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Education Law into Practice

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SPEECH/LANGUAGE IMPAIRMENT AND SPEECH/LANGUAGE PATHOLOGY IN STATE SPECIAL EDUCATION LAWS^{a1}

With the exception of the classification of specific learning disabilities (SLD), speech or language impairment (SLI) accounts for the highest percentage of students eligible under the Individuals with Disabilities Education Act (IDEA).¹ Yet, despite speech-language pathology (SLP) being a rather robust profession with a key presence in public schools,² the professional literature has almost entirely lacked legal analyses of SLI and SLP issues in the context of the IDEA.

As a first step to fill this gap, a recent article provided a comprehensive, yet compact, synthesis of the IDEA, the agency policy interpretations, and court decisions specific to SLI and SLP.³ The purpose of this follow-up article is to provide a similarly systematic overview of the SLI and SLP provisions of the corollary state special education laws,⁴ per the IDEA's structure of “cooperative federalism.”⁵

This analysis is limited to current state legislation and regulations with a marginal exception: per the example of comparable previous state law analyses,⁶ it includes state *454 special education policy manuals that were either clearly incorporated in the applicable legislation or regulations or, more marginally, approved by the state board of education.⁷ Conversely, the analysis does not extend to related areas for potential subsequent scholarship, specifically the corresponding SLI- and SLP-specific provisions under state laws for (a) students with disabilities at the Part C (ages 0-3) and preschool levels; (b) gifted and talented students; (c) pre-service, in-service, and certification of speech and language pathologists (SLPs); (d) SLP associates or assistants; (e) nonpublic schools and private providers, and (e) dyslexia or other general education laws. It also does not include state education agency (SEA) guidelines specific to SLI or SLP.

The organizational template for the analysis consists of the SLI and SLP provisions of the IDEA regulations.⁸ Specifically, the originally intended elements were as follows: (a) the definition of SLI;⁹ (b) the definition of SLP services;¹⁰ (c) the status of SLP services in relation to the definition of special education;¹¹ and (d) the provision specific to SLPs.¹² However, the final format for the table of state laws omits a column for the definition of SLP services because the only entry was marginal, being limited to the definition in Oklahoma's manual.¹³

The method for data collection was to use the “advanced search” feature of the Westlaw database to find all references to “speech” in the special education law for each state and the District of Columbia and then select those provisions that appeared to represent material additions to the aforementioned federal template.¹⁴

The table in the appendix provides the results. The rows represent the 50 states and the District of Columbia in alphabetical order, which are listed as abbreviations in the first *455 column. The remaining columns represent the successive elements of

the federal template, which are specified in bold font as baselines in the first row.¹⁵ The entries from state statutes are in regular font, whereas those from state regulations (and qualifying policy manuals) are in italics.¹⁶ In addition to those already identified (SEA, SL, SLD, SLI, SLP, and SLPt),¹⁷ the acronyms in the table are as follows: ASHA = American Speech-Language-Hearing Association; EL = English learner; RTI = response to intervention; SLT = speech-language therapy; SST = student support team; and TBI = traumatic brain injury. Finally, the entry for “standard subcategories” refers to the four areas that are largely specified in the federal definition of SLI and that are specified with the following terms or cognizable variations thereof: articulation, voice, fluency, and language.¹⁸

The first finding is that, overall, most state laws have at least one addition to the federal template but these additions are largely focused on elaborations of the SLI definition. Second, as the column for the SLI definition shows, the elaborations often include identifying and defining the four so-called “standard” subcategories. Yet, only a limited minority of state laws, such as those in Arkansas, Florida, Georgia, and West Virginia, provide highly detailed criteria and procedures for each of these subcategories. The majority of states either explicitly or inferably require the SLPt to be part of this eligibility evaluation determination. A few state laws are notable for particular considerations, such as rule-out exclusions for differences primarily attributable to EL or dialect or requirements (e.g., District of Columbia, Tennessee, and Virginia) for medical determinations (e.g., Oklahoma and Oregon). Similarly, occasional state laws either adhere to (e.g., Montana) or restrict (e.g., Tennessee) the use of a significant-discrepancy approach. Finally, a small set of state laws arrange the four subcategories into larger groupings (e.g., Florida and Georgia).

Third, the entries for the puzzling IDEA provision for whether SLP qualifies only as a related service or also as special education, ultimately leaving the answer to “state standards,”¹⁹ is largely unresolved in state laws. Instead, the large majority of state laws either merely repeat the circular federal standard or are entirely silent on this issue. Indeed, Arkansas' law repeats the IDEA provision verbatim.²⁰ Conversely, a handful of states either answer this question variously with one or more specific factors (Hawaii and New Mexico), an unconditional yes (Idaho, Oklahoma, and Washington), a partially unconditional yes (North Carolina and Rhode Island), or via delegation to the IEP team (Colorado and Ohio).²¹

Fourth, slightly less than half of the state laws add to the limited responsibility designated in the IDEA regulations for the SLPt by either mandating an evaluation role for one or more classifications beyond SLI or, more frequently, addressing the SLPt's caseload or class size. More specifically, the seven state laws that mandate an evaluation role beyond SLI all *456 identified autism,²² with Idaho, Montana, and Delaware providing successive extensions to one or more other classifications. On a partially overlapping basis, the seventeen state laws that address caseload or class size vary widely in the nature and range of the metric. The majority specify a numerical maximum caseload range from thirty to eighty, with the modes being 50 and 65, but the specified interacting factors for both caseload and class size expressly or implicitly include the delivery mode.²³

In conclusion, assessing whether providing such specifications in state special education laws amounts to a net benefit for students with disabilities and the schools that serve them with limited resources and competing priorities amounts to a political and pedagogical question beyond my purview. All I would add from my limited, albeit impartial, legal lens is the caveat that adding to the bloating proliferation of law in the United States not only compounds the transaction costs of legislation, regulations, adjudication, and administrative enforcement but also causes confusion between legal requirements and professional norms.²⁴ For SL professionals in the school context, advocacy for stronger SLI and SLP provisions in state special education laws ultimately is a matter of harmonizing the interests of the profession and those of students with disabilities with due regard for resource limitations and beneficial outcomes.²⁵

*457 Appendix

	SLI TERMINOLOGY, DEFINITION & ELIGIBILITY	SLP SERVICES AS SP. ED.	SLPT
IDEA	“speech or language impairment” = “a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance”	if the service is considered special education rather than a related service under State standards	alternative individual-diagnostic member of SLD evaluation team
AL	“the speech impaired” or “speech or language impairment” + specifies criteria and procedures for 4 standard subcategories	(circular - SLP qualifies if it meets the definition of sp. ed.)	max. case mgr. load: 30 student records
AK	“must (1) [meet the IDEA definition]; (2) require special facilities, equipment, or methods to make the child's educational program effective; (3) be diagnosed by a physician, as [SLI]; and (4) [be determined by the eval. team as needing sp. ed.]		max. caseload: 45 students
AZ	authorizes limiting the eval. to 4 alternative broad procedures for students with only articulation, voice, or fluency problems		
AR	specifies detailed referral characteristics, screening info, required eval. data and analysis, and programmatic considerations + 5 alternative criteria for terminating SLT services and related considerations, incl. 2 ASHA “Rules of Ethics”	(repeated)	
CA	“language or speech disorder” = “difficulty understanding or using language that adversely affects the pupil's educational performance and cannot be corrected without special education and related services” based on SLPT-determination within 4 standard subcategories + specifies criteria for each subcategory		max. caseload: district-wide average of 55 students unless SEA-approved exception
CO	“a communicative disorder which prevents the child from receiving reasonable educational benefit from general education” + specifies	“if the IEP Team determines that the child needs [SLP] services to receive a [RAPE]”	

	<i>3 alternate criteria and several alternate "dysfunctions"</i>		
CT	--		
DE	<i>eval. requires 2 particular procedures and, "[i]f applicable, prior to or as part of the eligibility process, RTI" + SLPt determination + defines 4 standard subcategories</i>		<i>mandated member of eval. team for autism, deaf-blind, hearing impairment, & SLD for oral expression or listening comprehension</i>
DC	<i>excludes attribution to "characteristics of second language acquisition or dialectic differences" + defines 4 standard subcategories</i>		
FL ²⁶	<i>"speech impairment" (with 3 standard subcategories) and, separately, "language impairment" + provides detailed definitions for each, with specific procedures and criteria and with required role/tasks for SLPt</i>	<i>(circular)</i>	<i>mandated observation role as part of autism eval.</i>
GA	<i>detailed definitions and criteria for 4 standard subcategories + specified SLPt procedures for eval. + 2 exclusions & SST prerequisite</i>		<i>max. class size of 11 or, with a paraprofessional, 15</i>
HI	<i>"speech or language disability" = "when a significant problem in the comprehension or production, or both, of an oral communication system, which is not consistent with the student's other developmental or cognitive abilities, or both, adversely affects the student's educational performance and is evident in one or more of the [4 standard subcategories, with specified criterion for the last 1 of them]"</i>	<i>"if [SLP] services are required by the student"</i>	
ID	<i>specifies definitions and criteria for each of the 4 standard subcategories</i>	<i>SLT qualifies as sp. ed.</i>	<i>mandated member of eval. team for autism and SLD for oral expression or listening comp.</i>
IL ²⁷			<i>max. caseload of 60 students</i>
IN	<i>provides definitions and procedures for the 4 standard subcategories + exclusion if solely EL or dialectical differences from standard English</i>		
IA			
KS			

KY	“impaired language, impaired voice, delayed acquisition of language, or absence of language”	<i>(circular)</i>	max. caseload of 65 students or 50% more if with SLP assistant
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*458 [The preceding image contains the references for footnotes ^{26, 27}]

	SLI TERMINOLOGY, DEFINITION & ELIGIBILITY	SLP SERVICES AS SP. ED.	SLPT
LA		<i>(circular)</i>	<i>max. caseload of 7 students in a self-contained class and 95 total hrs. of assessment, consultation, supervision, & services</i>
ME	<i>provides rather broad SLPt (or speech clinician) procedures</i>		
MD			
MA	<i>“communication impairment” = “[t]he capacity to use expressive and/or receptive language is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/or voice; conveying, understanding, or using spoken, written, or symbolic language”</i>		
MI	<i>defines 4 standard subcategories and provides generic procedures for SLPt or teacher of SLI</i>	<i>teacher of SLI may provide sp. ed.</i>	<i>mandated member of eval. team for autism + max. caseload of 60 students adjusted by specified factors (and max. size of 15 for severe SL class)</i>
MN	<i>specifies the definition and criteria for 4 standard subcategories</i>		
MS			<i>ratio between 25:1 and 48:1</i>
MO			
MT	<i>specifies significant deviation criterion for the 4 standard subcategories + SLPt required for at least the initial eval.</i>		<i>mandated member of the initial eval. team for autism, deaf-blindness & TBI</i>
NE		<i>(circular)</i>	

NV	<i>defines 4 standard subcategories and overall limitations + requires SL specialist + authorizes general procedures</i>	<i>(circular)</i>	<i>max. caseload of 50 students + max. size of 12 for a self-contained class</i>
NH			
NJ	<i>“communication impairment” = “a language disorder in morphology, syntax, semantics, and/or pragmatics/discourse that adversely affects a student's educational performance and is not due primarily to an auditory impairment” per specified deviation criteria + specifies definition and procedures for 3 standard speech and separate language subcategories</i>		<i>SLI eval. by “an approved speech correctionist or speech pathologist” + SL specialist as mandated member of IEP team for the 2 subcategory groupings of SLI</i>
NM		<i>specifies 4 criteria for qualifying as sp. ed.</i>	
NY			<i>max. caseload of 65 students</i>
NC^{a2}	<i>lists standard 4 subcategories and their criteria + provides general procedures, including SL screening + requires SLPt</i>	<i>“if the only service required by the child is [SL]”</i>	<i>max. caseload depends on specified factors</i>
ND			
OH		<i>“if the IEP team considers the service special education rather than a related service under state standards”</i>	<i>max. caseload of 80 students except, for 5 specified delivery alternatives, 50 students</i>
OK^{a2}	<i>4 standard subcategories & communication (“oral motor”) subcategory + specifies various eval. “considerations” including required specialized medical eval. for voice subcategory “to rule out physical structure etiology”</i>	<i>includes instruction in SLP</i>	<i>max. caseload of either 50 students (if less than 1 hr. per wk.) or 40 students (if more than 1 hr. per wk.)</i>
OR	<i>specifies 4 standard subcategories and SLPt eval. criteria for each + examination by otolaryngologist for voice subcategory</i>		<i>mandated eval. for autism</i>
PA			<i>max. caseload of 50 students for SLP and either 65 (itinerant) or 8 (self-contained) for SL teacher</i>
RI		<i>(circular) but qualifies unconditionally “up to the child's ninth (9th) birthday”</i>	
SC	<i>“speech handicapped”</i>		
SD			

TN	<i>defines 4 standard subcategories and excludes "attribute[ions] to characteristics of second language acquisition, cognitive referencing, and/or dialectic differences"</i>		
TX	<i>"speech disability" or "speech impairment" + by a SLT or SLPt</i>		<i>required part of eval. for autism classification</i>
UT^{a2}	<i>specifies various general eval. procedures, inch SLPt as member of eval. team + specific conditions for students with Orofacial Myofunctional Disorder; those with mild hearing loss, and ELs</i>	<i>(circular)</i>	
VT	<i>provides criteria for 4 standard subcategories, although with 2 (voice and fluency) under "oral expression" and 1 (language) as "listening comprehension"</i>	<i>(repeated)</i>	
VA	<i>provides broad eligibility criteria including "significant discrepancy in typical communications skills" in at least 1 of the 4 standard subcategories and an exclusion for primary attribution to EL or dialect differences</i>		<i>max. caseload of 68 students</i>
WA		<i>sp. ed. includes instruction in SLT</i>	<i>max. case management load of 50 students</i>
WV^{a2}	<i>specifies highly detailed definitions and criteria for 4 standard subcategories & "social communication disorder" + general exclusions for discrepancy as a sole factor and primary attributions to EL</i>		
WI	<i>specifies definitions, criteria, and special SLPt considerations for the 4 standard subcategories</i>		
WY	<i>specifies definitions and criteria for 4 standard subcategories, apparently referring to fluency as "stuttering"</i>		

Footnotes

^{a2} seemingly qualifying state policy manual (*supra* note 7 and accompanying text).

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 414 Educ. L. Rep. 453 (October 12, 2023).
- aa1 Perry 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.
- 1 U.S. Department of Education, 44th Annual Report to Congress on Implementation of the Individuals with Disabilities Education Act 44 (2022), <https://sites.ed.gov/idea/44th-annual-report-to-congress-on-idea> (reporting SLI accounted for 17.8% of IDEA-eligible students aged 5 through 21, with SLD being the leading classification at 34.9%).
- 2 *See, e.g.*, American Speech-Language-Hearing Association, School-Based Service Delivery in Speech and Language Pathology (n.d.), <https://www.asha.org/slp/schools/school-based-service-delivery-in-speech-language-pathology/> (providing resource information about delivery of SLP services in schools in accord with the IDEA).
- 3 Perry A. Zirkel, *Speech Language Pathology under the Individuals with Disabilities Education Act*, 396 Educ. L. Rep. 377 (2022) (canvassing of the IDEA legislation, the IDEA regulations, agency policy interpretations, and court decisions specific to the SLI classification and SLP services).
- 4 Although the IDEA regulations use “or” in SLI and a hyphen in DLP, these acronyms are used herein generically, regardless of whether a state law uses “and,” “or,” a hyphen, or a back slash as the connector between “speech” (S) and “language” (L). Moreover, following the similar slight distinction provided in the acronym in Zirkel, *supra* note 3, “SLPt” herein refers to a SL pathologist.
- 5 *See, e.g.*, *Schaffer v. Weast*, 546 U.S. 49, 52, 203 Educ. L. Rep. 29 (2005) (referring to the IDEA providing a uniform federal foundation that allows for varying additions in state special education laws).
- 6 *E.g.*, Andrew M.I. Lee & Perry A. Zirkel, *State Laws for Due Process Hearings under the IDEA: The Pre-Hearing Stage*, 40 J. Nat'l Ass'n Admin. L. Judiciary 1, 8 (2021); Perry A. Zirkel, *State Laws for Due Process Hearings under the IDEA*, 38 J. Nat'l Ass'n Admin. L. Judiciary 1, 10-12 (2018).
- 7 *E.g.*, Idaho Department of Education, Special Education Manual 2018, <http://www.sde.idaho.gov//sped/files/shared/Idaho-Special-Education-Manual-2018-Final.pdf>, expressly incorporated by reference in *Idaho Admin. Code r. 08.02.03.004*. The inclusion of the North Carolina policy manual is particularly questionable due to the lack of clarity as to whether it requires and has the added approval of designated state entity. *See, e.g.*, *No. Carolina State Bd. of Educ. v. State*, 814 S.E.2d 54 (N.C. 2018) (ruling that the state review commission approves policy documents for them to have the force of law under the state administrative procedures act).
- 8 For a similar template technique, *see* Lee & Zirkel, *supra* note 6, at 5-7; Zirkel, *supra* note 6, at 8-10.
- 9 34 C.F.R. § 300.8(b)(11) (2021) (“Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance”).
- 10 *Id.* § 300.34(c)(15) (“Speech-language pathology services includes-- (i) [i]dentification of children with speech or language impairments; (ii) [d]iagnosis and appraisal of specific speech or language impairments; (iii) [r]eferral for medical or other professional attention necessary for the habilitation of speech or language impairments; (iv) [p]rovision of speech and language services for the habilitation or prevention of communicative impairments; and (v) [c]ounseling and guidance of parents, children, and teachers regarding speech and language impairments”).

- 11 *Id.* § 300.39(a)(2) (“Special education includes [SLP], if the services otherwise [qualify as specially designed instruction, at no cost to the parents, to meet the unique needs of the eligible child] ... and if the service is considered special education rather than a related service under State standards”).
- 12 *Id.* § 300.308(b) (requiring the evaluation team for SLD eligibility to include “[a]t least one person qualified to conduct individual diagnostic examinations of children, such as a ... [SLPt]”).
- 13 Oklahoma State Department of Education, State Special Education Services Policies & Procedures 160 (2021), <https://sde.ok.gov/special-education>: “[i]nclude articulation, language and other communication services provided by a qualified ... SLP or a ... SLP assistant or possibly a ... SLT to support a student's communication needs.” The reasons for the marginal characterization are twofold: (1) it is not entirely clear that this manual has the binding force of state law, although it is referred to in the regulations (*Okla. Admin Code § 210:15-13-2(d)(3)*); and (2) this definition starts with “includes,” and it only provides what is otherwise implicit under the IDEA's inclusionary definition, thus arguably not constituting a material addition to the federal template.
- 14 *Supra* notes 8-13 and accompanying text.
- 15 *Id.*
- 16 The states with entries based on state policy manuals are designated with an asterisk in the first column.
- 17 *See, e.g., supra* note 4.
- 18 The IDEA regulatory definition lists three of these four subcategories as “such as” examples along with “stuttering.” *Supra* note 9. As the entry for Wyoming regulations helps clarify, the IDEA reference to “stuttering” implicitly corresponds to the fluency subcategory. 7 Wyo. Code R. ch. 7, § 4(d)(xi)(A)(II) (referring to “fluency” in the criteria for “stuttering” as one of the four subcategories).
- 19 The applicable IDEA regulation specifies two conditions. *Supra* note 11. The one that precedes the delegation to state standards is circular, in effect saying that SLP services qualify as special education if they meet the definition of special education.
- 20 Ark. Code R. § 005.18.2-2.68.
- 21 Additionally, the Michigan provision only answers the question indirectly and ambiguously. *Mich. Admin. Code r. 340.1701b* (“services ... that are specially designed to meet the unique needs of a student with a disability may be provided by ... a teacher of the [SLI]”).
- 22 The New Jersey entry, which technically should have been in the first headed column, noted this state's oddly differing statutory and regulatory provisions for the designated SL professional mandated for the evaluation and IEP teams for students with SLI.
- 23 For an alternate view, which is apparently based on a survey of a random sample of school-based SLPs and extends beyond state law to state guidance, *see* ASHA's State Case Load and Salary Data Map, <https://www.asha.org/slp/schools/state-caseload-and-salary-data-map/>
- 24 *See, e.g.,* Perry A. Zirkel, *The Role of Law in Special Education, Exceptionality* (in press).
- 25 *See, e.g.,* ASHA State Education Advocacy Leaders, <https://www.asha.org/advocacy/state/seals/>.

- 26 Florida's law also provides a possible exception to its pre-referral requirement for multi-tiered systems of support “if a team that comprises qualified professionals and the parent determines that these general education interventions are not appropriate for a student who demonstrates a speech disorder ... that require[s] immediate intensive intervention to prevent harm to the student or others.” [Fla. Admin. Code Ann. r. 6A-6.0331](#).
- 27 Illinois's law also requires that school districts maintain a SLP services delivery log that is available upon parental request. Ill. Comp. Stat. 5/14-8.02f(d).

414 WELR 453

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