Staying on the “Write” Side of the Law: Dysgraphia and Other Hot Topics in Section 504

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Holly’s outgoing personality, enthusiasm, and thoroughness combine to make her a popular lecturer. She is a frequent guest speaker for school districts, regional education service centers, special education shared service arrangements, state organizations, and universities on a variety of topics related to school law, including special education, Section 504, education records, sexual harassment, student discipline, and search and seizure. Holly has published numerous articles for state and firm publications on special education and other issues.

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Staying on the “Write” Side of the Law:

Dysgraphia and Other Hot Topics in Section 504

Holly Boyd Wardell
July 31, 2014
www.edlaw.com

Will you test my child for dysgraphia?
Dysgraphia is not a disability...

We don’t evaluate for dysgraphia...

Since 1985, Texas has had a state law requiring the screening and treatment of dyslexia and related disorders.
TEXAS EDUCATION CODE

Sec. 38.003. Screening and Treatment for Dyslexia and Related Disorders.
(a) Students enrolling in public schools in this state shall be tested for dyslexia and related disorders at appropriate times in accordance with a program approved by the State Board of Education.

RELATED DISORDERS

(2) "Related disorders" includes disorders similar to or related to dyslexia, such as developmental auditory imperception, dysphasia, specific developmental dyslexia, developmental dysgraphia, and developmental spelling disability.

Such as...
Related Disorders

- Developmental auditory imperception
- Dysphasia
- Specific developmental dyslexia
- Developmental dysgraphia
- Developmental spelling disability

*Not defined in state law.

Related Disorders

- Not defined in state law
- Not in Dyslexia Handbook
- Not in DSM-V
- Common understandings
- See next slides

- Difficulty learning sounds, sound-symbol relationships and the meaning of words
- Difficulty learning both receptive and expressive oral language
- Difficulty learning to read despite normal intelligence
Dysgraphia is not addressed in the *Dyslexia Handbook*.

**What does one do when a parent requests testing for one of the related disorders?**

**What does one do when he/she suspects a student has a related disorder?**
May a parent ask for dys[graphia] testing without dyslexia testing?

The law does not prohibit such a request.

What does one do when a parent requests testing for one of the related disorders?

- Ask the parent to put the request in writing/email.
- Regardless, convey the request to the appropriate campus personnel/team: campus 504 coordinator, counselor, student assistance team, RtI team, etc.
**What does one do when a parent requests testing for one of the related disorders?**

- Clarify whether the parent is asking for special education testing. If so, request will be processed by special education.
- If no, then the campus prereferral team needs to decide whether an evaluation is needed.

**What does one do when a parent requests testing for one of the related disorders?**

The school should respond in writing to the parent’s request—either granting the request for the evaluation or denying it.

**May the school decline to test?**

- Yes, if the school does not suspect that the student has a disability.
- Students struggle for a variety of reasons.
- Students’ skills develop at different rates.
- Do not say, “We have to go through RtI first.”
What does the law require wrt these related disorders?


2. Section 504, 34 CFR 104.32: obligation to identify, locate, and evaluate students suspected of having a disability (i.e., child find).

Section 504 of the Rehabilitation Act of 1973

No otherwise qualified individual with a disability in the United States...shall, solely by reason of her...disability, be excluded from participation, in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance ...

29 USC 794(a)

Section 504

- Civil rights law
- Prohibit discrimination
- On the basis of disability
- Any program that receives federal funding

Effectively operates as a rider attached to every grant of federal funds.
Section 504 Legal Standards

Academic Setting → Free appropriate public education
Nonacademic Setting → Equal opportunity to tryout/participate

Child Find

Duty to evaluate: triggered when educators suspect a disability
Struggling – response to intervention

Don’t say, “We have to go through the RtI process, and that takes 6 months.”
RTI CANNOT BE USED TO DELAY OR DENY AN EVALUATION

RESPONSE TO INTERVENTION
Memo to State Directors of Special Education, 56 IDELR 50 (OSEP 2011).

Evaluations under 504 can be as simple as gathering existing data.

Section 504
Procedural Requirements

• Local district 504 procedures likely require consent to evaluate a student for 504 services.

• Parents must be provided a copy of the 504 Notice of Rights prior to an evaluation.
• Records-based assessment
• Writing samples
• RtI Data/Progress Monitoring
• Informal assessment instruments
• Formal assessment instruments (e.g., PAL II)*

*trained evaluator

• Legibility and letter formation (observation, writing samples)
• Rate (observation)
• Orthographic Processing (standardized instruments)
• Spelling (standardized instruments)

DYSGRAPHIA SYMPTOMS
• Inaccurate grammar and punctuation
• Ideas are disorganized
• Ideas lack clarity
• Mix of upper and lower case letters in one word
• Unfinished words
• Omission of letters and words
What if a parent brings in an outside report from a doctor or psychologist that indicates the student has a dx of dysgraphia?

- Convene a 504 meeting to review the assessment.*
- 504 Committee can make determination based on the outside report or request additional testing.

*ARD if in special education

Outside Reports

Any informal or formal instruments used? How dx derived?

Observation?

Input from school? How long?

Any writing samples? In what setting?

*Ask for consent to communicate with outside evaluator/doctor.

Who determines whether a student has dysgraphia?
504 Analysis: Does the student have a physical or mental impairment that substantially limits a major life activity?

- Mental Impairment – dysgraphia dx or asmt indicates impairment (not struggles learning/writing)
- Substantially Limits – not defined, individualized, restricted in comparison to most
- Major Life Activity – learning, reading, writing

EDUCATIONAL NEED IS A SPED STANDARD – NOT 504
We have determined that the student exhibits characteristics of dysgraphia. Should he have a 504 plan?

Does a school have to have a “dysgraphia program” like its “dyslexia program”?

State law: not explicitly required by Tex. Educ. Code
Fed law: services must be individualized

ACCOMMODATIONS

504 Plan
Individualized
Be specific/clarify
Is the accommodation required for the student to receive FAPE?
DYSGRAPHIA ACCOMODATIONS

• Give access to a computer to type written assignments (reduce fatigue, ease ability to correct errors)
• Provided printed copy of notes and study guides
• Use of scribe for note-taking during the day
• Teacher accepts work printed out or submitted electronically
• Technology Coordinator will give student some training and answer questions on computer word processing

DYSGRAPHIA ACCOMODATIONS CONT.

• For Social Studies and Science, brief answers will be accepted in lieu of complete sentences
• Not penalized for spelling in narrative work
• Allow for brief breaks during extended writing assignments
• Allow for extra time on writing assignments (for both composition and editing)
• Reduce written work when possible

Dysgraphia Cases
sped cases

- Failure to identify
- Outside diagnoses
- Private Reports
- Is the student being successful with 504 accommodations?

Houston Independent School District
Texas State Educational Agency
104-SE-0110
June 18, 2010

Dysgraphia

Similarly, Petitioner did not meet his burden of proof that the school district failed to meet his needs arising from his dysgraphia. Id. Instead, the evidence established that appropriate accommodations were in place to address those needs including extended time for assignments and the use of a lap top for written work. The school district supported Student in compensating for his dysgraphia and he was able to achieve academically. Rowley, supra.
504 PROTECTIONS FOR STUDENTS

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THE DYSLEXIA HANDBOOK

REVISED 2007, UPDATED 2010

Procedures Concerning Dyslexia and Related Disorders

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HARRELL POWELL & HEMI, P.C.
2014

THE DYSLEXIA HANDBOOK

REVISED 2015

Procedures Concerning Dyslexia and Related Disorders

THE DYSLEXIA HANDBOOK

REVISED 2016

Procedures Concerning Dyslexia and Related Disorders

• Reflect legislative changes
• College Tchr Prep Programs
• Continuing Ed
• Limiting Retesting for Already-Diagnosed Ss
• On-line tools for Ss
• PEIMS data
Yes, they need 504 plans, too.

Equal opportunity to participate
Equal opportunity to try-out
Reasonable accoms – extracurr.
Seemed to suggest separate teams for students with disabilities
Later clarified that separate teams are not required

BULLYING CLAIMS
AS A DENIAL OF FAPE
Estate of Montana Lance v. Lewisville ISD

- SPED student bullied (physically and via names) committed suicide at school
- Lost case under special relationship theory
- Sued under § 504 FAPE
- LISD satisfied its § 504 FAPE obligations by implementing a valid IEP under IDEA
- Sued claiming LISD was deliberately indifferent to the disability-based harassment

Estate of Montana Lance cont.

“We stress that our conclusion here—that recipients may be liable for their deliberate indifference to known acts of peer sexual harassment—does not mean that recipients can avoid liability only by purging their schools of actionable peer harassment or that administrators must engage in particular disciplinary action.” “Section 504 does not require that schools eradicate each instance of bullying from their hallways to avoid liability.”

School districts are afforded flexibility in responding to unacceptable behavior and may tailor their responses to the circumstances.
Board policy FFH(LOCAL)
Discrimination on basis of disability

RESPONDING TO BULLYING

**RESPONDING TO BULLYING**

Prohibited harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student’s race, color, religion, gender, national origin, disability, or any other basis prohibited by law that is so severe, persistent, or pervasive that the conduct:

1. Affects a student’s ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;

2. Has the purpose or effect of substantially or unreasonably interfering with the student’s academic performance; or

3. Otherwise adversely affects the student’s educational opportunities.

Prohibited harassment includes dating violence as defined by this policy.

**RESOURCES**

- Examples of prohibited harassment: (list examples)
- Additional resources: (list additional resources)

**RESPONSES**

- Complaints may be filed with the District:

**WRITTEN REPORT**

Any District employee who receives notice that a student has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed above and take any other steps required by this policy.

Upon receipt of a report, the District official shall determine whether the allegations, if proven, would constitute prohibited conduct as defined by this policy. If so, the District official shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending:

**LEGAL ADVICE**

(Include any legal advice or guidance here)

**DISPUTE RESOLUTION**

(Include any dispute resolution procedures here)

**SIGNED DATED TO SUB**

(Include any signatures and dates here)
Individual Liability

School District Liability

Intentional Discrimination

Disparate Treatment v Disparate Impact

Doe v. Withers

INDIVIDUAL LIABILITY FOR INTENTIONALLY VIOLATING STUDENT'S IEP
504 TROUBLE SPOTS

Overlooking an Impairment
Student is 504 for dyslexia. Has behavior plan and a number of accommodations. Parent comes to meeting and, in passing, mentions that his new asthma medicine is interfering with ADHD meds.

Creating Disability
Parent consents to 504 evaluation for “behavior concerns” and mentions ADHD. Mom shows up at meeting with no diagnosis.

Teachers haven’t noticed any “extraordinary” behaviors
Is an average kid—average grades, average behavior problems
Altered Hypothetical: Creating Disability

- Parent comes to Section 504 meeting citing “behavior concerns” and mentioning ADHD. Parent consents to 504 evaluation but brings no diagnosis.
- Teachers see significant signs of ADHD and believe it is impacting his learning.

Making Promises You Can’t Keep

7th grader ADHD, dyslexia, and dysgraphia receives 504 services. Parent requests daily assignment and behavior tracking sheets and a daily email home from each teacher. Teachers agree, although behaviors are known and consistent, and are being accommodated.

Dangerous Discussions

Parent comes to 504 meeting and starts talking about SPED. Committee glosses over SPED issues and focuses on 504 plan only.
Not Seeking Dr. Information

Parent comes to meeting with recommendations from psychologist regarding dysgraphia. Doctor recommendations aren’t consistent with what teachers see in class. The committee refuses to make changes to the accommodation plan.

Not Thinking Critically About Accommodations

• Child has dysgraphia and needs extended time in ELA because difficulty processing/writing. No similar problem in math. 504 committee provides extended time in all classes.

• Student has seizure disorder. Administrator does not think student should receive accommodations on written work.

Child Find

Ben is a 2nd grade student. Ben’s mother asks his teacher to fill out forms for Ben’s physician [counselor, outside evaluator].

What should the teacher do?
Child Find

Ben is a 2nd grade student. The school nurse has been administering Focalin to him at school. Does the school need to do anything with this information?

Victoria ISD, Dkt. 286-SE-0809

In the Request for Hearing, Petitioner alleged that VISD denied the student a Free Appropriate Public Education (FAPE) in the following particulars:

1. Respondent denied the student’s parents a meaningful opportunity to participate in the decision making process by failing to work with them.
2. Respondent failed to properly supervise and educate the student.
3. Respondent improperly suspended the student and improperly ***, denying the student access to a FAPE.
4. Respondent failed to maintain the student in the classrooms.
5. Respondent failed to implement appropriate behavior interventions.
6. Respondent failed to provide a FAPE in that the student did not meet IEP goals and objectives, regressed significantly and failed to meet standards on the statewide assessment.
7. Respondent improperly denied the parent’s request for a private placement for the student.

Prior to filing a Request for Due Process Hearing, Petitioner unilaterally placed the student in a private, residential placement, where the parent alleged the student made progress.
Victoria ISD, Dkt. 286-SE-0809

On May 3, 2009, the student’s teacher wrote an email to the parent which states as follows:

"Please promise that if [student] DOESN'T get into a home somewhere that YOU will still insist that student goes to the *** campus. [Student] is very helpful to [side] and myself... Things have not improved at all. Student picks at those student can intimdate and I will have still have [sic] my other students next year and the personalities are clocking big time. I am so sorry I have to tell you but I can Not deal with[student] much longer. I am trying to hang in until the end of May but I may have to take a medical leave if I don’t get some relief. *** will not help you, do not be fooled, she is panny footing around. *** cannot help you, the District WILL NOT help you

Financially, you are asking your to pay by crediting *** or *** to a sweatband but they have NO intention of paying you at all. They are still trying to justify you. YET I know that I can beat my head on it. They are NOT going to fetch any money they have already put a hold on any new special of student being billed... they have gone up for these two new high schools if you don’t believe it ask some school board members... which by the way are also in with them off!

"I haven’t asked you but ONLY [student] is *** or three times and constantly take from book but ***. Student ***. Student told me the student would *** student said it to me in class. I should have written student up but they won’t do anything about it it’s the sad... I am sick and tired of this every day (student) is on my last nerve. Student *** and they get angry. If I had more at all, I’d hit student *** and even before reporting student ***. [Student] is here some at least a step. One day someone is going to kick student’s wise off the student’s *** and student’s ***. A regular will tell me student is, if not sensible if student acts that way with them.

Please, please send student to the *** campus next year if you can’t find a home for student. Maybe they can help student. I can help student behaviorally [sic] [Student] needs to be a behavior for me with a strong personality this teacher. [Student] is way in beyond me. I am sorry." [ED]

The student notified that the was extremely frustrated when she wrote the email and the email is in reference to events at the hosting. However, is light of the testimony as a whole, I find that the P.L. email in a reasonable assessment of the teacher’s improvement of the student’s behavioral problems during the spring of 2009 and the District’s failure to respond adequately to them. I also find that the email evidence supports a finding

Recent OCR Decisions

• Tolland (CT) Sch. Dist., 46 IDELR 171 (2006) – Don’t forget the gluten-free pizza party.

• Bethlehem (NY) Central Sch. Dist., 52 IDELR 169 (2009) – Can’t ban student with peanut allergy from culinary class.
OCR Decisions


“Life-threatening” peanut allergy

Service Animals

Change: Title II of ADA specifically includes services animals, so school districts are required to abide by the rules and establish regulations.

Service Animals

• No specific level of training required
• District not responsible for the care of supervision of a service animal
• Cannot exclude animal from recess, lunch, field trips, or bus ride, unless fundamentally alters program
Service Animals

- Animal v. Other Kid's Allergy (have to accommodate both, somehow)
- No size/weight/breed limitations
- Determinations made on case-by-case basis