



Fagen Friedman & Fulfrosts LLP

All Things Considered

Serving Students with Dyslexia



What We'll Consider . . .

- Background and Definition
- The Law and Guidance
- Recent OAH Cases Addressing Issues Related to Dyslexia

Huntington Beach City SD

Westminster SD

Laguna Beach USD

River Springs Charter School



I. Background and Definition



The Numbers

- Nationwide, dyslexia likely affects 1 in 10 individuals
- One estimate indicates that over 1 million students in California's K-12 public schools have some signs of dyslexia
- And approximately 220,000 of those students are receiving special education as SLD

(International Dyslexia Association, "About Dyslexia" (2017); Decoding Dyslexia CA, "Frequently Asked Questions" (2017))



Characteristics

- Specific reading disorder
- Does not reflect low intelligence
- Hereditary
- Affects individuals from different cultural, ethnic and socioeconomic backgrounds nearly equally

(International Dyslexia Association, "About Dyslexia" (2017))



Definition

- “Specific learning disability that is neurobiological in origin”
- “Characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities”
- “Deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction”



Definition (cont'd)

- “Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge”
- IDA’s definition has been cited verbatim by OAH and CDE

(International Dyslexia Association, “About Dyslexia” (2017); California Dept. of Educ, California Dyslexia Guidelines (2017); Student v. Capistrano Unified School Dist. (OAH 2010) Case No. 2010050368, 111 LRP 63912)



II. Dyslexia: The Law and Guidance



SLD Defined

- Disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language, which manifests itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations

(34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10))



SLD Defined

- SLD 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

(34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10))



SLD Defined

- SLD includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia

(34 C.F.R. § 300.8(c)(10); Ed. Code, § 56337, subd. (a); Cal. Code Regs., tit. 5, § 3030, subd. (b)(10))



Need for Special Education

- Don't forget! Even if student meets SLD definition, second step in determining eligibility is that student must require special education and related services as a result of his or her SLD
- Without such need, student cannot be found eligible



SLD Eligibility Criteria

District may consider whether student has severe discrepancy between intellectual ability and achievement in:

- Oral expression
- Listening comprehension
- Written expression
- Basic reading skill
- Reading comprehension
- Mathematical calculation or mathematical reasoning

(Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(B))



SLD Eligibility Criteria

District also may find SLD if student:

- Does not achieve adequately for his or her age **and**
- Does not make progress when using RTI process **or** exhibits a pattern of strengths and weaknesses in performance, achievement, or both

(Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(C))



SLD Eligibility Criteria

Whichever method is used:

- Underachievement may not be due to lack of appropriate instruction in reading or math and data must prove this
- An observation must be done in student's learning environment

(Cal. Code Regs., tit. 5, § 3030, subd. (b)(10)(C))



California Statutes

Education Code section 56245 (2008)

- Encourages districts to provide teachers with in-service training on recognition of – and teaching strategies for – SLDs, “including dyslexia and related disorders”



California Statutes

Education Code section 56337.5 (2015)

- Clarifies that student with dyslexia who meets SLD eligibility criteria is entitled to special education
- If student with dyslexia is found not eligible for special ed, his or her instruction “shall be provided in the regular education program”



California Statutes

Education Code section 56335 (2015)

- Required CDE to develop (nonbinding) program guidelines for dyslexia before 2017-2018 school year



CDE Guidance

California Dyslexia Guidelines (CDE 2017)

- Released August 14, 2017
- Provides educators, parents and other stakeholders with practical resources for identifying/educating students with dyslexia
- Emphasizes evidence-based instruction
- Look in your materials for website address to download full-text PDF (110 pages)



U.S. Dep't of Educ. Guidance

Dear Colleague Letter (OSERS 2015)

- Emphasized that dyslexia can be an SLD
- Encouraged districts to “consider situations where it would be appropriate to use the terms dyslexia, dyscalculia, or dysgraphia to describe and address the child's unique, identified needs through evaluation, eligibility, and IEP documents”



U.S. Dep't of Educ. Guidance

Letter to Unnerstall (OSEP 2016)

- District is only required to assess particular areas related to suspected disability
- If evaluation process reveals that a particular assessment for dyslexia is needed to ascertain disability and educational needs, then district must conduct such assessment



III. Recent Cases Addressing Issues Related to Dyslexia



Huntington Beach City SD (OAH 2017)

Facts

- Parent expressed concern about Student's struggles with letters and numbers
- First-grade teacher referred Student to reading intervention group
- Special ed teacher observed Student, did not believe he needed special ed, and wanted more time for interventions to work



Huntington Beach City SD (OAH 2017)

Facts (cont'd)

- Parent obtained private reading tutor
- District ultimately assessed Student in January of first grade year
- Found eligible as SLD based on unique needs in various areas of reading
- Parent's private assessment indicated dyslexia



Huntington Beach City SD (OAH 2017)

Issue

- Did District fail in its child find duties by not responding to Parents' concerns about Student's reading skills and by not referring Student for assessment until January 2015?



Huntington Beach City SD (OAH 2017)

Decision & Rationale

- ALJ ruled in favor of Parent and awarded reimbursement for private tutoring
- Student's struggles with reading, letter reversals and writing indicated dyslexia
- Staff was aware of Parent's concerns



Huntington Beach City SD (OAH 2017)

Decision & Rationale (cont'd)

- Interventions were “noteworthy signs that created suspicion of disability”
- “Reliance on an outcome basis” to determine whether or not to assess was “faulty”
- Student’s average grades should not have been basis for decision not to assess

(Student v. Huntington Beach City School Dist. and Huntington Beach City School Dist. v. Student (OAH 2017) Case Nos. 2016040336 and 2016090420, 117 LRP 5711)



Huntington Beach City SD (OAH 2017)

Practical Compliance Keys

- Threshold for suspecting that child has disability is relatively low
- Information from parents or teachers and/or medical documentation that student might have dyslexia should put districts on child find alert



Huntington Beach City SD (OAH 2017)

Practical Compliance Keys

- Key challenge facing districts using RTI is recognizing when child find is triggered
- What is “reasonable” time to wait before assessing will vary with circumstances



Westminster SD (OAH 2015)

Facts

- District conducted triennial assessment at end of Student's fourth grade year
- Met SLD eligibility criteria in area of written expression due to processing difficulties
- No discrepancy between ability and achievement in reading



Westminster SD (OAH 2015)

Facts (cont'd)

- Parent believed reading was an issue for Student and obtained IEE that concluded Student had dyslexia
- Parent obtained private tutor to provide “dyslexia therapy”
- IEP team determined Student did not need additional services to address reading



Westminster SD (OAH 2015)

Issues

- Did District's psychoeducational assessment meet all legal requirements?
- Did District's IEP deny Student FAPE by failing to address Student's dyslexia?



Westminster SD (OAH 2015)

Decision & Rationale

- ALJ ruled in favor of District on both issues
- Psychoeducational assessment met all legal requirements
- Parents' assessor was critical of failure to include dyslexia in Student's eligibility, but could not show why District's assessment was inappropriate



Westminster SD (OAH 2015)

Decision & Rationale (cont'd)

- District's IEP offered FAPE
- Student did not have reading impairment that required additional specialized instruction or books on tape
- Private assessor's belief that Student would struggle in future was not relevant

(Student v. Westminster School Dist. and Westminster School Dist. v. Student (OAH 2015) Case Nos. 2014110630 and 2014080827, 115 LRP 21366)



Westminster SD (OAH 2015)

Practical Compliance Keys



- Diagnosis of dyslexia does not provide automatic IDEA eligibility and should not drive specific instructional methodologies
- Parents do not have right to dictate specific areas that district must assess as part of its comprehensive evaluation



Westminster SD (OAH 2015)

Practical Compliance Keys



- Case is good illustration of “snapshot” rule
- So long as IEP is reasonably calculated to provide educational benefit at time of its development, it passes IDEA muster



Laguna Beach USD (OAH 2016)

Facts

- Parents funded private placement in Connecticut during third and fourth grades
- Rejected Connecticut district's proposed IEP and moved to California
- Placed Student at NPS that using Slingerland methodology to address Student's dyslexia



Laguna Beach USD (OAH 2016)

Facts (cont'd)

- Parents sought IEP from District
- District's interim IEP offered resource class for English and math, with gen ed placement (with aide) for other classes
- Parents objected because District did not use same methodology as NPS; also wanted more restrictive placement to address anxiety



Laguna Beach USD (OAH 2016)

Issue

- Did District's interim offer of services and placement appropriately address Student's dyslexia and reading difficulties?



Laguna Beach USD (OAH 2016)

Decision & Rationale

- ALJ ruled in favor of District
- District was not required to use Slingerland methodology in order to offer FAPE
- Special ed teacher testified that there were many effective reading programs that could address Student's dyslexia



Laguna Beach USD (OAH 2016)

Decision & Rationale (cont'd)

- District's placement was LRE
- Aides and resource specialist would provide necessary support and interventions
- Student needed exposure to gen ed peers and did not present behavior problems

(Student v. Laguna Beach Unified School Dist. (OAH 2016) Case No. 2016030723, 116 LRP 39101)



Laguna Beach USD (OAH 2016)

Practical Compliance Keys



- IEP teams have discretion to choose educational methodologies to address dyslexia (or any other educational need)
- But because reading methodologies are often major sources of contention, district should be able to explain why it selected a particular methodology



Laguna Beach USD (OAH 2016)

Practical Compliance Keys



- IEP teams should apply Rachel H. test when deciding on appropriateness of inclusive setting
- Analyze educational and noneducational benefits of general ed placement, as well as effect on teacher and other students



River Springs Charter Sch. (OAH 2016)

Facts

- Parents enrolled Student with SLD (reading and math) in Charter School for fourth grade
- Charter assessed Student in sixth grade
- Believed Student was making progress and reduced specialized instruction
- Parent provided extensive home tutoring to assist Student with reading



River Springs Charter Sch. (OAH 2016)

Facts (cont'd)

- Parents believed Student was not reading at grade level and removed her to NPS
- Obtained IEE indicating need for more specialized instruction
- Charter refused reimbursement and offered similar IEPs for following school year, which Parents rejected



River Springs Charter Sch. (OAH 2016)

Issue

- Did Student require more specialized academic instruction than the one hour per week offered by Charter's IEPs?



River Springs Charter Sch. (OAH 2016)

Decision & Rationale

- ALJ ruled in favor of Parents
- Student was falling behind her peers and required specialized instruction “many hours a day every day”
- Charter’s 60 minutes per week of SAI was insufficient to confer educational benefit



River Springs Charter Sch. (OAH 2016)

Decision & Rationale (cont'd)

- Charter provided numerous accommodations but no teaching methodology to address reading deficits and dyslexia
- Charter's IEP was procedurally inadequate – carried forward unmet goals and incorrectly indicated 100 percent gen ed placement

(Student v. River Springs Charter School and River Springs Charter School v. Student (OAH 2016) Case Nos. 2015110494 and 2015120807, 68 IDELR 260)



River Springs Charter Sch. (OAH 2016)

Practical Compliance Keys



- It is important to recognize when student might need additional services to obtain educational benefit
- Extensive home instruction or tutoring with only minimal progress can be “red flag” that student requires more specialized instruction



River Springs Charter Sch. (OAH 2016)

Practical Compliance Keys



- Case also illustrates importance of procedure
- Make sure not to repeat unmet goals from previous IEPs without addressing “why”
- Be consistent throughout the IEP document when describing placement offer and amount of time student will spend in gen ed classroom



Other Noteworthy Decisions

Berkeley USD (OAH 2014)

- Even if Student met DSM criteria for dyslexia, it would not necessarily mean SLD
- Test results, grade-level skills and enjoyment/ease of reading were not consistent with dyslexia

(Student v. Berkeley Unified School Dist. (OAH 2014) Case No. 2013120159, 114 LRP 17833)



Other Noteworthy Decisions

Lafayette USD (OAH 2010) and Los Angeles USD (OAH 2012)

- Failing to identify Student as “dyslexic” under SLD category did not matter because District offered appropriate programs/placements to address reading issues

(Student v. Lafayette Elementary School Dist. and Lafayette Elementary School Dist. v. Student (OAH 2010) Case Nos. 2009040640 and 2009081105, 110 LRP 37612; Student v. Los Angeles Unified School Dist. (OAH 2012) Case No. 2011100551, 112 LRP 27512)



Other Noteworthy Decisions

Dry Creek Joint ESD (OAH 2010)

- Two periods per day of one-to-one language arts instruction with teacher trained and experienced in addressing dyslexia – together with extensive list of accommodations and modifications – provided FAPE

(Student v. Dry Creek Joint Elementary School Dist. and Dry Creek Elementary School Dist. v. Student (OAH 2010) Case Nos. 2009060940 and 2009071109, 110 LRP 15980)



Take Aways . . .



- Cases illustrate key issues in identifying, assessing and providing appropriate services to students with dyslexia
- But it's also essential to develop collaborative relationship with parents
- Develop and foster culture that places priority on students and their needs!



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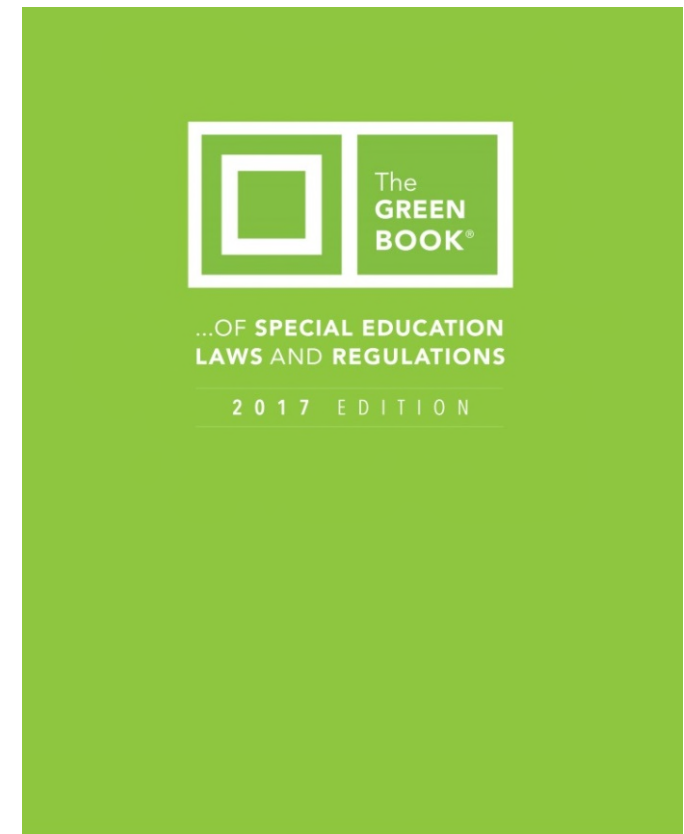


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