

# Dyslexia Update: Defense Attorney Perspective

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**WASA**

# WA legislative requirements re: dyslexia intervention

- RCW 28A.320.260
  - (3)(a) If a student shows indications of below grade level literacy development or indications of, or areas of weakness associated with, dyslexia, the school district must provide interventions using evidence-based multitiered systems of support, consistent with the recommendations of the dyslexia advisory council under RCW 28A.300.710 and as required under this subsection.
  - (b) The interventions must be evidence-based multisensory structured literacy interventions and must be provided by an educator trained in instructional methods specifically targeting students' areas of weakness.
  - (c) Whenever possible, a school district must begin by providing student supports in the general education classroom. If screening tools and resources indicate that, after receiving the initial tier of student support, a student requires interventions, the school district may provide the interventions in either the general education classroom or a learning assistance program setting. If after receiving interventions, further screening tools and resources indicate that a student continues to have indications of, or areas of weakness associated with, dyslexia, the school district must recommend to the student's parents and family that the student be evaluated for dyslexia or a specific learning disability.

# Dyslexia

- Specific Learning Disability
  - (k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.
  - (ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

# Case Study # 1

- Student A is starting the 3<sup>rd</sup> grade. They have been enrolled in general education since kindergarten. Student A has, however, previously participated in the District's LAP support due to lower reading scores on the District's available reading diagnostics. Student A has been showing some degree of progress with their reading scores, particularly in the spring of 2022.
  - Over this past summer, Parents went to a private evaluator and obtained a dyslexia diagnosis for Student A. Parents mention the diagnosis to staff and ask whether the District has any dyslexia-specific supports available for Student A. Staff bring the question to you and ask how they should respond to Parents.
  - Discuss your potential responses to staff **and/or** to Parents.

# Case Study # 2

- Elsewhere in the District, Student B is also a rising 3<sup>rd</sup> grader. They transferred into the District last fall from another state. Based upon that state's evaluation process, Student B is eligible for special education services under the Other Health Impaired category due to an ADHD diagnosis, with SDI only in Organization. Student B also participated in the District's LAP program last school year. Student B did not, however, respond positively to the LAP programming.
  - At the end of last school year, Parents of Student B asked whether LAP uses a multi-sensory structured literacy program. They heard about a private school in the area that reports great progress with their Orton-Gillingham-based program and Parents asked the principal whether Student should attend that private school.
  - How would you respond to principal **and/or** Parents?

# Evaluation Issues

- *Crofts v. Issaquah Sch. Dist.*, (9<sup>th</sup> Cir. 2022)
  - Court rejected claim that district required to specifically evaluate for “dyslexia” where the district completed a comprehensive evaluation in the area of reading and student found eligible for SDI in reading under the SLD category
    - This evaluation included data/opinions from parent’s private evaluation of student
  - Court further rejected claim that district required to use a specific methodology where record established student had benefited from school district’s educational program
    - This included testimony of use of multi-sensory and other effective reading instructional strategies and approaches



# *Crofts v. Issaquah Sch. Dist.*, (cont'd)

- “The American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-5) contains a definition for the diagnosis of a “specific learning disorder” but does not recognize dyslexia as a separate disorder or diagnosis. Within the specific learning-disorder listing, the DSM-5 contains a diagnostic code for a specific learning disorder “[w]ith an impairment in reading,” characterized by problems with word reading accuracy, reading rate or fluency, and reading comprehension. Am. Psychiatric Ass’n, Diagnostic and Statistical Manual of Mental Disorders (DSM-5) 67 (5th ed. 2013)(diagnostic code F81.0). Within that category of specific learning disorder, the DSM-5 notes that dyslexia is “an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word recognition, poor decoding, and poor spelling abilities.” *Id.*

# Five Components of Effective Reading Instruction

- Phonemic awareness
- Phonics
- Fluency
- Vocabulary
- Comprehension

See National Reading Panel results, April 13, 2000, available at <https://www.nichd.nih.gov/publications/pubs/nrp/findings>

See *also* <https://www.readnaturally.com/research/5-components-of-reading>  
*and* <https://ortongillinghamonlinetutor.com/the-national-reading-panel-and-the-big-five/#:~:text=They%20concluded%20that%20there%20were%20five%20essential%20components,vocabulary%20words%20or%20Vocabulary%20Development.%205%20Reading%20Comprehension>



# Evaluation Issues

- Duty to Complete Comprehensive Evaluations
  - ***D.S. and P.S. v. Bainbridge Island Sch. Dist.*, (W.D. WA, 2021)**
    - Parents' appeal of ALJ decision in favor of the District
    - Federal Court reversed and found for Parents
      - Issue on appeal – whether the District should have evaluated the student in the area of writing (dysgraphia) as part of District's special education reevaluation
      - Team had agreed and Parents consented only to reevaluation in areas of reading and cognition
    - Court focused on **internal staff comments of potential academic need** to second-guess the scope of the evaluation
      - Noted that Parents were unaware of these internal concerns prior to due process
      - Based upon Record, District violated Child Find & reevaluation obligations

# Evaluation Issues (cont'd)

- “Consideration” of Private Evaluation Data
  - ***Rogich v. Clark County Sch. Dist.*, (D. Nev., 2021)**
    - Federal court reversed lower administrative decision in favor of the school district and found a denial of FAPE by the district in not fully adopting private evaluation recommendations on how to implement a specific reading curriculum (O-G)
    - Court found that two IEE reports recommended **consistent and exclusive use of O-G reading methodology** for student with multiple disabilities in order to benefit, and because the proposed IEPs only identified use of a “multi-sensory approach to instruction” that could potentially confuse Student if used inconsistently, the proposed IEPs denied Student a FAPE
      - District was never able to implement its proposed IEPs due to unilateral parent placements
    - Parents awarded almost \$500,000 in reimbursement for unilateral private placement

# IEP Issues

- Identification of Specific Curriculum in an IEP
  - ***J.L. v. Mercer Island Sch. Dist.*, (9<sup>th</sup> Cir., 2010)**
    - “Although school districts should specify a teaching methodology for some students, for other students ‘IEPs may not need to address the instructional method to be used because specificity about methodology is not necessary to enable those students to receive an appropriate education.’ See 64 Fed. Reg. 12,552. **We accord deference to the District's determination and the ALJ's finding that K.L.'s teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective.** We hold that the District did not commit a procedural violation of the Individuals with Disabilities Education Act by not specifying teaching methodologies in K.L.'s individualized educational programs, and reverse the district court.”
  - Thus, a case-by-case determination

# IEP Issues (cont'd)

- Required Participants for IEP or Other Team meetings
  - ***R.P. v. Prescott Unified Sch. Dist.*, (9<sup>th</sup> Cir., 2011)**
    - School districts are **not obligated to include “experts” in any particular disability** at team meetings
    - WAC 392-172A-03095(1) only requires the following participants:
      - The parents of the student;
      - Not less than one gen edu teacher of the student if the student is, or may be, participating in the gen ed environment;
      - Not less than one special ed teacher of the student, or where appropriate, not less than one special ed provider;
      - A representative of the public agency who:
        - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education services;
        - Is knowledgeable about the general education curriculum; and
        - Is knowledgeable about the availability of resources of the school district.
      - **An individual who can interpret the instructional implications of evaluation results**, who may be a member of the team described above;
      - At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
      - Whenever appropriate, the student.

# Questions?