.3d 303, 345 Educ. L. Rep. 666 (5th Cir. 2017); *J.M. v. Morris Sch. Dist. Bd. of Educ.*, 58 IDELR ¶ 48 (D.N.J. 2011) (Winston); **J.W. v. Medford Lakes Bd. of Educ.**, 79 IDELR ¶ 134 (D.N.J. 2021) (Cambridge); *D.B. v. Bedford Sch. Dist.*, 708 F. Supp. 2d 564, 259 Educ. L. Rep. 608 (W.D. Va. 2010) (Vistas); *James D. v. Bd. of Educ. of Aptakasic-Tripp Cmty. Consol. Sch. Dist.*, 642 F. Supp. 2d 804, 250 Educ. L. 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); *Wood v. Katy Indep. Sch. Dist.*, 163 F. Supp. 3d 396, 334 Educ. L. Rep. 98 (S.D. Tex. 2015); *Antonaccio v. Arlington Cent. Sch. Dist.*, 281 F. Supp. 2d 710, 181 Educ. L. Rep. 584 (S.D.N.Y. 2003) (Pine Ridge); **J.F. v. Byram Twp. Bd. of Educ.**, 812 F. App'x 79, 378 Educ. L. Rep. 851 (3d Cir. 2020) (Craig School); **S.F. v. Smith**, 81 IDELR ¶ 163 (D. Md. 2022); *C.B. v. Smith*, 74 IDELR ¶ 230 (D. Md. 2019) (Lab School); **Galina C. v. Shaker Reg'l Sch. Dist.**, 41 IDELR ¶ 3 (D.N.H. 2004) (Burnham Brook); *Livingston v. DeSoto Cnty. Sch. Dist.*, 782 F. Supp. 1173, 72 Educ. L. 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 F. App'x 95, 259 Educ. L. Rep. 483 (2d Cir. 2010) (school not named); **A.B. v. Smith**, 83 IDELR ¶ 53 (4th Cir. 2023); **B.B. v. District of Columbia**, 80 IDELR ¶ 214 (D.D.C. 2022); **A.D. v. District of Columbia**, 80 IDELR ¶ 184 (D.D.C. 2022); *Q.C-C. v. District of Columbia*, 164 F. Supp. 3d 35, 334 Educ. L. Rep. 194 (D.D.C. 2016) (Lab School). The courts granted tuition reimbursement in relatively few of all these cases-- *A.N. v. Bd. of Educ. of Iroquois Cent. Sch. Dist.*, *C.B. v. Special Sch. Dist.*, *Hall v. Vance Cnty. Bd. of Educ.*; *Bd. of Educ. of Uniondale Free Sch. Dist. v. J.P.*; *Grim v. Rhinebeck Cent. Sch. Dist.*; *A.W. v. Bd. of Educ. of Wallkill Cent. Sch. Dist.*; *D.B. v. Bedford Sch. Dist. Cnty. Sch. Dist. v. Darlene S.*; *cf. Wood v. Kingston Sch. Dist.* (90%); **Arlington Cent. Sch. Dist. v. D.K. (two of three semesters)**; *Nicholas A. v. Norristown Area Sch. Dist.* (one of two years).

- 193 *E.g.*, *B.E.L. v. State of Haw. Dep't of Educ.*, 711 F. App'x 426 (9th Cir. 2018); *Gillette v. Fairland Bd. of Educ.*, 932 F.3d 551, 67 Educ. L. Rep. 510 (6th Cir. 1991); *Douglas W. v. Greenfield Pub. Sch.*, 164 F. Supp. 2d 157, 157 Educ. L. Rep. 648 (D. Mass. 2001).
- 194 *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.
- 195 *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.”
- 196 **Kristin L. Sayeski & Perry A. Zirkel, Orton-Gillingham and the IDEA: Analysis of the Frequency and Outcomes of Case Law**, 71 *Annals Dyslexia* 483 (2021).
- 197 *E.g.*, *A.W. v. Jersey City Pub. Sch.*, 486 F.3d 791, 220 Educ. L. Rep. 502 (3d Cir. 2007); *G.M. v. Dry Creek Joint Elementary Sch. Dist.*, 595 F. App'x 698, 315 Educ. L. Rep. 88 (9th Cir. 2014).

- 198 *E.g.*, *B.D.S. v. Southold Union Free Sch. Dist.*, 52 IDELR ¶ 293 (S.D.N.Y. 2009).
- 199 *E.g.*, *I.W. v. Sch. Dist. of Phila.*, 67 IDELR ¶ 14 (E.D. Pa. 2016); *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).
- 200 *E.g.*, *Ron J. v. McKinney Indep. Sch. Dist.*, 45 IDELR ¶ 9 (E.D. Tex. 2005), *further proceedings*, 2006 WL 3099449 (E.D. Tex. Oct. 30, 2006).
- 201 Among the additional or alternative avenues of legal recourse is funding legislation. *E.g.*, <http://www.interdys.org/LEARNact.htm>. Of course, informal action, emphasizing collaboration, trust, and professional norms, is another, less restrictive option.
- 202 *E.g.*, *Wood v. Katy Indep. Sch. Dist.*, 163 F. Supp. 3d 396, 334 Educ. L. Rep. 98 (S.D. Tex. 2015) (ruled that the Texas Dyslexia Act does not provide a private right of action and does not relate to special education); *Myslow v. New Milford Sch. Dist.*, 2006 WL 473735 (D. Conn. Feb. 28, 2006) (rejection of 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); *Sch. Dist. of Pittsburgh v. Provident Charter Sch. for Children with Dyslexia*, 134 A.3d 128, 329 Educ. L. Rep. 949 (Pa. Commw. 2016) (approving the charter, despite a local district's objection, of a charter school for students with dyslexia); *cf. Sauers v. Winston Salem Forsyth Cnty. Sch. Bd.*, 179 F. Supp. 3d 544, 336 Educ. L. Rep. 939 (M.D.N.C. 2016) (rejecting various constitutional and common law claims, except negligent infliction of emotional distress, of high school student with dyslexia who allegedly was subjected to bullying).

## 411 WELR 903