

THE DYSLEXIA HANDBOOK

REVISED 2007, UPDATED 2010

Procedures Concerning
Dyslexia and Related
Disorders

TEXAS EDUCATION AGENCY • AUSTIN, TEXAS

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Foreword

Reading is the fundamental skill upon which all formal education depends. Research now shows that a child who doesn't learn the reading basics early is unlikely to learn them at all. Any child who doesn't learn to read early and well will not easily master other skills and knowledge and is unlikely to ever flourish in school or life.

(Moats, 1999)

Texas has a long history of supporting the fundamental skill of reading. This history includes a focus on early identification and intervention for children who experience reading difficulties. In support of new dyslexia legislation passed by the Texas Legislature, the State Board of Education (SBOE) first approved the Texas Education Agency handbook *Dyslexia and Related Disorders: An Overview of State and Federal Requirements* in January 1986.

The SBOE approved new guidelines called the *Revised Procedures Concerning Dyslexia and Related Disorders* in 1992, which were revised in 1998. The handbook was updated again in 2001 and was called *The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders*. The SBOE continued to stress the importance of using research-based strategies to prevent reading difficulties and provide appropriate instruction to struggling readers in November 2006 when *The Dyslexia Handbook Revised 2007: Procedures Concerning Dyslexia and Related Disorders* was approved. In the summer of 2010, the need arose for an update of the handbook to include new legislation and additional research. This handbook replaces all previous handbooks and guidelines.

The Dyslexia Handbook – Revised 2007, Updated 2010: Procedures Concerning Dyslexia and Related Disorders (Dyslexia Handbook) contains the SBOE-approved procedures concerning dyslexia and related disorders. The Texas Education Agency (TEA) handbook provides guidelines for school districts to follow as they identify and provide services for students with dyslexia. Additionally, the handbook provides school districts and parents/guardians with information regarding the state's dyslexia statutes and their relation to these federal laws: the Rehabilitation Act of 1973, Section 504 as amended in 2008 (§504), the Americans with Disabilities Amendments Act and the Individuals with Disabilities Education Act of 2004 (IDEA 2004).

In addition to the Dyslexia Handbook, resources include a State Dyslexia Network, a State Dyslexia Consultant, and a hotline (1-800-232-3030) at regional Education Service Center (ESC) 10. There are also designated consultants at each ESC available to assist district stakeholders with implementing state law and SBOE rules and procedures regarding dyslexia. The handbook contains contact information for the State Dyslexia Consultant and for the designated consultants at each regional ESC.

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Preface

Students who continue to struggle to read, despite appropriate or intensified instruction, are provided organized systems of reading support in the state of Texas. Some students struggle during early reading acquisition. Others do not struggle until the later grades, when they face more complex language demands (e.g., reading textbooks). Some may be non-English speakers who struggle to read in their native languages and/or English language learners (ELLs) who struggle to read despite having appropriately developed oral English language. For many struggling readers, including students in all grades, non-English speakers, and ELLs, the difficulty with reading may be a result of dyslexia.

The purpose of this handbook of procedures related to dyslexia is to provide guidelines for school districts, charter schools, campuses, teachers, and parents or guardians in the identification and instruction of students with dyslexia. This handbook will be helpful to districts and charter schools as they develop their written procedures regarding students with dyslexia. While state and federal laws provide a legal framework, districts and charter schools should also address the individual needs of the students they serve.

In Texas the identification and instruction of students with dyslexia and related disorders are mandated and structured by two statutes and one rule. Texas Education Code (TEC) §38.003 (1) defines dyslexia and related disorders, (2) mandates testing students for dyslexia and providing instruction for students with dyslexia, and (3) gives the SBOE authority to adopt rules and standards for administering testing and instruction. Chapter 19 of the Texas Administrative Code (TAC) §74.28 outlines the responsibilities of districts and charter schools in the delivery of services to students with dyslexia. Finally, The Rehabilitation Act of 1973 Section 504 as amended in 2008 (§504) establishes assessment and evaluation standards and procedures for students.

In addition to the statutes and rules related to dyslexia, the SBOE approved (1992) and revised (1998) a set of guidelines, *The Revised Procedures Concerning Dyslexia and Related Disorders*. The present handbook, *The Dyslexia Handbook – Revised 2007, Updated 2010: Procedures Concerning Dyslexia and Related Disorders* (Dyslexia Handbook), replaces all previous handbooks and guidelines. The handbook introduces legal changes with revisions to TAC §74.28 (c), (f) and (g). Additions to the handbook include the following: Occupations Code Chapter 403, passed during the 81st Texas Legislature related to Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists and TEA's 2008-2009 Response to Intervention Guidance document.

The following chapters are included in this handbook:

- I. Definitions and Characteristics of Dyslexia
- II. Procedures for Assessing Students for Dyslexia
- III. Referral to Special Education
- IV. Instruction for Students with Dyslexia

The Dyslexia Handbook has 13 appendices:

- A. A flow chart that provides a pathway to the identification and provision of instruction for students with dyslexia
- B. 2008-2009 Response to Intervention Guidance
- C. An overview of laws and rules for dyslexia
- D. State statutes related to dyslexia in Texas
- E. Contributors in the field of dyslexia
- F. Accommodation information
- G. Questions and answers
- H. Contacts for further information and organizations
- I. Associated terms
- J. Publications related to dyslexia
- K. Office of Civil Rights information on students with disabilities preparing for postsecondary education
- L. Additional information for diagnosticians and professionals who assess for dyslexia
- M. Section 504 Code of Federal Regulations

I. Definitions and Characteristics of Dyslexia

The student who struggles with reading and spelling often puzzles teachers and parents. The student displays average ability to learn in the absence of print and receives the same classroom instruction that benefits most children; however, the student continues to struggle with some or all of the many facets of reading and spelling. This student may be a student with dyslexia.

The Texas Education Code (TEC) §38.003 defines dyslexia in the following way:

(1) Dyslexia means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.

(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.

<http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.38.htm#38.003>

The current definition from the International Dyslexia Association states the following:

Dyslexia is a specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

(Adopted by the International Dyslexia Association Board of Directors, Nov. 12, 2002)

The primary difficulties of a student identified as having dyslexia occur in phonemic awareness and manipulation, single-word decoding, reading fluency, and spelling. Secondary consequences of dyslexia may include difficulties in reading comprehension and/or written expression. These difficulties are unexpected for the student's age, educational level, or cognitive abilities. Additionally, there is often a family history of similar difficulties.

The following are the primary reading/spelling characteristics of dyslexia:

- Difficulty reading real words in isolation
- Difficulty accurately decoding nonsense words
- Slow, inaccurate, or labored oral reading (lack of reading fluency)
- Difficulty with learning to spell

The reading/spelling characteristics are the result of difficulty with the following:

- The development of phonological awareness, including segmenting, blending, and manipulating sounds in words
- Learning the names of letters and their associated sounds
- Phonological memory (holding information about sounds and words in memory)
- Rapid naming of familiar objects, colors, or letters of the alphabet

Secondary consequences of dyslexia may include the following:

- Variable difficulty with aspects of reading comprehension
- Variable difficulty with aspects of written composition
- A limited amount of time spent in reading activities

Common Evidence of Dyslexia

The following may be associated with dyslexia if they are unexpected for the individual's age, educational level, or cognitive abilities.

Pre-school

- May talk later than most children
- May have difficulty with rhyming
- May have difficulty pronouncing words (i.e., busgetti for spaghetti, mawn lower for lawn mower)
- May have poor auditory memory for nursery rhymes and chants
- May be slow to add new vocabulary words
- May be unable to recall the right word
- May have trouble learning numbers, days of the week, colors, shapes, and how to spell and write his or her name

Kindergarten through Third Grade

- Fails to understand that words come apart; for example, that snowman can be pulled apart into snow and man and, later on, that the word man can be broken down still further and sounded out as /m/ /ă/ /n/
- Has difficulty learning the letter names and their corresponding sounds
- Has difficulty decoding single words (reading single words in isolation)—lacks a strategy
- Has difficulty spelling phonetically
- Reads dysfluently (choppy and labored)
- Relies on context to recognize a word

Fourth Grade through High School

- Has a history of reading and spelling difficulties
- Avoids reading aloud
- Reads most materials slowly; oral reading is labored, not fluent
- Avoids reading for pleasure
- May have an inadequate vocabulary
- Has difficulty spelling; may resort to using less complicated words in writing that are easier to spell

Sources for Common Evidence of Dyslexia:

Common Signs, (n.d.). Retrieved July 10, 2006, from The International Dyslexia Association Web site.

Shaywitz, S. (2003). *Overcoming dyslexia: A new and complete science-based program for reading problems at any level*. New York: Alfred A Knopf.

II. Procedures for Assessing Students for Dyslexia

Research shows that children who read well in the early grades are far more successful in later years; and those who fall behind often stay behind when it comes to academic achievement.

(Snow, Burns, and Griffin, 1998)

Procedures Required By State and Federal Law Prior To Formal Assessment

The Student Success Initiative (SSI) is a state-level effort to ensure that all Texas students receive the instruction and support needed to be academically successful in reading and mathematics. For students that demonstrate difficulties during early reading instruction (kindergarten, grades 1 and 2), the most common form of instructional help is available through the SSI as mandated by TEC §28.006. This education code requires districts and charter schools to administer early reading instruments to all students in kindergarten and grades 1 and 2 to assess their reading development and comprehension. If, on the basis of the reading instrument results, students are determined to be at risk for dyslexia or other reading difficulties, the district or charter school must notify the students' parents or guardians. According to TEC §28.006(g), the district or charter school must also implement an accelerated (intensive) reading program that appropriately addresses the students' reading difficulties and enables them to "catch up" with their typically performing peers.

As evident through the components of SSI and other state-level initiatives that support reading, Texas is committed to data-driven instruction. Early reading assessments are required by state law and are evidence-proven to be best practice. With the use of early reading assessment instruments, teachers can quickly assess a child's reading abilities and provide prescriptive instruction by isolating the skills that need strengthening.

In the book *Straight Talk About Reading* (1999), Hall and Moats state the following:

- "Early identification is critical because the earlier the intervention, the easier it is to remediate" (p. 279).
- "Inexpensive screening measures identify at risk children in mid-kindergarten with 85 percent accuracy" (p. 279).
- If at risk students are not provided intervention by age eight, they have a 74% chance of continuing their reading difficulties into high school.

With this in mind, it is important that school districts not delay identification and intervention for students suspected of having dyslexia until second or third grade. The International Dyslexia Association (IDA) indicates that the unexpected difficulties that students with dyslexia demonstrate in the area of reading are seen despite the provision of effective (scientifically based) classroom instruction. Therefore, the use of a Response to Intervention (RtI) or a tiered process is important in the identification of dyslexia. RtI or the use of a tiered process should not delay the inclusion of a student in dyslexia intervention once dyslexia is identified.

Response to Intervention

The interventions provided to students who are reported to be at risk for dyslexia or other reading difficulties should align with the requirements of NCLB legislation that requires that districts and charter schools implement reading programs using scientifically based reading research (SBRR). Additionally, the most recent reauthorization of the federal Individuals with Disabilities Education Act (IDEA 2004), passed in 2004, is consistent with NCLB in emphasizing quality of instruction and documentation of student progress. A process based on the student's response to scientific, research-based intervention is one of the criteria included in IDEA 2004 that states may use in determining whether a student has a specific learning disability, including dyslexia. Districts and charter schools are strongly recommended to implement an RtI process for students who are at risk for dyslexia or other reading difficulties, as they would with any student exhibiting learning difficulties. (See the TEA 2008-2009 Response to Intervention Guidance Document in Appendix B.) Ongoing assessment and progress monitoring of reading achievement gains are required for students at risk for dyslexia or other reading difficulties. Additional information pertaining to initiatives that support the reading achievement of Texas students is available on TEA's website: www.tea.state.tx.us

Regardless of the process in place, the parents or guardians always have the right to request a referral for assessment at any time.

The flow chart provided in Appendix A serves as an example of how a district's or charter school's dyslexia program can be integrated into the RtI process. It is important to note that a tiered intervention should last as long as progress monitoring indicates appropriate. Generally, interventions are not expected to last an entire year.

Procedures for Assessment of Dyslexia

Districts and charter schools must establish written procedures for recommending and assessing students for dyslexia within general education. While districts and charter schools must follow federal and state guidelines, they must also develop procedures that address the needs of their student populations.

The first step in the assessment process, Data Gathering, should be an integral part of the district's or charter school's process for any student exhibiting learning difficulties.

1. Data Gathering

At any time (from kindergarten through grade 12) that a student continues to struggle with one or more components of reading, districts and charter schools must collect additional information about the student. Districts and charter schools should use this information to evaluate the student's academic progress and determine what actions are needed to ensure the student's improved academic performance. Some of the information that the district or charter school collects is in the student's cumulative folder; other information is available from teachers and parents or guardians. To ensure that underachievement in a student suspected of having dyslexia (a specific learning disability) is not due to lack of appropriate instruction in reading, other information should be considered. This information should include data that demonstrates the student was provided appropriate instruction and data-based documentation of repeated assessments of achievement at reasonable intervals (progress monitoring),

reflecting formal assessment of student progress during instruction. Additional information to be considered includes the results from some or all of the following:

- Vision screening
- Hearing screening
- Teacher reports of classroom concerns
- Basal reading series assessment
- Accommodations provided by classroom teachers
- Academic progress reports (report cards)
- Gifted/Talented assessments
- Samples of school work
- Parent conferences
- Testing for limited English proficiency (all years available)
- Speech and language screening through a referral process (English and native language, if possible)
- The K–2 reading instrument as required in TEC §28.006 (English and native language, if possible)
- Universal screening for all grade levels available (English and native language, if possible)
- State student assessment program as described in TEC §39.022

One of the actions that the district or charter school has available is to recommend that the student be assessed for dyslexia. The district or charter school recommends assessment for dyslexia if the student demonstrates the following:

- Poor performance in one or more areas of reading and/or the related area of spelling that is unexpected for the student's age/grade
- Characteristics of dyslexia

The next step in the assessment process is formal assessment. This is not a screening; rather, it is an individualized evaluation used to gather assessment data that will be included, along with other data available, to determine whether the student exhibits dyslexia.

2. Formal Assessment

Students enrolling in public schools in Texas shall be assessed for dyslexia and related disorders at appropriate times (TEC §38.003 (a)). The appropriate time depends upon multiple factors including the student's reading performance; reading difficulties; poor response to supplemental, scientifically based reading instruction; teachers' input; and input from the parents or guardians. Additionally, the appropriate time for assessing is **early** in a student's school career (19 TAC §74.28), the earlier the better. While earlier is better, students should be recommended for assessment for dyslexia even if the reading difficulties appear later in a student's school career.

When formal assessment is recommended, the district or charter school completes the evaluation process as outlined in §504 using the following procedures:

- Notify parents or guardians of proposal to assess student for dyslexia (§504)
- Inform parents or guardians of their rights under §504
- Obtain permission from the parent or guardian to assess the student for dyslexia
- Assess student, being sure that individuals/professionals who administer assessments have training in the evaluation of students for dyslexia and related disorders (19 TAC §74.28)

Note: If the student is being assessed as part of a special education evaluation or is already served in special education and a dyslexia evaluation is being requested, IDEA 2004 due process procedures must be followed.

The notices and consent must be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless it is clearly not feasible to do so.

In compliance with §504, tests, assessments, and other evaluation materials must have the following characteristics:

- Be validated for the specific purpose for which the tests, assessments, and other evaluation materials are used
- Include material tailored to assess specific areas of educational need and not merely materials that are designed to provide a single general intelligence quotient
- Be selected and administered so as to ensure that, when a test is given to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level, or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills
- Be selected and administered in a manner that is not racially or culturally discriminatory
- Include multiple measures of a student's reading abilities such as informal assessment information (e.g., anecdotal records, district universal screenings, progress monitoring data, criterion referenced assessments, results of informal reading inventories, classroom observations)
- Be administered by trained personnel and in conformance with the instructions provided by the producer of the evaluation materials

Domains to Assess

The district or charter school administers measures that are related to the student's educational needs. Depending upon the student's age and stage of reading development, the following are the areas related to reading that should be assessed:

Academic Skills

- Letter knowledge (name and associated sound)
- Reading real and nonsense words in isolation (decoding)

- Reading fluency (both rate and accuracy should be measured)
- Reading comprehension
- Written spelling

Cognitive processes that underlie the reading difficulties

- **Phonological/phonemic awareness** (Difficulties in phonological and phonemic awareness are typically seen in students with dyslexia and impact a student’s ability to learn letters and the sounds associated with letters and letter combinations, learn the alphabetic principle, use the sounds of the letters and letter combinations to decode words and to accurately spell.)
- **Rapid naming** (Difficulties in rapid naming may or may not be weak, but if deficient, will impact a student’s ability to automatically name letters and read words and to read connected text at an appropriate rate.)

Based on the student’s academic difficulties and characteristics, additional areas that may be assessed include the following:

- Vocabulary
- Listening comprehension
- Oral expression
- Written expression
- Handwriting
- Orthographic processing
- Mathematical reasoning
- Intelligence

3. English Language Learners

This refers to students served in bilingual and ESL programs as well as students designated limited English proficient (LEP) whose parents have denied services.

Much diversity exists among English language learners (ELLs). The identification and service delivery process for dyslexia must be in step with the student’s linguistic environment and educational background. Involvement of the Language Proficiency Assessment Committee (LPAC) is recommended.

Additional Data Gathering (in addition to the information previously listed under “Data Gathering”)

Language Proficiency Assessment Committee (LPAC) documentation (TEC §§89.1220 (g)(h)(i)) that includes the following:

- Home Language Survey
- Assessment related to identification for limited English proficiency (oral language proficiency tests and norm-referenced tests)
- TAKS results when available

- Texas English Language Proficiency System (TELPAS) information (Reading Proficiency Test in English [RPTE] and Texas Observation Protocol [TOP])
- Type of language programming provided and language of instruction
- Linguistic environment and second-language acquisition development
- Previous schooling in and outside of the United States

Additional Assessment (in addition to the information listed under “Domains to Assess”)

- Comprehensive oral language proficiency testing should be completed in English and the student’s native language whenever possible.
- If the student has received academic instruction in his/her native language, as well as English, then the “Domains to Assess” need to be completed in both languages to the appropriate extent.

Additionally, personnel involved in the evaluation process of ELLs for dyslexia need to be trained in bilingual assessment and interpretation procedures.

Interpretation

To appropriately understand test results, the examiner(s)/committee of knowledgeable persons must interpret test results in light of the student’s language development (in both English and the student’s native language), educational history, linguistic background, socioeconomic issues, and any other pertinent factors that affect learning.

4. Identification of Students with Dyslexia

The identification of dyslexia is made by a §504 committee. The §504 committee first determines whether the student has dyslexia. In order to make an informed determination, the committee must be knowledgeable about the following:

- The student being assessed
- The reading process
- Dyslexia and related disorders
- Dyslexia instruction
- District or charter school, state, and federal guidelines for assessment
- The assessments used
- The meaning of the collected data

The §504 committee determines the identification of dyslexia after reviewing all accumulated data from Step 1 (Data Gathering) and Step 2 (Formal Assessment) including the following information:

- The observations of the teacher, district or charter school staff, and/or parent/guardian
- Data gathered from the classroom (including student work and the results of classroom measures) and information found in the student’s cumulative folder (including the developmental and academic history of the student)
- Data-based documentation of student progress during instruction/intervention

- The results of administered assessments
- Language Assessment Proficiency Committee (LPAC) documentation, when applicable
- All other accumulated data regarding the development of the student’s learning and his/her educational needs

In order to make an appropriate identification of dyslexia, the §504 committee will need to make decisions in the following three areas:

- A. The pattern of weaknesses in a student with dyslexia will reflect one or more difficulties with low performance for the student’s age and educational level in the following academic skills:
 - Reading real words in isolation
 - Decoding nonsense words
 - Reading fluency (both rate and accuracy)
 - Written spelling (an isolated difficulty in spelling would not be sufficient to identify dyslexia)
- B. Based on the data, if the committee determines weaknesses are indicated in the listed academic skills, then the committee will look next at the underlying cognitive processes for the difficulties seen in the student’s word reading and written spelling. These academic difficulties in reading and written spelling will typically be the result of a deficit in phonological or phonemic awareness.

The student may also demonstrate difficulties in other areas of cognitive processing, including one or more of the following:

- Rapid naming
- Orthographic processing

If the student exhibits reading and written spelling difficulties and currently has appropriate phonological/phonemic processing, it is important to examine the student’s history to determine if there is evidence of previous difficulty with phonological/phonemic awareness.

NOTE: Because previous effective instruction in phonological/phonemic awareness may remediate phonological awareness skills in isolation, average phonological awareness scores alone do not rule out dyslexia. Ongoing phonological processing deficits can be exhibited in word reading and/or written spelling.

- C. If the committee determines the student exhibits weaknesses in reading and written spelling that are the result of a deficit in phonological/phonemic awareness, the committee will then examine the student’s data to determine whether these difficulties are unexpected for the student in relation to the student’s other cognitive abilities (the ability to learn in the absence of print) and **unexpected** in relation to the provision of effective classroom instruction.

Many students with dyslexia will have difficulty with the secondary characteristics of dyslexia, including **reading comprehension** and **written composition**.

Based on the above information and guidelines, the §504 committee first determines whether the student has dyslexia. If the student has dyslexia, the committee also determines whether the student has a disability under §504. Whether a student is eligible for §504 accommodations is a separate determination from the determination that the student has dyslexia. A student is considered to have a disability under §504 if the condition substantially limits the student's learning, including the specific activity of reading. Additionally, the §504 committee, in determining whether a student has a disability that substantially limits the student in a major life activity, must **not** consider the ameliorating effects of any mitigating measures that student is using. If the committee does not identify dyslexia, but the student has another condition or disability that substantially limits the student's learning, eligibility for §504 services related to the student's other condition or disability should be considered.

Students with additional factors that complicate their dyslexia may require additional support or referral to special education. If a student is already qualified as a student with a disability under special education, the Admission, Review, and Dismissal (ARD) committee should determine the least restrictive environment for delivering the student's dyslexia intervention.

For additional information for diagnosticians and professionals who assess for dyslexia, see Appendix M.

III. Referral to Special Education

At any time during the assessment for dyslexia, identification process, or instruction related to dyslexia, students may be referred for evaluation for special education. At times, students will display additional factors/areas complicating their dyslexia and will require more support than what is available through the general education dyslexia program. At other times, students with severe dyslexia or related disorders will be unable to make adequate academic progress within any of the programs described in the procedures related to dyslexia. In such cases, a referral to special education for evaluation and possible identification as a child with a disability within the meaning of IDEA 2004 (20 U.S.C. section 1400 et seq.) should be made as needed.

If the student with dyslexia is found eligible for special education in the area of reading, and the ARD committee determines the student's instructional needs for reading are most appropriately met in a special education placement, the student's Individualized Education Program (IEP) must include appropriate reading instruction. Appropriate reading instruction includes the descriptors listed in Chapter IV, "Instruction for Students with Dyslexia."

If a student with dyslexia is referred for special education, districts and charter schools follow the requirements of IDEA 2004. In IDEA 2004, §1401 (30), dyslexia is considered one of a variety of etiological foundations for "specific learning disability." Section 34 CFR 300.8(c)(10) states the following:

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.

<http://ritter.tea.state.tx.us/special.ed/rules/pdf/idea06fr.pdf>

The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

Although IDEA 2004 indicates that dyslexia is an example of a learning disability, the evaluation requirements for eligibility in §34 CFR 300.309(a)(1) specifically designate the following areas for a learning disability in reading: basic reading skill, reading fluency skills, and/or reading comprehension.

IV. Instruction for Students with Dyslexia

Once it has been determined that a student has dyslexia, the school district or charter school shall provide an appropriate instructional program for the student as required in TEC §38.003:

In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.

<http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.38.htm#38.003>

The following procedures must be followed:

- Instructional decisions for a student with dyslexia are made by a team that is knowledgeable about the student, the meaning of the evaluation information, and instructional components and approaches for students with dyslexia.
- School districts and charter schools shall purchase or develop a reading program for students with dyslexia and related disorders that is aligned with the descriptors found in this handbook. The descriptors include the components of phonemic awareness, graphophonemic knowledge, language structure, linguistic patterns, and processes. Instructional approaches include explicit, individualized, and multi-sensory instruction (19 TAC §74.28). The components of instruction and instructional approaches are described in the next section of this handbook.
- Each school must provide each identified student access at his/her campus to an instructional program that meets the requirements in 19 TAC §74.28(c) and to the services of a teacher trained in dyslexia and related disorders. The school district may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus (19 TAC §74.28).
- Parents/guardians of students eligible under §504 must be informed of all services and options available to the student under that federal statute.
- Teachers who provide the appropriate instruction for students with dyslexia must be trained in instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components specified in the next section of this handbook (19 TAC §74.28).
- Teachers who provide the appropriate instruction for students with dyslexia must be trained in the professional development activities specified by each district, charter school, and/or campus planning and decision making committee which shall include the instructional strategies indicated above (19 TAC §74.28).

Districts and charter schools shall provide a parent education program for the parents/guardians of students with dyslexia and related disorders. The program should include the following:

- Characteristics of dyslexia and related disorders
- Information on assessment and diagnosis of dyslexia
- Information on effective strategies for teaching students with dyslexia

- Awareness of information on classroom modifications and especially of modifications allowed on standardized testing (19 TAC §74.28)

Components of Instruction

The instructional program should be offered in a small group arrangement (e.g., 1:3 – 1:6) and include reading, writing, and spelling as appropriate. The major instructional strategies should utilize individualized, intensive, and multisensory methods as appropriate.

Components of instruction, as appropriate for the reading needs of the student, include the following:

- Phonemic awareness instruction that enables students to detect, segment, blend, and manipulate sounds in spoken language
- Graphophonemic knowledge (phonics) instruction that takes advantage of the letter-sound plan in which words that carry meaning are made of sounds, and sounds are written with letters in the right order (Students with this understanding can blend sounds associated with letters into words and can separate words into component sounds for spelling and writing.)
- Language structure instruction that encompasses morphology (the study of meaningful units of language such as prefixes, suffixes, and roots), semantics (ways that language conveys meaning), syntax (sentence structure), and pragmatics (how to use language in a particular context)
- Linguistic instruction directed toward proficiency and fluency with the patterns of language so that words and sentences are the carriers of meaning
- Strategy-oriented instruction in the strategies students use for decoding, encoding, word recognition, fluency, and comprehension that students need to become independent readers

Instructional approaches, as appropriate to meet the instructional needs of the student, include the following:

- Explicit, direct instruction that is systematic (structured), sequential, and cumulative (Instruction is organized and presented in a way that follows a logical, sequential plan, fits the nature of language [alphabetic principle] with no assumption of prior skills or language knowledge, and maximizes student engagement. This instruction proceeds at a rate commensurate with students' needs, ability levels, and demonstration of progress.)
- Individualized instruction that meets the specific learning needs of each individual student in a small group setting
- A reading curriculum that matches each student's individual ability level and contains all of the Components of Instruction mandated in 19 TAC §74.28
- Intensive, highly concentrated instruction that maximizes student engagement, uses specialized methods and materials, produces results, and contains all the Components of Instruction mandated in 19 TAC §74.28 (e.g., homogeneous small-group instruction, 50 minutes per day in individual or small-group instruction in addition to 90 minutes of core instruction [time amounts are examples], weekly progress monitoring to ensure adequate progress and learning, appropriate setting outside the class designated by the school – see Appendix B: *2008-2009 Response to Intervention Guidance Document*)

- Meaning-based instruction that is directed toward purposeful reading and writing, with an emphasis on comprehension and composition
- Multisensory instruction that incorporates the simultaneous use of two or more sensory pathways (auditory, visual, kinesthetic, tactile) during teacher presentations and student practice

Teachers of students with dyslexia shall be prepared to utilize these techniques and strategies. They may also serve as trainers and consultants in the area of dyslexia and related disorders to regular, remedial, and special education teachers.

The following are some best practices related to the instruction provided to students with dyslexia and the training recommended for the teachers of these students.

Components of Instruction – Additional information

Source: August, D., and Shanahan, T., (Eds.) (2006). Executive summary, *Developing literacy in second-language learners: Report of the National Literacy Panel on language-minority children and youth*. Mahwah: Lawrence Erlbaum Associates.

Major findings of the panel:

- Instruction that provides substantial coverage in the key components of reading—identified by the National Reading Panel (NICHD, 2000) as phonemic awareness, phonics, fluency, vocabulary, and text comprehension—has clear benefits for language-minority students (p. 3).
- Instruction in the key components of reading is necessary—but not sufficient—for teaching language-minority students to read and write proficiently in English. Oral proficiency in English is critical as well—but student performance suggests that it is often overlooked in instruction (p. 4).
- Oral proficiency and literacy in the first language can be used to facilitate literacy development in English (p. 5).

Source: Clark, D., & Uhry, J., (Eds.) (2004). *Dyslexia: Theory and practice of instruction* (3rd ed.). Austin: Pro-Ed.

- Children with dyslexia need the following:
 - “Direct, intensive, and systematic input from, and interaction with, the teacher” (p. 89)
 - “Immediate feedback from the teacher” (p. 90)
 - “Careful pacing of instruction” (p. 90)
 - “Systematic, structured progression from the simple to the complex” (p. 91)
- Other components of instruction:
 - “Learning to mastery” (p. 91)
 - “Multisensory instruction” (p. 92)

Source: Moats, L.C. (1999). *Teaching reading is rocket science* (Item No. 39-0372). Washington, DC: American Federation of Teachers.

Well designed, controlled comparisons of instructional approaches have consistently supported these components and practices in reading instruction:

- *Direct teaching of decoding, comprehension, and literature appreciation*
- *Phoneme awareness instruction*
- *Systematic and explicit instruction in the code system of written English*
- *Daily exposure to a variety of texts, as well as incentives for children to read independently and with others*
- *Vocabulary instruction that includes a variety of complementary methods designed to explore the relationships among words and the relationships among word structure, origin, and meaning*
- *Comprehension strategies that include prediction of outcomes, summarizing, clarification, questioning, and visualization*
- *Frequent writing of prose to enable a deeper understanding of what is read. (pp. 7–8)*

Source: National Reading Panel. (2000). *Report of the National Reading Panel: Teaching children to read, an evidence-based assessment of the scientific research literature on reading and its implications for reading instruction*. Washington, DC: National Institute of Child Health and Human Development.

- Emphasis is placed on the importance of identifying early which children are at risk for reading failure and intervening quickly to help them.
- How reading is taught matters—reading instruction is most effective when it is taught comprehensively, systematically, and explicitly.

Source: Shaywitz, S. (2003). *Overcoming dyslexia: A new and complete science-based program for reading problems at any level*. New York: Alfred A Knopf.

Essentials of a successful reading intervention:

- **Early intervention:** The best intervention begins in kindergarten with remediation beginning in first grade (p. 257).
- **Intense instruction:** “Reading instruction must be delivered with great intensity Optimally, a child who is struggling to read should be given instruction in a group of three and no larger than four students, and the child should receive this specialized reading instruction at least four, and preferably five, days a week” (p. 258).
- **High-quality instruction:** “High-quality instruction is provided by a highly qualified teacher. Recent studies highlight the difference that a teacher can make in the overall success or failure of a reading program” (p. 258).

- **Sufficient duration:** “One of the most common errors in teaching a student with dyslexia to read is to withdraw prematurely the instruction that seems to be working. A child who is reading accurately but not fluently at grade level still requires intensive reading instruction” (p. 259).

The essentials of an effective **early intervention** program:

- Systematic and direct instruction in the following:
 - Phonemic awareness—noticing, identifying, and manipulating the sounds of spoken language
 - Phonics—how letters and letter groups represent the sounds [of] spoken language
 - Sounding out words (decoding)
 - Spelling
 - Reading sight words
 - Vocabulary and concepts
 - Reading comprehension strategies
- Practice in applying the above skills in reading and in writing
- Fluency training
- Enriched language experiences: listening to, talking about, and telling stories (262).

Source: Torgesen, J. K. (2004). *Lessons learned from research on interventions for students who have difficulty learning to read*. In P. McCardle & V. Chhabra (Eds.), *The voice of evidence in reading research* (pp. 355–382). Baltimore: Brookes.

The first implication for practice and educational policy is that schools must work to provide preventive interventions to eliminate the enormous reading practice deficits that result from prolonged reading failure. The second implication is that schools must find a way to provide interventions for older children with reading disabilities that are appropriately focused and sufficiently intensive. (p. 376)

Source: Vaughn, S., & Linan-Thompson, S. (2003). *Group size and time allotted to intervention*. In B. Foorman (Ed.), *Preventing and remediating reading difficulties* (pp. 275–298). Parkton, MD: York Press.

- *Mounting evidence suggests that most students with reading problems can make significant gains in reading if provided systematic, explicit, and intensive reading instruction based on critical elements associated with improved reading such as phonemic awareness, phonics, fluency in word recognition and text reading, and comprehension.*
- *There were no statistically significant differences between students receiving intervention instruction in a teacher to student ratio of 1:1 or 1:3 though both groups outperformed students in a 1:10 teacher to student ratio.*
- *Student progress determined the length of intervention. (pp. 299, 320)*

Training and Practice Standards for Teachers of Students with Dyslexia

Source: Moats, L. C. (1999). *Teaching reading is rocket science* (Item No. 39-0372). Washington, DC: American Federation of Teachers.

The knowledge and skills needed to teach reading include the following:

- The psychology of reading and reading development
 - Basic facts about reading
 - The characteristics of poor and novice readers
 - Environmental and physiological factors in reading development
 - How reading and spelling develop
- Knowledge of the language structure
 - Phonology
 - Phonetics
 - Morphology
 - Orthography
 - Semantics
 - Syntax and text structure
- Practical skills of instruction - use of validated instructional practices
- Assessment of classroom reading and writing skills

Source: Occupations Code Chapter 403. Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists.

This statute provides information about requirements to become a Licensed Dyslexia Practitioner and/or Licensed provides Dyslexia Therapist (See Appendix D).

Source: International Dyslexia Association Position Statement: Dyslexia Treatment Programs, March 2009.

Professional practitioners, including teachers or therapists, should have had specific preparation in the prevention and remediation of language-based reading and writing difficulties. Teachers and therapists should be able to state and provide documentation of their credentials in the prevention and remediation of language-based reading and writing difficulties, including program-specific training recommended for the use of specific programs (pp. 1-2).

Source: *Knowledge and Practice Standards for Teachers of Reading*. International Dyslexia Association, 2010.

This document provides standards for teachers of students with dyslexia.

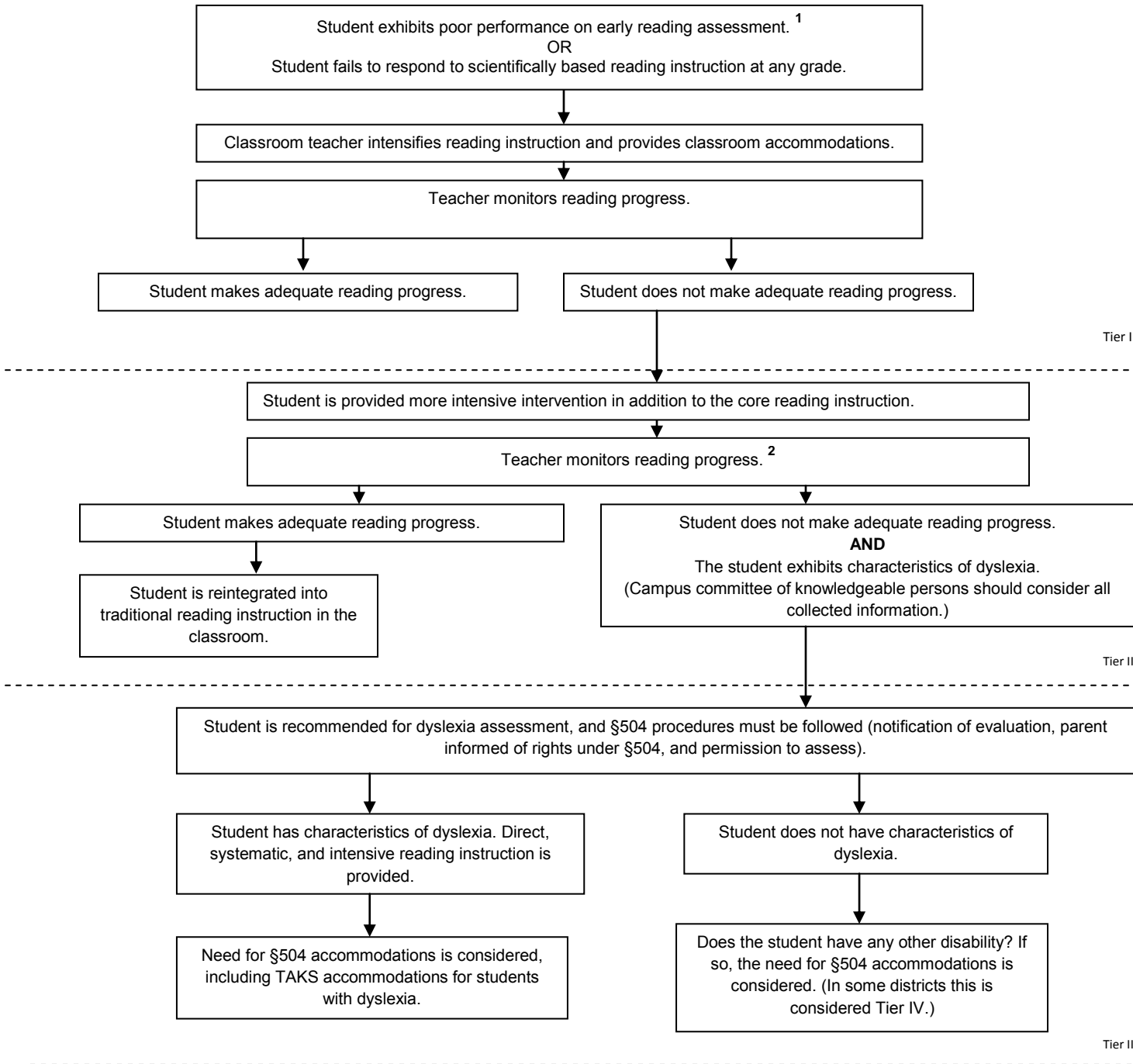
Source: International Multisensory Structured Language Education Council (IMSLEC)

This organization provides accreditation in quality training courses for the professional preparation of multisensory structured language education specialists.

See Appendix H: Contacts for further information.

Appendix A: Pathway to the Identification and Provision of Instruction for Students with Dyslexia

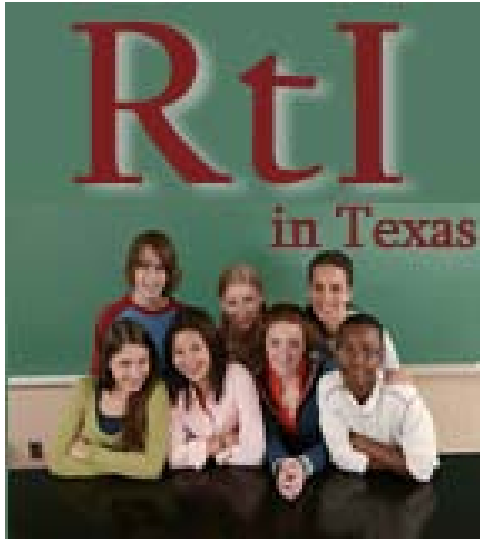
This flow chart illustrates a process for determining the instructional support needed by students with dyslexia using a Response to Intervention process. Special education evaluation should be conducted whenever it appears to be appropriate. Some students will NOT proceed through all steps before being referred for a Full Individual Evaluation (FIE). A dyslexia evaluation may be incorporated into the FIE completed through special education.



Some districts/charters use a four-tier model. Both three-tier and four-tier models have been found effective.

¹ Parents (or guardians) of students in K-2 will be notified if the student is determined to be at risk for dyslexia or other reading difficulties (TEC §28.006).

² Parents (or guardians) may request dyslexia assessment or special education evaluation at any time.



2008-2009

Response to Intervention

Guidance

Response to Intervention
Division of Curriculum
Texas Education Agency
1701 N. Congress
Austin, Texas 78701
(512) 463-9581

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Acknowledgements

This guidance document has been compiled with extensive contributions from the Response to Intervention Coordination Council (RtICC) whose members represent the stakeholders for whom we hope this document will serve as a resource.

The member organizations of the RtICC believe that RtI is an approach that should be embraced by Texas schools and teachers as they strive to ensure that all students achieve success in learning.

The following RtICC members have dedicated many hours of collaborative work to RtI, and for their contributions, the Texas Education Agency (TEA) is extremely thankful.

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Texas-American Federation of Teachers (TEXAS-AFT)

Haidee Williams
Project Coordinator
Texas Comprehensive Center (TXCC) at SEDL

The mission of the RtICC is to communicate clear, consistent expectations for RtI implementation, model support for RtI from the various perspectives of the membership organizations, provide feedback to TEA regarding the RtI challenges faced by school districts, and identify and share RtI resources and best practices.

Texas Education Agency

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Response to Intervention

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October 2008

Dear Educator,

As we strive to provide a high quality education for all Texas students, we must continually seek to improve our schools by providing effective, research-based instruction that will meet our students' academic and social needs.

Response to Intervention, or RtI, a multi-tiered approach to instruction, is evolving as the framework of the general education program for all students including those who experience difficulties either academically or behaviorally. RtI helps to ensure that students have the opportunity to experience a full range of educational opportunities through the general education program.

Federal mandates require us to implement proactive models of instruction that allow all students to receive effective instructional as well as behavioral interventions in the general education setting.

The Texas Education Agency (TEA) is committed to assisting you as you consider the implementation of RtI on your campuses. We have established the RtI Coordinating Council (RtICC) to help us understand the needs of students, parents, teachers, and administrators regarding effective RtI implementation. TEA is deeply grateful to the membership of the RtICC for the following implementation guide. I trust it will prove a valuable resource to you.

Thank you for your commitment to improving student achievement in Texas.

Sincerely,

Robert Scott
Commissioner of Education

Response to Intervention (RtI)

RtI is the practice of meeting the academic and behavioral needs of all students through a variety of services containing the following key elements:

- High-quality instruction and **scientific research-based** tiered interventions aligned with individual student need
- Frequent monitoring of student progress to make results-based academic and/or behavioral decisions
- Application of student response data to important educational decisions (such as those regarding placement, intervention, curriculum, and instructional goals and methodologies)

The instructional approaches used within the general education setting should result in academic and/or behavioral progress for the majority of the students. Struggling students are identified using data-based student **progress monitoring** and provided intensive instruction. The use of scientifically validated curricula and teaching methods expected in an RtI model leads to data-based school improvement.

Benefits of RtI

RtI holds the promise of ensuring that all children have access to high quality instruction and that struggling learners, including those with learning disabilities (LD), are identified, supported, and served early and effectively. Driven and documented by reliable data, the implementation of RtI in Texas schools can result in

- more effective instruction;
- increased student achievement;
- **more appropriate LD identification**;
- increased professional collaboration; and
- overall school improvement.

Multi-tiered model

To ensure that appropriate instruction directly addresses students' academic and behavioral difficulties in the general education setting, a multi-tiered service delivery model is used. Included are layers of increasingly intense intervention responding to student-specific needs.

Tier 1: Teachers use high-quality core class instruction aligned with the Texas Essential Knowledge and Skills (TEKS) in which about 80% or more of the students are successful. This tier is the crucial foundation of the RtI instructional model.

Tier 2: Students are identified for individual or small group intervention in addition to core class instruction. This level includes scientific research-based programs, strategies, and procedures designed and employed to supplement, enhance, and support Tier 1 activities. District-established **standard protocol** matches appropriate intervention strategies to specific student needs. Tier 2 addresses the needs of approximately 10–15% of the students.

Tier 3: Students who have not responded adequately to Tiers 1 and 2 receive specific, custom-designed individual or small group instruction (designed using a **problem-solving** model) beyond the instruction in Tier 1. This level of intervention is aimed at those students who have identified difficulties academically or behaviorally. Tier 3 addresses the needs of approximately 5–10% of the students.

	TIER 1: CORE CLASS CURRICULUM	TIER 2: SMALL GROUP INTERVENTION	TIER 3: INTENSIVE INTERVENTION
Focus	All students	Identified students with marked difficulties who have not responded to Tier 1 efforts	Identified students with marked difficulties who have not responded to Tier 1 and Tier 2 efforts
Program	Scientific research-based curriculum and instruction	Specialized scientific research-based intervention	Individualized and responsive intervention
Grouping	As needed	Homogeneous small group instruction (1:5–10)	Homogeneous small group instruction (1:3)
Time	*90 minutes per day or more	*20 – 30 minutes per day in small group in addition to 90 minutes of core instruction	*50 minutes per day in individual or small group instruction in addition to 90 minutes of core instruction
Assessment	Universal Screening at beginning, middle, and end of the academic year (or more often, if appropriate)	Weekly progress monitoring on target skill(s) to ensure adequate progress and learning	Weekly progress monitoring on target skill(s) to ensure adequate progress and learning
Interventionist	General education teacher	Determined by the school (may be classroom teacher, specialized teacher, external interventionist, paraprofessional, etc.)	Determined by the school (may be classroom teacher, specialized teacher, external interventionist, paraprofessional, etc.)
Setting	General education classroom	Appropriate setting in the classroom or outside the classroom designated by the school	Appropriate setting outside the classroom designated by the school

*Time amounts are examples for use in comparing relative times and not intended to be recommendations; instructional time will vary depending on circumstances unique to each school.

Fidelity of Implementation

Current research indicates that the most common cause of failed intervention is a lack of **fidelity of implementation**. Scientific research may indicate that an intervention model is successful, but that success can only be dependably duplicated if teachers are provided sufficient on-going program-specific training, agree to implement all aspects of the model as designed and as tested, and uphold that agreement. Fidelity to the researched design should be documented; gaps in fidelity should be identified and corrected.

Assessment leading to data-based decisions

To determine the effectiveness of an intervention, student progress is monitored through formative assessments that are sensitive to small changes in student behavior and performance. The following three types of assessments are typical of RtI:

1. **Universal screening** of all students identifies those not making academic or behavioral progress at expected rates.
2. **Diagnostics** determine what students can and cannot do in academic and behavioral domains.
3. **Progress monitoring** determines whether academic or behavioral interventions are producing the desired effects.

Progress monitoring helps teachers choose effective, targeted instructional techniques and establish goals which enable all students to advance appropriately toward attainment of state achievement standards. RtI decision-making processes are dependent upon reliable student performance data and data-collection systems.

Benefits of Progress Monitoring

- Accelerated learning due to appropriate instruction
- Informed instructional decisions
- Effective communication with families and other professionals about students' progress
- High expectations for students by teachers
- Appropriate special education referrals
- Documentation of student progress for accountability purposes

Who is responsible for RtI?

Since RtI is a whole-school instructional framework intended to improve instruction and learning for all students, all faculty and staff members share responsibility for RtI.

The Principal is the instructional leader of the school and so must be the leader in developing and implementing an RtI model.

Counselors and diagnosticians play important roles in designing the RtI model to be used that may include making scheduling decisions, identifying student needs and monitoring progress, and helping to make decisions on appropriate interventions.

Teachers, of course, are the most important component of an RtI team and need to understand all aspects of RtI. Since teachers provide the bulk of the instruction and have the most opportunity to observe student progress, their support of RtI is crucial to success. Teachers should be included in every stage of developing an RtI model. The activities that comprise RtI typically occur in the general education setting as schools use a variety of strategies to assist struggling students. General and special education staff coordinate and collaborate to develop a process for RtI implementation, and such collaboration may lead to a shift in roles played by teachers from both areas. General education teachers may need training in many practices currently used primarily by special education teachers. The expertise of special education teachers can strengthen general education instruction as they provide that training, help to customize Tier 3 services, provide Tier 2 and 3 services, and, in general, team more closely with general education faculty.

Paraprofessionals may implement small-group interventions, assess progress, and maintain crucial databases showing that progress.

RtI's role in determining learning disability (LD) eligibility

As established by the reauthorization of the Individuals with Disabilities Education Act (IDEA) of 2004, LEAs may choose to use RtI as one of a variety of ways to determine appropriate LD eligibility. This use of RtI addresses concerns with models of LD identification that primarily rely on the use of IQ tests and performance discrepancy. Additional information regarding the use of RtI in determining LD eligibility is available in a question and answer format at <http://www.tea.state.tx.us/special.ed/guidance/rules/index.html>.

RtI in Secondary Programs

Little research is currently available on the use of RtI in secondary schools. Clearly, all students can benefit from quality instructional strategies used across the curriculum (Tier 1), and students who arrive in high school performing below grade level can benefit from research-based instructional interventions and progress monitoring (Tiers 2 and 3). Currently, schools often address the needs of struggling students through tutoring programs offered during and/or after school or on Saturdays. Through an RtI model, such tutoring would be provided by teachers trained in scientifically researched instructional models, interventions would be carefully chosen to directly target deficient skills, and students' individual progress would be carefully monitored to determine the effectiveness of the strategies implemented and to make appropriate adjustments. Using an RtI model, faculty and staff shift from a focus on the student's difficulties to a focus on planned and actual growth in response to carefully chosen and authentically implemented interventions.

Secondary schools implementing RtI will have unique considerations. Districts may want to scale up to a secondary RtI model, beginning with early grades only and gradually adding grade levels over multiple academic years. Another scale-up option that could be effective in both elementary and secondary schools is beginning with a focus only on improving Tier 1 instruction and adding Tiers 2 and 3 in the next two academic years. Regardless of the approach, issues that must be carefully considered include the following:

- What universal screening and progress monitoring options are available for secondary students and appropriate for the campus population?
- At Tier 1, what are the universal high-quality instructional practices that will be used across all subject areas?

- What age-appropriate interventions are available? Can a standard protocol identification of suitable interventions be established for the most common areas of need?
- In what ways might the structure of the school day impede intervention implementation? In what ways might the traditional school day structure be modified to accommodate an RtI model?
- How can program-specific professional development be provided to all teachers? How can opportunities for professional collaboration be expanded?
- In what ways can parent involvement and communication be increased to support the RtI model?

Using an RtI model to address **behavioral concerns**

Behavioral issues can negatively impact learning as learning difficulties can negatively impact behavior. As students' academic success improves in school, their social and behavioral success tends to improve as well. Nevertheless, an RtI model specifically designed to address behavioral difficulties can

- improve the pace of that improvement;
- support academic growth; and
- help improve the climate of the school.

Both academic and behavioral interventions contain the same components:

- The needs of most students are met through high-quality, research-based universal instructional and behavioral practices.
- Students needing additional intervention are identified and served through Tier 2 interventions. Tier 2 interventions are chosen through a campus-designed standard protocol or problem-based model. Student progress is carefully monitored, and interventions are modified as necessary.
- Custom-designed Tier 3 interventions are implemented with the small percentage of students who are not successful with Tier 2 interventions.
- Fidelity of implementation is crucial to success at all three tiers.

As with academic models, the focus of the entire school using RtI to address behavioral concerns can shift from identifying negative behavior to teaching and promoting positive behavior.

State and federal financial support for RtI

Although no state or federal funds are specifically appropriated for RtI implementation, several funding sources may appropriately be accessed by districts to support this initiative, including but not limited to the following:

- **Accelerated Reading Instruction/Accelerated Math Instruction (ARI/AMI)** - State funding is granted directly to districts for the purpose of identifying and serving students in Grades K-8 who are at risk of not meeting grade-level expectations in reading and math.
- **Compensatory Education Funds** - In addition to serving students at risk of dropping out of school, as defined in Section 29.081(d) of the Texas Education Code, a school district may serve students who meet local eligibility criteria adopted by the board of trustees.

- **High School Allotment** - Rtl initiatives directed at improving academic success, disciplinary/behavioral issues, and drop out prevention may be appropriately funded for Grades 6 – 12 using the high school allotment.
- **IDEA-B Early Intervening Services (EIS)** - LEAs may use up to 15% of the entitlement received under IDEA-B to support Rtl implementation. Local education agencies (LEAs) are encouraged to consider Rtl when using EIS funds and when addressing student emotional/behavioral health and/or disproportionate representation by race/ethnicity in special education.
- **Reading First** - Reading First funds support struggling readers in Grades K-3 through professional development and technical assistance in the areas of phonological awareness, phonics, vocabulary, fluency and comprehension. Funds also support professional development for K-12 Special Education teachers.
- **Title I, Part A Funds** - Title I, Part A funds must be expended for programs/activities/strategies that are scientifically-based on research and meet needs (identified in the campus's comprehensive needs assessment process) which are listed in the campus improvement plan.

State initiatives to support Rtl

The Response to Intervention Coordinating Council (RtlCC) was formed in December 2007 to provide support and guidance to TEA and districts as Rtl models are designed and implemented. In addition to representatives from several TEA divisions, all of whom work together to model braiding various services for successful Rtl implementation,

RtlCC membership includes representatives from the following associations:

- American Federation of Teachers, Texas Chapter (TEXAS-AFT)
- Education Service Centers (ESCs)
- Texas Association of School Administrators (TASA)
- Texas Association of Secondary School Principals (TASSP)
- Texas Comprehensive Center at SEDL (TXCC)
- Texas Elementary Principals and Supervisors Association (TEPSA)
- Texas State Teachers Association (TSTA)

As determined at the conception of the RtlCC, the council's 2007-09 goals are as follows:

1. Create state guidance tools available to districts on the TEA website.

Guidance Tool	Completion Date
The Texas definition of Rtl	September 2008
The elements of an effective Rtl model	September 2008

Information about appropriate funding sources for RtI implementation	Work in progress
A glossary of RtI terms	September 2008
Frequently asked questions and answers	September 2008
Links to useful resources	September 2008
Information about training opportunities	September 2008
Connections to ESC support	September 2008
Images of successful RtI implementation	Work in progress
Sample forms, procedures, etc. for modification and use by LEAs	Work in progress

2. Provide guidance and direction for the provision of effective RtI professional development through the state system of ESCs.

Appendix C: Sources of Laws and Rules for Dyslexia Identification and Instruction

- Texas Education Code (TEC) §38.003
- Texas Education Code (TEC) §28.006
- Texas Education Code (TEC) §7.028(b)
- Texas Administrative Code (TAC) §74.28 (State Board of Education Rule)
- *The Dyslexia Handbook – Revised 2007, Updated 2010: Procedures Concerning Dyslexia and Related Disorders*
- Texas Occupations Code, Chapter 403
- Rehabilitation Act of 1973, Section 504 (§504), as amended in 2008
- Individuals with Disabilities Education Act (IDEA 2004)
- TAKS Accommodations for Students with Dyslexia (Bundled Accommodations)

Summary

School Boards MUST ensure the following:

- That procedures for identifying a student with dyslexia or a related disorder are implemented in the district (TAC §74.28)
- That procedures for providing appropriate instructional services to the student are implemented in the district (TAC §74.28)
- That the district or school complies with all applicable requirements of state educational programs (TEC §7.028)

School Districts MUST do the following:

- Administer K–2 assessments (TEC §28.006)
- Provide early identification, intervention, and support (TEC §28.006)
- Apply results of early assessment instruments to instruction and report to the Commissioner of Education (TEC §28.006)
- Implement SBOE-approved procedures for students with dyslexia and related disorders (Dyslexia Handbook and TAC §74.28)
- Provide training about dyslexia to educators (TAC §74.28(c))
- Ensure the procedures for identification and instruction are in place (TAC §74.28)
- Notify parents in writing before an assessment or identification procedure is used with an individual student (TAC §74.28)
- Test for dyslexia at appropriate times (TEC §38.003)
- Meet the requirements of §504 when assessment for dyslexia is recommended (Dyslexia Handbook)
- Provide treatment (instruction) for students with dyslexia (TEC §38.003)

- Purchase or develop their own programs that include descriptors listed in the Dyslexia Handbook (TAC §74.28)
- Inform parents of all services and options available to students eligible under the §504 (TAC §74.28)
- Provide student with services of a teacher trained in dyslexia (TAC §74.28)
- Provide a parent education program (TAC §74.28)

Checklist of procedures to follow to ensure compliance with State Dyslexia Laws/Code:

- Notify parents or guardians of proposal to assess student for dyslexia (§504)
- Inform parents or guardians of their rights under §504
- Obtain parent or guardian permission to assess the student for dyslexia.
- Administer measures using only individuals/professionals who are trained in assessment to evaluate students for dyslexia and related disorders (19 TAC §74.28)
- Ensure identification of dyslexia is made by the §504 committee of persons knowledgeable about the reading process, dyslexia and dyslexia instruction, the assessments used, and the meaning of the collected data
- Provide dyslexia instruction as per TEC §38.003 (instruction is provided regardless of student eligibility for §504)

Checklist of written documentation that is recommended to ensure compliance with §504:

- Documentation that the notice of evaluation has been given to parents or guardians
- Documentation that parents or guardians were given their rights under §504
- Documentation of the parent's or guardian's consent for the evaluation (Letter to Durham. 27 IDELR 380 [OCR 1997])
- Documentation of the evaluation data
- Documentation of the decisions made by the committee of knowledgeable persons concerning the disability (whether a disability exists) and, if a disability exists, whether the disability substantially limits a major life activity
- Documentation of the placement options and placement decisions

Appendix D: State Statutes Related to Dyslexia

Texas Education Code §38.003 (State Law)

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.
- (b) In accordance with the program approved by the State Board of Education, the board of trustees of each school district shall provide for the treatment of any student determined to have dyslexia or a related disorder.
- (c) The State Board of Education shall adopt any rules and standards necessary to administer this section.
- (d) In this section:
- (1) "Dyslexia" means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity.
 - (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.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

The original version of this statute was passed in 1985 through HB 157, Texas Legislature, 69th Regular Session.

Texas Education Code §28.006 (State Law)

§28.006. Reading Diagnosis

- (a) The commissioner shall develop recommendations for school districts for:
- (1) Administering reading instruments to diagnose student reading development and comprehension;
 - (2) Training educators in administering the reading instruments; and
 - (3) Applying the results of the reading instruments to the instructional program.
- (b) The commissioner shall adopt a list of reading instruments that a school district may use to diagnose student reading development and comprehension. A district-level committee established under Subchapter F, Chapter 11, may adopt a list of reading instruments for use in the district in addition to the reading instruments on the commissioner's list. Each reading instrument adopted by the commissioner or a district-level committee must be based on scientific research concerning reading skills development and reading comprehension. A list of reading instruments adopted under this subsection must provide for diagnosing the

reading development and comprehension of students participating in a program under Subchapter B, Chapter 29.

(c) Each school district shall administer, at the kindergarten and first- and second-grade levels, a reading instrument on the list adopted by the commissioner or by the district-level committee. The district shall administer the reading instrument in accordance with the commissioner's recommendations under Subsection (a)(1).

(d) The superintendent of each school district shall:

(1) Report to the commissioner and the board of trustees of the district the results of the reading instruments; and

(2) Report, in writing, to a student's parent or guardian the student's results on the reading instrument.

(e) The results of reading instruments administered under this section may not be used for purposes of appraisals and incentives under Chapter 21 or accountability under Chapter 39.

(f) This section may be implemented only if funds are appropriated for administering the reading instruments. Funds, other than local funds, may be used to pay the cost of administering a reading instrument only if the instrument is on the list adopted by the commissioner.

(g) A school district shall notify the parent or guardian of each student in kindergarten or first or second grade who is determined, on the basis of reading instrument results, to be at risk for dyslexia or other reading difficulties. The district shall implement an accelerated reading instruction program that provides reading instruction that addresses reading deficiencies to those students and shall determine the form, content, and timing of that program. The admission, review, and dismissal committee of a student who participates in a district's special education program under Subchapter B, Chapter 29, and who does not perform satisfactorily on a reading instrument under this section shall determine the manner in which the student will participate in an accelerated reading instruction program under this subsection.

(h) The school district shall make a good faith effort to ensure that the notice required under this section is provided either in person or by regular mail and that the notice is clear and easy to understand and is written in English and in the parent or guardian's native language.

(i) The commissioner shall certify, not later than July 1 of each school year or as soon as practicable thereafter, whether sufficient funds have been appropriated statewide for the purposes of this section. A determination by the commissioner is final and may not be appealed. For purposes of certification, the commissioner may not consider Foundation School Program funds.

(j) No more than 15 percent of the funds certified by the commissioner under Subsection (i) may be spent on indirect costs. The commissioner shall evaluate the programs that fail to meet the standard of performance under Section 39.051(b)(7) and may implement sanctions under Subchapter G, Chapter 39. The commissioner may audit the expenditures of funds appropriated for purposes of this section. The use of the funds appropriated for purposes of this section shall be verified as part of the district audit under Section 44.008.

(k) The provisions of this section relating to parental notification of a student's results on the reading instrument and to implementation of an accelerated reading instruction program may be implemented only if the commissioner certifies that funds have been appropriated during a school year for administering the accelerated reading instruction program specified under this section.

Text of subsection (l) effective until January 1, 2002.

(l), (m) Expired.

Added by Acts 1997, 75th Leg., ch. 397, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 396, Sec. 2.11, eff. Sept. 1, 1999.

Amended by: Acts 2006, 79th Leg., 3rd C.S., Ch. [5](#), Sec. 3.05, eff. May 31, 2006.

Acts 2007, 80th Leg., R.S., Ch. [1058](#), Sec. 6, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. [1340](#), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. [895](#), Sec. 26, eff. June 19, 2009.

Texas Education Code §7.028(b) (State Law)

§7.028. Limitation on Compliance Monitoring

(b) The board of trustees of a school district or the governing body of an open-enrollment charter school has primary responsibility for ensuring that the district or school complies with all applicable requirements of state educational programs.

*Added by Acts 2003, 78th Leg., ch. 201, § 4, eff. Sept. 1, 2003.
Renumbered from V.T.C.A., Education Code § 7.027 by Acts 2005,
79th Leg., ch. 728, § 23.001(9), eff. Sept. 1, 2005.*

Texas Administrative Code §74.28 (State Board of Education Rule)

Students with Dyslexia and Related Disorders

(a) The board of trustees of a school district must ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate instructional services to the student are implemented in the district. These procedures will be monitored by the Texas Education Agency (TEA) with on-site visits conducted as appropriate.

(b) A school district's procedures must be implemented according to the State Board of Education (SBOE) approved strategies for screening, and techniques for treating, dyslexia and related disorders. The strategies and techniques are described in "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders," a set of flexible guidelines for local districts that may be modified by SBOE only with broad-based dialogue that includes input from educators and professionals in the field of reading and dyslexia and related disorders from across the state. Screening should be done only by individuals/professionals who are trained to assess students for dyslexia and related disorders.

(c) A school district shall purchase a reading program or develop its own reading program for students with dyslexia and related disorders that is aligned with the descriptors found in "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." Teachers who screen and treat these students must be trained in instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." The professional development activities specified by each district and/or campus planning and decision making committee shall include these instructional strategies.

(d) Before an identification or assessment procedure is used selectively with an individual student, the school district must notify the student's parent or guardian or another person standing in parental relation to the student.

(e) Parents/guardians of students eligible under the Rehabilitation Act of 1973, §504, must be informed of all services and options available to the student under that federal statute.

(f) Each school must provide each identified student access at his or her campus to instructional programs required in subsection (c) of this section and to the services of a teacher trained in dyslexia and related disorders. The school district may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus.

(g) Because early intervention is critical, a process for early identification, intervention, and support for students at risk for dyslexia and related disorders must be available in each district as outlined in "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders."

(h) Each school district shall provide a parent education program for parents/guardians of students with dyslexia and related disorders. This program should include: awareness of characteristics of dyslexia and related disorders; information on testing and diagnosis of dyslexia; information on effective strategies for teaching dyslexic students; and awareness of information on modification, especially modifications allowed on standardized testing.

Source: The provisions of this §74.28 adopted to be effective September 1, 1996, 21 TexReg 4311; amended to be effective September 1, 2001, 25 TexReg 7691; amended to be effective August 8, 2006, 31 TexReg 6212; amended to be effective August 24, 2010, 35 TexReg 7211.

Texas Occupations Code Chapter 403. LICENSED DYSLEXIA PRACTITIONERS AND LICENSED DYSLEXIA THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 403.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Department" means the Department of State Health Services.
- (3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (4) "License holder" means a person who holds a license issued under this chapter.
- (5) "Multisensory structured language education" means a program described by the International Multisensory Structured Language Education Council for the treatment of individuals with dyslexia and related disorders that provides instruction in the skills of reading, writing, and spelling:
 - (A) through program content that includes:
 - (i) phonology and phonological awareness;
 - (ii) sound and symbol association;
 - (iii) syllables;
 - (iv) morphology;
 - (v) syntax; and
 - (vi) semantics; and
 - (B) following principles of instruction that include:
 - (i) simultaneous multisensory instruction, including visual-auditory-kinesthetic-tactile instruction;
 - (ii) systematic and cumulative instruction;
 - (iii) explicit instruction;
 - (iv) diagnostic teaching to automaticity; and
 - (v) synthetic and analytic instruction.

(6) "Qualified instructor" means a person described by Section 403.110.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH SERVICES. The department shall administer this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.003. APPLICABILITY. This chapter does not:

- (1) require a school district to employ a person licensed under this chapter;
- (2) require an individual who is licensed under Chapter 501 to obtain a license under this chapter; or
- (3) authorize a person who is not licensed under Chapter 401 to practice audiology or speech-language pathology.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 403.051. ADVISORY COMMITTEE. The department shall appoint an advisory committee to advise the department in administering this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.052. RULES. The executive commissioner shall adopt rules necessary to administer and enforce this chapter, including rules that establish standards of ethical practice.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 403.101. LICENSE REQUIRED. A person may not use the title "licensed dyslexia practitioner" or "licensed dyslexia therapist" in this state unless the person holds the appropriate license under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.102. ISSUANCE OF LICENSE. The department shall issue a licensed dyslexia practitioner or licensed dyslexia therapist license to an applicant who meets the requirements of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.103. LICENSE APPLICATION. (a) A license applicant must apply to the department on a form and in the manner the department prescribes.

(b) The application must be accompanied by a nonrefundable application fee.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.104. ELIGIBILITY FOR LICENSED DYSLEXIA PRACTITIONER LICENSE. (a) To be eligible for a licensed dyslexia practitioner license, an applicant must have:

- (1) earned a bachelor's degree from an accredited public or private institution of higher education;
- (2) successfully completed at least 45 hours of course work in multisensory structured language education from a training program that meets the requirements of Section 403.106;
- (3) completed at least 60 hours of supervised clinical experience in multisensory structured language education;

- (4) completed at least five demonstration lessons of the practice of multisensory structured language education, each observed by an instructor from a training program that meets the requirements of Section 403.106 and followed by a conference with and a written report by the instructor; and
- (5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by a national certifying professional organization.

(b) Clinical experience required under Subsection (a)(3) must be obtained under:

- (1) the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of Section 403.106; and
- (2) guidelines approved by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.105. ELIGIBILITY FOR LICENSED DYSLEXIA THERAPIST LICENSE. (a) To be eligible for a licensed dyslexia therapist license, an applicant must have:

- (1) earned at least a master's degree from an accredited public or private institution of higher education;
- (2) successfully completed at least 200 hours of course work in multisensory structured language education from a training program that meets the requirements of Section 403.106;
- (3) completed at least 700 hours of supervised clinical experience in multisensory structured language education;
- (4) completed at least 10 demonstration lessons of the practice of multisensory structured language education, each observed by an instructor from a training program that meets the requirements of Section 403.106 and followed by a conference with and a written report by the instructor; and
- (5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by a national certifying professional organization.

(b) Clinical experience required under Subsection (a)(3) must be obtained under:

- (1) the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of Section 403.106; and
- (2) guidelines approved by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.106. REQUIREMENTS FOR TRAINING PROGRAMS. (a) For purposes of determining whether an applicant satisfies the training requirements for a license under this chapter, a multisensory structured language education training program completed by the applicant must:

- (1) be accredited by a nationally recognized accrediting organization;
- (2) have in writing defined goals and objectives, areas of authority, and policies and procedures;

- (3) have the appropriate financial and management resources to operate the training program, including a knowledgeable administrator and standard accounting and reporting procedures;
 - (4) have a physical site, equipment, materials, supplies, and environment suitable for the training program;
 - (5) have a sufficient number of instructional personnel who have completed the requirements for certification in multisensory structured language education;
 - (6) have been reviewed by multisensory structured language education professionals who are not affiliated with the training program;
 - (7) have developed and followed procedures to maintain and improve the quality of training provided by the program;
 - (8) have provided direct instruction in the principles and in each element of multisensory structured language education for a minimum of:
 - (A) 200 contact hours of course work for training program participants who seek a licensed dyslexia therapist license; and
 - (B) 45 contact hours of course work for training program participants who seek a licensed dyslexia practitioner license;
 - (9) have required training program participants to complete a program of supervised clinical experience in which the participants provided multisensory structured language education to students or adults, either individually or in small groups for a minimum of:
 - (A) 700 hours for training program participants who seek a licensed dyslexia therapist license; and
 - (B) 60 hours for training program participants who seek a licensed dyslexia practitioner license;
 - (10) have required training program participants to demonstrate the application of multisensory structured language education principles of instruction by completing demonstration lessons observed by an instructor and followed by a conference with and a written report by the instructor; and
 - (11) have provided instruction based on the Texas Education Agency publication "The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (2007)," or a revised version of that publication approved by the department.
- (b) A training program must require a training program participant who seeks a licensed dyslexia practitioner license to have completed at least five demonstration lessons described by Subsection (a)(10) and a participant who seeks a licensed dyslexia therapist license to have completed at least 10 demonstration lessons.
- (c) The department, in consultation with the advisory committee, shall determine whether a training program meets the requirements of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.107. EXAMINATION; RULES. (a) To obtain a license, an applicant must:

- (1) pass a written examination approved by the department under Subsection (b); and
- (2) pay fees set by the executive commissioner.

(b) The department shall, in consultation with the advisory committee:

- (1) identify and designate a competency examination that is related to multisensory structured language education and that will be administered at least twice each year by a professional organization that issues national certifications; and
- (2) maintain a record of all examinations for at least two years after the date of examination.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.108. WAIVER OF EXAMINATION REQUIREMENT. The department, in consultation with the advisory committee, may waive the examination requirement and issue a license to an applicant who holds an appropriate certificate or other accreditation from a nationally accredited multisensory structured language education organization recognized by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.109. INACTIVE STATUS; RULES. (a) The executive commissioner by rule may provide for a license holder to be placed on inactive status.

(b) Rules adopted under this section must include a time limit for a license holder to remain on inactive status.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.110. QUALIFIED INSTRUCTOR. To be considered a qualified instructor under this chapter, a person must:

- (1) be a licensed dyslexia therapist;
- (2) have at least 1,400 hours of clinical teaching experience in addition to the hours required to obtain a licensed dyslexia therapist license; and
- (3) have completed a two-year course of study dedicated to the administration and supervision of multisensory structured language education programs taught by a nationally accredited training program that meets the requirements of Section 403.106.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 403.151. PRACTICE SETTING. (a) A licensed dyslexia practitioner may practice only in an educational setting, including a school, learning center, or clinic.

(b) A licensed dyslexia therapist may practice in a school, learning center, clinic, or private practice setting.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

Sec. 403.152. CONTINUING EDUCATION. (a) A license holder's license may not be renewed unless the license holder meets the continuing education requirements established by the executive commissioner.

(b) The executive commissioner, in consultation with the advisory committee, shall establish the continuing education requirements in a manner that allows a license holder to comply without an extended absence from the license holder's county of residence.

(c) The department shall:

(1) provide to a license applicant, with the application form on which the person is to apply for a license, information describing the continuing education requirements; and

(2) notify each license holder of any change in the continuing education requirements at least one year before the date the change takes effect.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2009.

SUBCHAPTER E. LICENSE DENIAL; COMPLAINT AND DISCIPLINARY PROCEDURES

Sec. 403.201. COMPLAINTS. Any person may file a complaint with the department alleging a violation of this chapter or a rule adopted under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.202. PROHIBITED ACTIONS. A license holder may not:

(1) obtain a license by means of fraud, misrepresentation, or concealment of a material fact;

(2) sell, barter, or offer to sell or barter a license; or

(3) engage in unprofessional conduct that endangers or is likely to endanger the health, welfare, or safety of the public as defined by executive commissioner rule.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.203. GROUNDS FOR DISCIPLINARY ACTION. If a license holder violates this chapter or a rule or code of ethics adopted by the executive commissioner, the department shall:

(1) revoke or suspend the license;

(2) place on probation the person if the person's license has been suspended;

(3) reprimand the license holder; or

(4) refuse to renew the license.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.204. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR CRIMINAL CONVICTION. (a)

The department may deny a license or may suspend or revoke a license if the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony. The department may take action authorized by this section when:

(1) the time for appeal of the person's conviction has elapsed;

(2) the judgment or conviction has been affirmed on appeal; or

(3) an order granting probation is made suspending the imposition of the person's sentence, without regard to whether a subsequent order:

(A) allows withdrawal of a plea of guilty;

(B) sets aside a verdict of guilty; or

(C) dismisses an information or indictment.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is a conviction for purposes of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.205. HEARING. (a) If the department proposes to revoke, suspend, or refuse to renew a person's license, the person is entitled to a hearing before a hearing officer appointed by the State Office of Administrative Hearings.

(b) The executive commissioner shall prescribe procedures for appealing to the commissioner a decision to revoke, suspend, or refuse to renew a license.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.206. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter to suspend, revoke, or refuse to renew a license is governed by Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.207. SANCTIONS. (a) The executive commissioner, in consultation with the advisory committee, by rule shall adopt a broad schedule of sanctions for a violation of this chapter.

(b) The State Office of Administrative Hearings shall use the schedule of sanctions for a sanction imposed as the result of a hearing conducted by that office.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.208. PROBATION. The department may require a license holder whose license suspension is probated to:

- (1) report regularly to the department on matters that are the basis of the probation;
- (2) limit practice to areas prescribed by the department; or
- (3) continue the license holder's professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.209. MONITORING OF LICENSE HOLDER. (a) The executive commissioner by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter.

(b) Rules adopted under this section must include procedures to:

- (1) monitor for compliance a license holder who is ordered by the department to perform certain acts; and
- (2) identify and monitor license holders who represent a risk to the public.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.210. INFORMAL PROCEDURES. (a) The executive commissioner by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056, Government Code; and
- (2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

- (1) provide the complainant and the license holder an opportunity to be heard; and
- (2) require the presence of a representative of the attorney general or the department's legal counsel to advise the department or the department's employees.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.211. REINSTATEMENT. (a) A person may apply for reinstatement of a revoked license on or after the first anniversary of the date of revocation.

(b) The department may:

- (1) accept or reject the application; and
- (2) require an examination as a condition for reinstatement of the license.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.212. REPRIMAND; CONTINUING EDUCATION. (a) In addition to other disciplinary action authorized by this subchapter, the department may:

- (1) issue a written reprimand to a license holder who violates this chapter; or
 - (2) require that a license holder who violates this chapter attend continuing education programs.
- (b) The department, in consultation with the advisory committee, may specify the number of hours of continuing education that must be completed by a license holder to fulfill the requirement of Subsection (a)(2).

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROCEDURES

Sec. 403.251. CIVIL PENALTY. (a) A person who violates this chapter, a rule adopted by the executive commissioner, or an order adopted by the commissioner under this chapter is liable for a civil penalty not to exceed \$500 for each occurrence.

(b) At the request of the department, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Sec. 403.252. CEASE AND DESIST ORDER. (a) If it appears to the commissioner that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, the commissioner after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing a civil penalty under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. [1255](#), Sec. 1, eff. September 1, 2010.

Appendix E: Contributors in the Field of Dyslexia

The Interim Committee on Dyslexia and Related Disorders, created by House Bill 461, 81st Texas Legislature, was commissioned to study and recommend legislation to increase awareness, early detection, and treatment of dyslexia and related disorders. Committee members are as follows:

Senate Members

Senator Bob Deuell
Senator Joan Huffman

House Members

Representative Jim Jackson
Representative Jim McReynolds

Public Members

Linda Sue Gladden
Elliott Goldman
Rebecca N. Jones
Joyce S. Pickering
Karen Sue Vickery

Clerk: Bogan Durr

Appendix F: Accommodations

Classroom Accommodations

A student with dyslexia may require accommodations in the classroom setting. The most common and needed accommodations are extended time for reading due to the student’s lack of fluency and not penalizing the student for spelling errors on assignments without time for editing, since dyslexia directly affects spelling. Depending on the student’s individual needs, additional accommodations may be necessary.

Dyslexia Bundled Accommodations: TAKS and TAKS (Accommodated) Reading

Dyslexia Bundled Accommodations
Grade/Language
Grade 3 English and Spanish
Grade 4 English and Spanish
Grade 5 English and Spanish
Grade 6 English
Grade 7 English
Grade 8 English

A series of studies have been conducted to evaluate the effectiveness of a group of accommodations on the performance of students with dyslexia on TAKS reading. The three accommodations must be “bundled,” meaning the accommodations must be provided together. The dyslexia bundled accommodations are available for eligible students taking the TAKS or TAKS (Accommodated) reading tests shown in the table above. Student eligibility is described on the following page. The bundled accommodations are not available for students taking TAKS–M since the test has been modified and provides similar accommodations. Although dyslexia bundled accommodations are not available during LAT administrations, other similar linguistic accommodations are available.

The bundled accommodations are

- orally reading all proper nouns associated with each passage (from the state-supplied proper-nouns list) before students begin individual reading,
- orally reading all test questions and answer choices to students, and
- extending the testing time over a two-day period.

Eligible students should be tested individually or in small groups. Other guidelines for administering the dyslexia bundled accommodations are provided in the District and Campus Coordinator Manual. Test instructions specific to the administration of reading tests with the dyslexia bundled accommodations and the applicable proper-nouns list will be provided to test administrators. It is important to note that there are

separate dyslexia bundled accommodations test administrator instructions and proper-nouns lists for TAKS (Accommodated).

Eligibility for Dyslexia Bundled Accommodations

A student who meets either of the following criteria is eligible to receive the three bundled accommodations on TAKS or TAKS (Accommodated) reading tests at grades 3–8.

A test administrator may provide the dyslexia bundled accommodations to a student

- not receiving special education services who is identified with dyslexia; or
- receiving special education services who is identified with dyslexia or has documentation in the IEP that indicates that the student exhibits the characteristics of dyslexia, causing him or her to lack word-identification skills and/or to have difficulty reading words in isolation.

In either case, the student must routinely receive accommodations in classroom instruction and testing that address the difficulties he or she has reading words in isolation.

Authority for Decision

For students who meet either eligibility criterion outlined above, the decision to provide the dyslexia bundled accommodations should be made by the student's

- placement committee as required by Section 504 of the Rehabilitation Act of 1973 and must be documented in the student's IAP;
- committee of knowledgeable persons as outlined in *The Dyslexia Handbook* and must be documented in accordance with district policies and procedures; or
- ARD committee and must be documented in the student's IEP.

In the case of an ELL, the decision should be made by the applicable group above, in conjunction with the student's LPAC, and be documented in the student's permanent record file.

Only students who meet the eligibility criteria may receive the dyslexia bundled accommodations. Eligibility is determined locally based on these criteria; therefore, no Accommodation Request Form should be submitted.

Oral/Signed Administration: TAKS, TAKS (Accommodated) and TAKS-M Mathematics, Science, and Social Studies

Oral/Signed Administration	
Grade/Language	
Grade 3 English and Spanish*	mathematics
Grade 4 English and Spanish*	mathematics
Grade 5 English and Spanish*	mathematics and science
Grade 6 English	mathematics
Grade 7 English	mathematics
Grade 8 English	mathematics, science, and social studies
Grade 9 English	mathematics
Grade 10 English	mathematics, science, and social studies
Grade 11/Exit Level English	mathematics, science, and social studies

*TAKS-M tests are not available in Spanish.

An oral/signed administration is an accommodation for eligible students taking TAKS, TAKS (Accommodated), or TAKS–M mathematics, science, and/or social studies tests. For students who are deaf or hard of hearing and are eligible for this administration, specific guidelines for signing test content for a state assessment are included in Appendix C. Student eligibility is described on the following page.

Oral administration can encompass different levels of reading support for each student on any part of the test (including the state-supplied mathematics and science charts) or on allowable supplemental aids. The test administrator may provide the following levels of support:

- Reading only a few words or phrases at student request
- Reading multiple sentences throughout the test at student request
- Reading the test in its entirety

It is the responsibility of the ARD committee, the Section 504 committee, or the committee of knowledgeable persons to appropriately document the level of reading support the student needs. A student may request a change in the level of reading support provided during testing only if this option is documented.

It is important to remember that for all students in grade 3, reading assistance is part of test administration procedures on the mathematics test and is not considered an accommodation. Documentation of reading assistance in this case is not required. However, if a grade 3 student needs the entire test read aloud, the eligibility criteria for an oral administration must be met and documentation is required.

Test administrators who conduct an oral administration must be familiar with subject-specific terms and symbols associated with the subject-area test. This will ensure that the test is administered accurately. Additional information, including guidelines for reading aloud various types of test questions, can be found in the “Oral Administration” appendix of the appropriate TAKS or TAKS–M test administration directions.

Eligibility for Oral/Signed Administration

An oral/signed administration is allowed only for the mathematics, science, and social studies tests. It is **NOT** allowed for the reading, writing, or ELA tests. (This does not apply to the dyslexia bundled accommodations or the accommodation of reading aloud test questions and answer choices for TAKS–M reading selections.)

A test administrator may read aloud or sign the test questions and answer choices for mathematics, science, and/or social studies tests to a student

- not receiving special education or Section 504 services who is identified as dyslexic;
- receiving Section 504 services who is identified as dyslexic or has evidence of reading difficulties as documented in the IAP;
- receiving special education services who is identified as dyslexic or has evidence of reading difficulties as documented in the IEP; or
- receiving special education services who is deaf or hard of hearing and who has evidence of reading difficulties as documented in the IEP.

In all cases, the student must routinely receive this type of accommodation in classroom instruction and testing.

Authority for Decision

For students who meet any eligibility criterion outlined above, the decision to provide an oral/signed administration should be made by the student's

- committee of knowledgeable persons as outlined in *The Dyslexia Handbook* and must be documented in writing in accordance with district policies and procedures;
- placement committee as required by Section 504 of the Rehabilitation Act of 1973 and must be documented in the student's IAP; or
- ARD committee and must be documented in the student's IEP.

In the case of an ELL, the decision should be made by the applicable group above, in conjunction with the student's LPAC, and be documented in the student's permanent record file.

Only students who meet the eligibility criteria may receive an oral/signed administration. Eligibility is determined locally based on these criteria; therefore, no Accommodation Request Form should be submitted.

Source: <http://www.tea.state.tx.us/student.assessment/accommodations/>

Appendix G: Questions and Answers

The following questions and answers relate to various topics important to dyslexia and related disorders.

Relationship of Dyslexia to the Rehabilitation Act of 1973, §504, as amended in 2008

1. How does §504 affect the way school districts and charter schools implement the state dyslexia law and the State Board of Education (SBOE) rules and procedures?

- If a student is suspected of having a disability within the scope of the Individuals with Disabilities Education Act 2004 (IDEA 2004), all special education procedures must be followed. IDEA 2004 procedures meet the requirements of §504.
- If a student is not suspected of having a disability within the scope of IDEA 2004, he/she may still have a disability within the scope of §504. Such a student must be assessed, evaluated, and provided an education that meets the individual needs of the student as adequately as the students without disabilities are served in the district or charter school. At times, such nondiscrimination requires the provision of special services or modifications of programs to enable the student to benefit from the education that is offered to him/her. (The most familiar example is the provision of a ramp for students using wheelchairs.) Following the dyslexia guidelines in this handbook ensures attention to the special needs of a student with dyslexia who is considered disabled under §504. Particular attention must be paid to the procedural and appeal provisions of §504.
- When students are singled out for individualized assessment, the procedures for assessing students for dyslexia must be carried out within the requirements of §504, including notification of parents/guardians; opportunity for parents/guardians to examine relevant records; use of valid measures; and evaluation and placement by a team of persons knowledgeable about the student, meaning of the evaluation data, and placement options. The steps taken to comply with §504 should be documented in writing.

2. Is every student suspected of having dyslexia “disabled” within the meaning of §504?

No, not in all cases. To be a person with a disability within the meaning of §504, the student must have a disability that is substantially limiting, affects a major life activity (such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working (34 CFR 104.3(j)), and affects the student’s education. Thus a student with dyslexia may be considered to have a disability within the scope of §504 if the condition substantially limits the student’s learning.

3. What written documentation is recommended to ensure compliance with §504?

It is recommended that districts and charter schools document the following in writing in the event that an Office for Civil Rights investigation is initiated by a formal complaint:

- Documentation that the notice of evaluation has been given to parents or guardians
- Documentation that parents or guardians were given their rights under §504
- Documentation of the parent or guardian’s consent for the evaluation (Letter to Durham. 27 IDELR 380 [OCR 1997])
- Documentation of the evaluation data
- Documentation of the decisions made by the committee of knowledgeable persons concerning the disability (whether a disability exists) and, if a disability exists, whether the disability substantially limits a major life activity
- Documentation of the placement options and placement decisions

The intent of this recommended documentation is to ensure that a district or charter school meets the needs of students and protects the rights of students and parents or guardians.

4. What procedural protections are provided to parents or guardians who may not agree with the decisions made by a district or charter school?

- If the student is suspected of having a disability within the scope of IDEA 2004, the procedural protections provided for in that law and the corresponding rules for implementation apply.
- If the student is not suspected of having a disability within the scope of IDEA 2004, then the procedural protections of §504 may apply. Under §504, parents or guardians may file a request for a hearing with the school district or charter school. The school district or charter school must appoint as an impartial hearing officer a person who is not an employee and has no other conflict of interest. At the hearing, there must be opportunity for participation by the parents or guardians and, if desired, by counsel for the parents or guardians. Decisions of the hearing officer may be appealed to state or federal court.

Texas Education Code, Texas Administrative Code, and State Board of Education Rules and Procedures

5. What is the difference between the SBOE rule and SBOE procedures?

The SBOE rule requires school districts and charter schools to follow *The Dyslexia Handbook – Revised 2007, Updated 2010: Procedures Concerning Dyslexia and Related Disorders* (Dyslexia Handbook). The procedures, as stated in the Dyslexia Handbook, are guidelines developed to assist districts and charter schools in complying with state and federal laws.

6. What are the responsibilities of a school district or charter school in implementing the state dyslexia law?

Every school district and charter school must collect pertinent data for any student suspected of having dyslexia or a related disorder. (See Chapter II, “Procedures for Assessing Students for Dyslexia.”) A committee of persons knowledgeable about the student must review the relevant data and determine

whether the student has dyslexia. If the student is identified with dyslexia, then the committee uses the data to determine instructional needs specific to the individual student. The district or charter is responsible for ensuring that dyslexia instructional services are provided directly on the student's campus. If a parent or guardian receives assessment information related to their child's reading difficulties from a private individual or entity, the district or charter school must consider the information provided by the parent or guardian. However, the district or charter school must follow state law, rule and procedures, as well as local dyslexia policy, to make the final determination of student eligibility for dyslexia and related disorders.

7. Who is responsible for overseeing the implementation of the dyslexia law within a district or charter school?

The local school board or board of trustees for each school district and charter school is responsible for ensuring compliance with state law, SBOE rule, and procedures for dyslexia services in their districts (TEC §38.003, TEC §7.028(b)), and TAC §74.28).

8. What can I do if the district or charter school is not following state requirements related to dyslexia?

If the student is eligible under §504 or IDEA 2004, parents should follow due process procedures afforded them through these federal laws that protect students with disabilities. If the student is not eligible under §504 or IDEA 2004, parents should follow district grievance procedures to resolve complaints.

9. What monies may be used to support the dyslexia program?

State foundation funds, state compensatory funds, title funds, or local funds may be used. State compensatory and title funds are used to supplement the regular classroom instruction. For students whose disability warrants special education services, special education funds may be used to provide direct and indirect services to students who are eligible for special education and related services. However, IDEA 2004 has identified that a local education agency (LEA) **may** use up to 15% of its IDEA 2004 B entitlement for early intervention services for any child in kindergarten through grade 12 who is not currently identified as needing special education or related services, but who needs additional academic and behavioral supports to succeed in a general education environment. These funds are to be used as supplementary funds and should not be used to supplant local, state, or other federal program dollars. This funding flexibility may be a supplemental funding option for early dyslexia interventions.

Assessment Recommendation

10. When is a student who is experiencing reading difficulties to be considered for placement in an instructional program for dyslexia and related disorders?

See Chapter II of this handbook for information related to procedures that are required by state and federal law prior to a formal assessment of a student experiencing reading difficulties. If a student is not progressing in the general, remedial, and/or compensatory reading programs in school and other causes have been

eliminated, the student should be recommended for assessment to determine whether he/she has dyslexia or a related disorder.

11. Should all students be routinely reviewed for dyslexia?

TEC §28.006 requires school districts or charter schools to administer a reading instrument at the kindergarten, first- and second-grade levels and to notify the parent or guardian of each student in kindergarten, first or second grade who is determined, on the basis of the reading instrument results, to be at risk for dyslexia or other reading difficulties. Additionally, data related to the reading achievement and progress of all students should be continuously monitored and reviewed. A recommendation for assessment for dyslexia is made only for a student who has not adequately responded to scientifically based classroom reading instruction as well as intensive intervention AND who exhibits the primary characteristics of dyslexia. An additional consideration when monitoring a student's reading skills is a poor reading performance that is unexpected for the student.

12. Does the student have to be a certain grade level before dyslexia assessment can occur?

No. There is not a grade level requirement before assessment can occur; however, students should be provided research-based intervention prior to recommending assessment for dyslexia.

13. May a parent or guardian recommend that a student be assessed for dyslexia?

Yes. A parent or guardian may request to have his/her child assessed for dyslexia or a related disorder by staff at the district or charter school. (If the school district has data to support refusal of the parent's or guardian's request, the procedural protections of §504 must be followed. The parents or guardians must be provided their notice of rights under §504. For a student who is special education-eligible, IDEA 2004 procedures must be followed. Best practices suggest appropriate timelines to mirror those of special education.)

14. Can the parent bring an assessment from a private evaluator or source?

Yes. A parent or guardian may choose to have his/her child assessed by a private diagnostician or other source. To be valid, this assessment must comply with the requirements set forth in §504 and the guidelines in this handbook (Chapter II, Procedures for Assessing Students with Dyslexia). The district or charter school must consider information provided by the parent or guardian when interpreting evaluation data and making placement decisions. However, the district or charter school determines whether the student is eligible for services for dyslexia and/or related disorders.

15. Must a student fail a class or subject before being recommended for assessment for dyslexia?

No. A student is not required to fail a class or subject or fail the state required assessment to be considered for a dyslexia assessment. According to TEC §38.003, students should be assessed for dyslexia at appropriate times.

16. Can a student be considered for assessment of dyslexia even if he/she has passed a test required by the statewide assessment program?

Yes. Results from a state test, required by the statewide assessment program, are only one source of data to be gathered and considered for possible recommendation for assessment. Other information must also be considered, such as teacher information, report card grades, parent information, history of reading difficulties, informal observations of the student's abilities, response to scientifically based reading instruction, etc.

17. If the student attends a private school (including a home school), is the local school district required to assess the student for dyslexia if a parent requests an assessment?

No. The state statute related to dyslexia, TEC §38.003, indicates that the law pertains to students enrolled in public schools.

18. To whom should the student be referred if there is a problem with speech or language development?

The normal special education referral procedures should be followed. For students identified as disabled under IDEA 2004, a speech-language pathologist usually provides services for students with identified language/speech problems in accordance with the decisions of the admission, review, and dismissal (ARD) committee.

19. Should the parent or guardian be notified if a district or charter school plans to evaluate a student for dyslexia or a related disorder?

Yes. Notice of the recommendation to assess the student for dyslexia must be given to the parent or guardian prior to any individualized assessment. Parental consent for individualized assessment is necessary before the assessment process begins. In addition, notice of §504 due process rights must be provided to the parent or guardian at this time. The notices and consent must be provided in the native language of the parent or guardian or other mode of communication used by the parent or guardian, unless it is clearly not feasible to do so.

20. Is there one test that can be used to determine that a student has dyslexia or a related disorder?

No. Districts and charter schools should use multiple data sources, including formal and informal measures that are appropriate for determining whether a student has dyslexia or a related disorder. Reading assessments, as appropriate for the reading development of the student, should include the following:

Academic Skills

- Letter knowledge (name and associated sound)
- Reading real and nonsense words in isolation (decoding)
- Reading fluency (both rate and accuracy should be measured)
- Reading comprehension
- Written spelling

Cognitive Process

- Phonological/phonemic awareness
- Rapid naming

Additional Areas that MAY be Assessed

- Vocabulary
- Listening comprehension
- Oral expression
- Written expression
- Handwriting
- Orthographic processing
- Mathematical reasoning
- Intelligence

21. Is it necessary to record assessment results and data collected on special forms?

No. Assessment results and data are usually recorded in a student's cumulative folder. Although there is no uniform or required format for this record keeping, it is important that school districts and charter schools keep this information in *writing* to ensure that they meet the needs of their students and protect the rights of students and their parents or guardians, and to provide documentation should the Office for Civil Rights investigate a formal complaint.

22. Can special education assess for dyslexia?

Yes. Federal IDEA 2004 regulations related to assessment (34 CFR 300.304 (c)(4)) indicate that a student should be assessed in all areas related to the suspected disability. In the case of a student referred for a disability in reading, dyslexia is a related area.

23. Who administers a dyslexia assessment to a student receiving special education services?

The Dyslexia Handbook contains two references related to who is qualified to assess for dyslexia:

- Nineteen TAC §74.28 indicates that assessment should only be done by individuals/professionals who are trained to assess students for dyslexia and related disorders.
- Section 504 requires that tests, assessments, and other evaluation materials be administered by trained personnel and in conformance with the instructions provided by the producer of the evaluation materials.

A district or charter school can determine in its policies and procedures who will conduct the dyslexia assessment. In some cases it may be the dyslexia teacher; in other cases it may be an educational diagnostician or a Licensed Specialist in School Psychology (LSSP).

24. When should further assessment through special education be considered?

- If a student exhibits evidence of severe difficulties with academic skills and a disability is suspected, further assessment should be considered.
- If, while in dyslexia intervention, the student is not making progress, further assessment should be considered.
- If a student is not enrolled in public school, including a home school setting, and a learning disability is suspected, further assessment should be considered under Child Find.

NOTE: Students who are enrolled in a private school, including a home school, are entitled under Child Find to be assessed for a suspected learning disability; however, they must be enrolled in a public school to receive services (TEC §38.003).

Identification of a Student with Dyslexia

25. Who ultimately identifies the student as dyslexic and makes the placement decision?

The identification must be made by the §504 committee of knowledgeable persons formed at the district, charter school, or campus level. This team should include two or more of the following individuals: the superintendent, a principal, a counselor, a reading specialist, a dyslexia specialist, a speech and language pathologist, an educational diagnostician, a special education teacher, and a teacher or other professional educator. If the student is limited English proficient (LEP), the team should also include a member of the Language Proficiency Assessment Committee (LPAC). The team must be knowledgeable about the student being assessed; reading; dyslexia and related disorders; dyslexia instruction; district or charter school, state, and federal guidelines for assessment; the assessments that were used; and the meaning of the collected data. In addition, it is suggested that the parents or guardians of the student be a part of this process.

This answer does not necessarily apply to students covered by IDEA. If a student is covered by IDEA, the placement decision would be made by the student's admission, review, and dismissal (ARD) committee,

which should also include members of the committee of knowledgeable persons previously described for students with dyslexia.

26. What factors must the committee consider before placing a student into a dyslexia program?

The identification of dyslexia is made by a §504 committee. The §504 committee first determines whether the student has dyslexia. In order to make an informed determination, the committee must be knowledgeable about the following:

- The student being assessed
- The reading process
- Dyslexia and related disorders
- Dyslexia instruction
- District or charter school, state, and federal guidelines for assessment
- The assessments used
- The meaning of the collected data

The §504 committee determines the identification of dyslexia after reviewing all accumulated data from Step 1 (Data Gathering) and Step 2 (Formal Assessment) including the following information:

- The observations of the teacher, district or charter school staff, and/or parent/guardian
- Data gathered from the classroom (including student work and the results of classroom measures) and information found in the student's cumulative folder (including the developmental and academic history of the student)
- Data-based documentation of student progress during instruction/intervention
- The results of administered assessments
- Language Assessment Proficiency Committee (LPAC) documentation, when applicable
- All other accumulated data regarding the development of the student's learning and his/her educational needs

The following factors must NOT be used as the sole reason to identify a student for a dyslexia program:

- The student's primary language is not English
- The student has irregular attendance
- The student lacks experiential background
- The student has had a brain injury, disease, or surgery that interferes with learning

27. Must an intelligence test be administered in the identification process for dyslexia?

No. The most current definition of dyslexia from the International Dyslexia Association (IDA) indicates that the difficulties the student exhibits in reading should be **unexpected** in relation to the student's other cognitive abilities **and** the provision of effective classroom instruction. Examples of other cognitive abilities that could be age-appropriate in relation to unexpected reading difficulties might include the student's oral

language skills, problem solving and reasoning skills, ability to learn in the absence of print, or strong math skills in comparison to reading skills.

28. Question 27 refers to “unexpected in relation to the provision of effective classroom instruction.” How does this apply to assessment?

It is important to have documentation regarding the student’s instructional history. Was the student exposed to scientifically based reading instruction in the classroom? Was the student identified as at risk? If so, was the student provided with accelerated (intensive) intervention? Is there documentation of the student’s progress? These questions are important to the data-gathering process prior to or during assessment.

Instruction

29. Must each campus have a dyslexia program?

Yes. In accordance with 19 TAC §74.28(f), each school must provide each student identified with dyslexia access at his/her campus to the services of a teacher trained in dyslexia and related disorders. The school district may, with the approval of each student’s parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his/her campus.

30. What must a locally developed program for students with dyslexia include?

A locally developed program must align with descriptors found in this handbook under the section titled “Components of Instruction.” In addition, as with a purchased reading program, a locally developed dyslexia program must be evidence-based.

31. Must each campus offer appropriate dyslexia instruction for students identified as having dyslexia at each grade level (grades 1 through 12)?

Yes. All students identified with dyslexia must receive reading instruction that is appropriate for their literacy needs. The instruction must match the descriptors in this handbook and, as appropriate for the student, contain reading, writing, and spelling components.

32. May a parent or guardian refuse services for a student identified with dyslexia?

Yes. A parent or guardian may refuse appropriate instructional services for a student identified with dyslexia even when those services are offered during the instructional school day. The school district or charter school will want to document in writing a decision made by the parent or guardian to decline services. For a student receiving services through special education, due process procedures outlined by IDEA 2004 would apply.

33. What is the difference between instruction for students with dyslexia who are in general education and students with dyslexia who are in special education?

There may or may not be a difference in instruction. In this handbook, Chapter IV, “Instruction for Students with Dyslexia,” describes the reading instruction that must be in place to serve students identified with dyslexia. Students who qualify for special education have an Individualized Education Program (IEP) developed by the admission, review, and dismissal (ARD) committee. For students with dyslexia who qualify for special education, and whose ARD committee has determined a special education placement for dyslexia instruction, the IEP must include, as appropriate, the reading instruction that matches the descriptors found in Chapter IV of this handbook, “Instruction for Students with Dyslexia.”

School districts and charter schools must ensure that students who participate in special education services are not denied access to programs on the basis of their disability. To the extent appropriate, the student must be educated in the least restrictive setting with nondisabled peers and have instruction that enables the student to participate and progress in the general curriculum. This means the following for a student who is eligible for special education and who also meets the Texas identification criteria for dyslexia and related disorders:

- He/she must have an IEP that provides access to instructional programs in reading and written language that comply with the SBOE rules and procedures concerning dyslexia and related disorders as determined by the ARD committee.
- He/she may not be denied access to the district’s or charter school’s programs for students with dyslexia, unless the ARD committee determines such a program would deny the student a free appropriate public education (FAPE) and educational benefit.
- He/she must have the ARD committee consider the range of services available for students with dyslexia in determining the least restrictive educational placement for the student.

34. How long should a student remain in a remedial program or in an instructional program designed for students with dyslexia and related disorders?

The local district or charter school should, as with any alternative program, establish criteria for exit. Even after exit, the student, in order to be successful, may require some continuing supports in the general program. Additionally, the campus may want to routinely monitor the progress of the student to be sure that the student maintains successful reading performance.

35. How is instruction for dyslexia different from other reading instruction?

The Dyslexia Handbook lists and describes the components of instruction that must be a part of a program used for students identified with dyslexia. Teachers (general education or special education) who provide instruction for students with dyslexia must have training in the listed components of instruction as well as be trained in instructional strategies that utilize individualized, intensive, and multisensory methods. (See “Instruction for Students with Dyslexia,” Chapter IV in the Dyslexia Handbook.)

36. May a computer program be used as the primary method of delivery for a dyslexia instructional program?

No. Computer instruction to teach reading is not supported by scientifically based reading research. The National Reading Panel (2000), in its review of the research related to computer technology and reading instruction, indicated that it is extremely difficult to make specific instructional conclusions based on the small sample of research available and that there are many questions about computerized reading instruction that still need to be addressed. Additionally, in a recently released position statement, the International Dyslexia Association (2009) indicated “Technology-based instruction should not be used as a substitute for a relationship with a knowledgeable, trained teacher or educational therapist. Technological innovations, however, may be extremely helpful in providing practice and reinforcement, access to information, and alternative routes of communication.”

Teachers of Students with Dyslexia

37. What certification should teachers of students with dyslexia and related disorders have?

Teachers of students with dyslexia and related disorders must have valid Texas teaching certificates for the particular grade level(s) that they teach. Teachers who are licensed dyslexia practitioners or licensed dyslexia therapists or who have coursework in the areas of reading and reading disabilities should be considered first for assignment to teach students with dyslexia and related disorders. These teachers should be trained to deliver instruction that is described in Chapter IV of the Dyslexia Handbook. Those who are certified educational aides, per TAC guidelines, may perform assigned tasks under the guidance and supervision of a certified teacher or teaching team.

38. How does a teacher in general or special education become trained to serve students with dyslexia?

Teachers must be trained to deliver instruction that is described in Chapter IV of the Dyslexia Handbook. As stated in 19 TAC §74.28, teachers who provide appropriate instruction for students with dyslexia must be trained and be prepared to implement instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components. These teachers must also be trained in the professional development activities specific to dyslexia as specified by each district, charter school, and/or campus planning and decision-making committee.

Relationship between Dyslexia and Special Education

39. If a student is currently receiving special education services and is then identified as needing additional services for dyslexia, does the admission, review, and dismissal (ARD) committee need to document in the ARD Report the dyslexia identification process and the instruction specific to dyslexia?

- a) The admission, review, and dismissal (ARD) committee should document that the student has been identified with dyslexia or that the student has a reading disability that exhibits characteristics consistent with dyslexia. Since there are instructional implications as well as accommodations on the state assessment program for students who have been identified with dyslexia, the dyslexia identification should be noted in the ARD Report.
 - b) For students with dyslexia who qualify for special education in the area of reading, and who will be receiving their reading instruction in a special education placement, the ARD committee **must** include appropriate reading instruction on the student's IEP. Appropriate reading instruction includes the descriptors found in Chapter IV of the Dyslexia Handbook.
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40. If a student is already receiving special education services for one particular area of need (e.g., speech), does the ARD committee need to convene to recommend that the student be assessed for dyslexia, or can this recommendation to assess for dyslexia be made informally following general education procedures without a meeting of the ARD committee?

For any student receiving special education services, including a student receiving speech services, special education procedures **must** be followed. The ARD committee and other qualified professionals, as appropriate, must review existing evaluation data on the student and on the basis of that review and input from the student's parents or guardians, identify what additional data, if any, are needed to make an informed decision regarding identification of dyslexia. The ARD committee may conduct its review without a meeting. If further assessment is recommended, the parent or guardian must receive notice of assessment and procedural safeguard rights (when appropriate), and give consent for the evaluation according to the requirements by the IDEA 2004. A timeline for completion of the evaluation should be determined by the ARD committee.

41. Who provides dyslexia instruction to a student receiving special education services?

Chapter IV, "Instruction for Students with Dyslexia," of the Dyslexia Handbook indicates that teachers who provide appropriate instruction for students with dyslexia must be trained in instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components.

42. Who determines the content of the dyslexia instruction for a student who is also receiving special education services?

Chapter III, "Referral to Special Education," of the Dyslexia Handbook states the following: "If the student with dyslexia is found eligible for special education in the area of reading, the ARD committee must include appropriate reading instruction on the student's IEP." Appropriate reading instruction includes the descriptors listed in Chapter IV, "Instruction for Students with Dyslexia."

43. May the educational diagnostician or Licensed Specialist in School Psychology (LSSP) use the same diagnostic data that was gathered for the Individuals with Disabilities Education Act (IDEA 2004) identification process to identify a student with dyslexia? Must the determination of dyslexia be made by a separate committee of knowledgeable persons or the admission review and dismissal (ARD) committee?

The educational diagnostician or LSSP may use the same diagnostic data gathered for the IDEA 2004 identification process as long as the data includes assessment information from the domains listed in the Dyslexia Handbook to be a part of the identification of dyslexia.

The determination of dyslexia is made by a multidisciplinary team composed of members who are knowledgeable about dyslexia and the reading process as indicated in Chapter II of the Dyslexia Handbook. For purposes of a student who is currently receiving special education services, the ARD committee serves as the multidisciplinary team described above and should include members with the additional knowledge of dyslexia, dyslexia evaluation, and interventions required by Chapter IV of the Dyslexia Handbook.

44. What additional training does an educational diagnostician or LSSP need to have in order to assess a student for dyslexia?

No additional training is needed; however, the assessment professional needs to have an understanding of dyslexia, awareness of the domains to assess for dyslexia, and the profile of strengths and weaknesses that is typically exhibited when a student has dyslexia. TAC §74.28 indicates that screening (assessment) should be done by individuals/professionals who are trained to assess students for dyslexia and related disorders.

45. When a student is receiving special education services, may a general education teacher(s) assess for dyslexia versus having an educational diagnostician or LSSP assess?

A general education teacher (preferably a dyslexia teacher/therapist or reading specialist) may assess for dyslexia if that is consistent with the district or charter school policies and procedures and he/she meets the qualifications required in 19 TAC §74.28 and §504 (see Question 23); however, the identification should be made by the appropriate committee. For a student receiving special education services, this committee would be the ARD committee, including member(s) who are knowledgeable about dyslexia and the reading process as indicated in Chapter II of the Dyslexia Handbook.

46. How do we prevent duplication or conflict of services for a student identified for both special education and dyslexia services (e.g., if a student is receiving instruction in one method with his/her dyslexia teacher and a different method with his/her special education teacher)?

The appropriate teachers for a student who is receiving reading instruction through both special education and general education dyslexia should coordinate the services offered to this student. This collaboration model should include all teachers, both general education and specialized teachers, who teach reading (including reading in the content area) to ensure generalization of the methodology identified as the reading intervention. The admission, review, and dismissal (ARD) committee has the ultimate responsibility for consistency of methodology. The ARD committee will also need to determine the most appropriate environment for the student to receive the instruction. (See Question 40.)

47. What considerations need to be given to “least restrictive environment” when determining dyslexia services for a student also receiving special education services (e.g., a special education dyslexia program offered in a resource class vs. a dyslexia program offered outside the special education class)?

The least restrictive environment (LRE) means that students with disabilities are educated with peers who are nondisabled to the maximum extent appropriate, and special classes, separate schooling, or other removal of students with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

For any student receiving special education services, including a student identified with dyslexia, the placement decision is made by a group of persons including the parents or guardians and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options (the ARD committee) and is made in conformity with the LRE provisions of the IDEA 2004. The child’s placement is determined at least annually and is based on the child’s IEP.

48. What is the district’s or charter school’s responsibility in conducting assessments required by colleges and universities for students with dyslexia to receive accommodations?

According to the Office of Civil Rights, neither the high school nor the postsecondary school is required to conduct or pay for a new evaluation to document a student’s disability and need for accommodations. Consequently, the responsibility will fall to the student. (See Appendix K: *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities.*)

49. What are the related disorders currently listed in TEC §38.003?

- Dysphasia – a delay in the development of comprehension and/or expression of oral language; terminology commonly used to describe this condition includes developmental language disorder and specific language impairment

- Specific Developmental Dyslexia – another term for dyslexia
- Developmental Dysgraphia – a specific learning disability that impairs handwriting and sometimes spelling
- Developmental Spelling Disability – an unexpected difficulty in the area of spelling in the absence of reading or other written language difficulties
- Developmental Auditory Imperception

English Language Learners

50. How many years does a student need to receive ESL/bilingual instruction before assessment for dyslexia can be considered?

There is no fixed amount of time that an English language learner must receive ESL/bilingual instruction before assessment for dyslexia is considered. To set a specific amount of time might lead to a critical delay of services for eligible students who are at risk. A student demonstrating reading and writing difficulties who is being considered for assessment for dyslexia must first have been provided with consistent and appropriate academic instruction in reading and writing. Academic instruction should have been in the language that allowed the student to have had access to the instruction.

51. What determines the language of instruction for dyslexia services related to an English language learner (ELL)?

To determine the language of instruction of dyslexia services for an ELL, the committee of knowledgeable persons should consider the following two issues:

1. What language allows the student to adequately access the dyslexia services?
2. What is the student's current language of classroom instruction?

Texas State Assessment Program Accommodations for Students with Dyslexia (Bundled Accommodations)

52. Does a student have to routinely receive these three specific accommodations (orally reading proper nouns, orally reading comprehension questions and answer choices, and having extended time) as a bundled group in the classroom?

A student may, but does not have to, receive all three accommodations as a bundle during *classroom* instruction and testing. However, in both of these instances a student should routinely receive accommodations related to his/her difficulties with decoding words in isolation. For example, the teacher may read directions orally, help with unfamiliar vocabulary, or provide extended time for reading assignments.

53. May a student who is being monitored or who has been exited from a dyslexia program be considered for the dyslexia bundled accommodations?

If a student has been receiving dyslexia services and has made sufficient progress in word-reading skills so that accommodations in classroom instruction or testing are no longer required, the student is not eligible. However, if after exiting a program, a student continues to need accommodations in classroom instruction and testing for reading difficulties at the isolated word level, then the student is eligible for the bundled accommodations.

54. Is the provision of a second day to complete the reading test optional?

No. Extending the test over a two-day period is required. Research findings have indicated that students who need these accommodations require two days because of the fatigue factor associated with the student's reading difficulties at the isolated word level. The test administrator will stop the reading test approximately halfway through, following the directions included in the TAKS Test Administrator Manual provided by the Texas Education Agency, Student Assessment Division. The student will complete the reading test on the second day of administration.

Appendix H: Contacts for Further Information

Education Service Center Dyslexia Contacts

For more information about dyslexia services, contact your regional education service center. When you call, ask for the dyslexia contact for your region.

Region 1	1900 W. Schunior Edinburg, TX 78541-2234 (956) 984-6000 Fax (956) 984-6299	Region 2	209 North Water Street Corpus Christi, TX 78401-2599 (361) 561-8400 Fax (361) 883-3442
Region 3	1905 Leary Lane Victoria, TX 77901-2899 (361) 573-0731 Fax (361) 576-4804	Region 4	7145 West Tidwell Houston, TX 77092-2096 (713) 462-7708 Fax (713) 744-6514
Region 5	2295 Delaware Street Beaumont, TX 77703-4299 (409) 838-5555 Fax (409) 833-9755	Region 6	3332 Montgomery Road Huntsville, TX 77340-6499 (936) 435-8400 Fax (936) 295-1447
Region 7	1909 N. Longview Street Kilgore, TX 75662-6827 (903) 988-6700 Fax (903) 988-6735	Region 8	P.O. Box 1894 Mt. Pleasant, TX 75456-1894 (903) 572-8551 Fax (903) 575-2611
Region 9	301 Loop 11 Wichita Falls, TX 76306-3706 (940) 322-6928 Fax (940) 767-3836	Region 10	400 E. Spring Valley Road Richardson, TX 75081-5101 (972) 348-1700 Fax (972) 231-3642
Region 11	3001 North Freeway Fort Worth, TX 76106-6596 (817) 740-3600 Fax (817) 740-7600	Region 12	P.O. Box 23409 Waco, TX 76702-3409 (254) 297-1212 Fax (254) 666-0823
Region 13	5701 Springdale Road Austin, TX 78723-3675 (512) 919-5313 Fax (512) 919-5374	Region 14	1850 Highway 351 Abilene, TX 79601-4750 (325) 675-8600 Fax (325) 675-8659
Region 15	P.O. Box 5199 San Angelo, TX 76902-5199 (325) 658-6571 Fax (325) 658-6571	Region 16	5800 Bell Street Amarillo, TX 79109-6230 (806) 677-5000 Fax (806) 677-5001
Region 17	1111 West Loop 289 Lubbock, TX 79416-5029 (806) 792-4000 Fax (806) 792-1523	Region 18	P.O. Box 60580 Midland, TX 79711-0580 (432) 563-2380 Fax (432) 567-3290
Region 19	P.O. Box 971127 El Paso, TX 79997-1127 (915) 780-1919 Fax (915) 780-6537	Region 20	1314 Hines Avenue San Antonio, TX 78208-1899 (210) 370-5200 Fax (210) 370-5750

State and Federal Contacts

For more information about state dyslexia regulations:

State Dyslexia Consultant
Region 10 Education Service Center
400 E. Spring Valley Road
Richardson, TX 75081-5101
1-800-232-3030
www.region10.org

Director of English Language Arts/Reading
Texas Education Agency
Division of Curriculum
1701 N. Congress Avenue
Austin, TX 78701-1494
(512) 463-9581
www.tea.state.tx.us
www.tea.state.tx.us/curriculum/elar/index.html

For more information regarding the Rehabilitation Act of 1973, §504:

The Office for Civil Rights/Department of Education
Dallas Regional Office/Region VI (Arkansas, Louisiana, Mississippi, Texas)
1999 Bryan Street, Suite 1620
Dallas, Texas 75201
(214) 661-9600
Fax (214) 661-9587

Organizations

Note: This is *not* a TEA-endorsed list but is intended to provide additional sources for information about dyslexia and related disorders.

<p>ALLIANCE The Alliance for Accreditation and Certification 14070 Proton Road, Suite 100, LB9 Dallas, TX 75244 (972) 233-9107 ext. 213 Fax (972) 490-4219 www.allianceaccreditation.org</p>	<p>ALTA Academic Language Therapy Association 14070 Proton Road, Suite 100, LB9 Dallas, TX 75244 (972) 233-9107 ext. 208 Fax (972) 490-4219 HOPELINE 1-866-283-7133 www.ALTAread.org</p>
<p>Department of Pediatrics/University of Texas at Houston Children’s Learning Institute 7000 Fannin Suite 2300 Houston, TX 77030 (713) 500-3709 http://cli.uth.tmc.edu/</p>	<p>EDMAR Educational Associates MTS Publications 415 N. McGraw Forney, TX 75126 (877) 552-1090 (toll free) Fax (972) 552-9889 www.mtsedmar.com</p>
<p>IDA International Dyslexia Association 40 York Road Baltimore, MD 21204 (410) 296-0232 Fax (410) 321-5069 www.interdys.org</p>	<p>IMSLEC International Multisensory Structured Language Education Council 15720 Hillcrest Road Dallas, TX 75248 (972) 774-1772 www.imslec.org</p>
<p>IRA International Reading Association P.O. Box 8139 Newark, DE 19714-8139 (800) 336-7323 (toll free) Fax (302) 731-1057 www.reading.org</p>	<p>LDA Learning Disabilities Association of America 4156 Library Road Pittsburgh, PA 15234 (412) 341-1515 Fax (412) 344-0224 www.ldanatl.org</p>

<p>LDAT Learning Disabilities Association of Texas 1011 West 31st Street Austin, TX 78705 (512) 458-8234 (800) 604-7500 (Texas residents only) www.ldat.org</p>	<p>LEAD* Literacy Education & Academic Development, Inc. P.O. Box 822494 Dallas, TX 75231-2494 (214) 536-9046 Fax (214) 536-7917 www.leadabcd.com</p>
<p>NCLD National Center for Learning Disabilities 381 Park Avenue South, Suite 1401 New York, NY 10016 (888) 575-7373 (toll free) Fax (212) 545-9665 www.nclld.org</p>	<p>Neuhaus Education Center* 4433 Bissonnet Bellaire, TX 77401 (713) 664-7676 Fax (713) 664-4744 www.neuhaus.org</p>
<p>RFB&D Recording for the Blind and Dyslexic 20 Roszel Road Princeton, NJ 08540 (800) 221-4792 www.rfbd.org</p>	<p>RFB&D Recording for the Blind & Dyslexic Southwest Region – Texas Location 1314 West 45th Street Austin, TX 78756 (512) 323-9390 (877) 246-7321 (toll free) www.rfbd.org/Locations/Southwest-Region-Home/80/</p>
<p>Scottish Rite Learning Center of Austin, Inc.* 12871 N. US Highway 183, Suite 105 Austin, TX 78750 (512) 472-1231 Fax (512) 326-1877 http://www.scottishritelearningcenter.org</p>	<p>Scottish Rite Learning Center of West Texas* 1101 70th Street Lubbock, TX 79412 (806) 765-9150 Fax (806) 765-9564 www.lubbockscottishrite.org</p>
<p>Southern Methodist University Learning Therapy Program* 5236 Tennyson Parkway Building 4, Suite 108 Plano, TX 75024 (214) 768-7323 Fax (972) 473-3442 www.smu.edu/learning_therapy</p>	<p>Southwest Multisensory Learning Center* 600 S. Jupiter Road Allen, TX 75002 (972) 359-6646 Fax (972) 359-8291 www.southwestacademy.org/training.htm</p>

<p>Texas Scottish Rite Hospital for Children Luke Waites Center for Dyslexia and Learning Disorders* 2222 Welborn Street Dallas, TX 75219-9813 (214) 559-7885 Fax (214) 559-7808 www.tsrhc.org</p>	<p>The Shelton School* 15720 Hillcrest Road Dallas, TX 75248 (972) 774-1772 Fax (972) 991-3977 www.shelton.org</p>
<p>TSRA Texas State Reading Association P.O. Box 16887 Lubbock, TX 79490 (512) 54-9300 Fax (806) 368-8619 www.tsra.us</p>	<p>Scottish Rite Learning Center of South Texas 308 Avenue E San Antonio, TX 78205 (210) 222-0133 Fax (210) 222-0136 www.srlearningcenter.org</p>
<p>JPWMF and Learning Center* 403 W. Washington Drive San Angelo, TX 76903 (325) 655-2331 www.jpwlearningcenter.com</p>	<p>Midwestern State University 3410 Taft Blvd. Wichita Falls, TX 76308 (940) 397-4855 www.mwsu.edu</p>

*International Multisensory Structured Language Education Council (IMSLEC)-accredited training center

Appendix I: Associated Terms

Accelerated reading instruction: intensified, research-based reading instruction that addresses the student's reading needs that were determined by the results of the K–2 reading instruments (TEC §28.006). This intensive, research-based instruction is provided for students determined to be at risk for dyslexia or other reading difficulties. The district or charter school determines the form, content, and timing of the intensive instruction that is designed to meet students' needs (e.g., instruction in phonemic awareness, alphabetic principle, word-analysis strategies, fluency, and/or reading comprehension).

Accommodation: changing or altering the learning environment, materials, delivery method, or number of answers. Accommodations/changes should not be made to the state curriculum standards known as the Texas Essential Knowledge and Skills (TEKS) student expectations.

Adaptive behavior: the effectiveness in which the student meets the standards of personal independence and social responsibility expected of his or her age and cultural group.

Alphabetic principle: the understanding that the sequence of letters in written words represents the sequence of sounds (or phonemes) in spoken words.

“At risk” for dyslexia: students whose K–2 reading instrument (TEC §28.006) results indicate needs in the areas of reading and/or reading development. The students considered at risk are at the pre-identification level and are not identified as students with dyslexia at this time. These students must be provided accelerated reading instruction (intensive, research-based instruction that addresses the reading needs of the student).

Developmental dysgraphia: an inability to write legibly. This may occur in addition to other difficulties in written language. Visual-motor coordination skills are frequently within the average range and are not the primary cause of dysgraphia.

Developmental spelling disorder: significant difficulty learning to spell. This occurs in the absence of reading or other written language difficulties.

Differentiated instruction: to recognize students' varying background knowledge, readiness, language, preferences in learning, and interests and to react responsively. Differentiated instruction is a process to approach teaching and learning for students of differing abilities in the same class. The intent of differentiating instruction is to maximize each student's growth and individual success by meeting each student where he or she is and assisting in the learning process.

Dyslexia: specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge (International Dyslexia Association, 2002).

Evaluation: the use of multiple methods in evaluating a variety of data to guide establishment of appropriate interventions. For the identification of a student with dyslexia, the data for evaluation should include the teacher's observations, the developmental and academic history of the student, the results of a variety of reading assessments, and all other information relevant to the identification of dyslexia.

Explicit, direct instruction: instruction that is systematic (structured), sequential, and cumulative. Instruction is organized and presented in a way that follows a logical sequential plan, fits the nature of language (alphabetic principle) with no assumption of prior skills or language knowledge, and maximizes student engagement.

Fluency: the ability to read with speed, accuracy, and proper expression. Fluency is one of several critical factors necessary for reading comprehension.

Graphophonemic knowledge (phonics) instruction: instruction that takes advantage of the letter-sound plan in which words that carry meaning are made of sounds, and sounds are written with letters in the right order. Students with this understanding can blend sounds associated with letters into words and can separate words into component sounds for spelling and writing.

Individualized instruction: instruction that meets the specific learning needs of an individual student. Materials and methods are matched to each student's individual ability level.

Intervention: a change in instruction in the area of learning difficulty to improve performance and achieve adequate progress.

Language dominance: the language of the individual that is stronger and more developed.

Language proficiency: the level of skill in a language. Language proficiency is composed of oral (listening and speaking) and written (reading and writing) components as well as academic and non-academic language.

Language structure instruction: instruction that encompasses morphology, semantics, syntax, and pragmatics.

Linguistic instruction: instruction that is directed toward proficiency and fluency with patterns of language so that words and sentences are the carriers of meaning.

Meaning-based instruction: instruction that is directed toward purposeful reading and writing, with an emphasis on comprehension and composition.

Morpheme: a meaningful linguistic unit that cannot be divided into smaller meaningful elements, as the word *book*. A morpheme is also a component of a word, as *s* in *books*.

Morphology: the study of the structure and form of words in a language, including inflection, derivation, and the formation of compounds. Knowledge of morphemes facilitates decoding, spelling, and vocabulary development.

Multisensory instruction: instruction that incorporates the simultaneous use of two or more sensory pathways (auditory, visual, kinesthetic, tactile) during teacher presentation and student practice.

Phonemic awareness: the insight that spoken words can be conceived as a sequence of sounds; the ability to manipulate the sounds within words (e.g., segmenting or blending).

Phonics: instructional practices that emphasize how spelling is related to speech sounds in systemic ways; explicit instruction in letter-sound correspondences.

Phonology: the sound structure of speech and in particular the perception, representation, and production of speech sounds.

Progress monitoring: a scientifically based practice used to assess students' academic progress and/or performance and evaluate the effectiveness of instruction. Progress monitoring can be implemented with individual students or an entire class. Progress monitoring is a quick (less than five minutes) probe that is done frequently (weekly or biweekly) in order to make instructional changes in a timely fashion.

Recommendation for assessment for dyslexia: recommendation by the teacher, district, or charter school staff, and/or the parent or guardian that a student be assessed for dyslexia. Following the recommendation, the district or charter school must adhere to its written procedures and the procedures within the handbook.

Response to intervention (RTI): a multistep, or tiered, approach to providing services and interventions at increasing levels of intensity to students who struggle with learning. The progress students make at each stage of intervention is closely monitored. Results of this monitoring are used to make decisions about the need for further research-based instruction and/or intervention in general education, in specialized instructional settings, or both.

Scientifically based research: under the No Child Left Behind (NCLB) definition, scientifically based research must meet the following criteria:

- Employ systematic, empirical methods that draw on observation or experiment
- Involve rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions
- Rely on measurements or observational methods that provide valid data across evaluators and observers, and across multiple measurements and observations
- Be accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparatively rigorous, objective, and scientific review

Strategy-oriented instruction: thoughtfully ordered step-by-step instruction in the strategies that students need to become independent readers, including strategies for decoding, encoding, word recognition, fluency, and comprehension.

Universal screening: a step taken by school personnel to determine which students are at risk for not meeting grade-level standards. Universal screening can be accomplished by administering an academic screening to all students in a given grade level. Students whose scores fall below a certain cutoff point are identified as needing closer monitoring or intervention.

Appendix J: Publications Related to Dyslexia

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- Hogan, K., & Pressley, M. (Eds.) (1997). *Scaffolding student learning: Instructional approaches & issues*. Cambridge, MA: Brookline Books.
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Appendix K: Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities

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U.S. Department of Education
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Secretary

Office for Civil Rights

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U.S. Department of Education
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More and more high school students with disabilities are planning to continue their education in postsecondary schools, including vocational and career schools, two- and four- year colleges, and universities. As a student with a disability, you need to be well informed about your rights and responsibilities as well as the responsibilities postsecondary schools have toward you. Being well informed will help ensure you have a full opportunity to enjoy the benefits of the postsecondary education experience without confusion or delay.



The information in this pamphlet, provided by the Office for Civil Rights (OCR) in the U. S. Department of Education, explains the rights and responsibilities of students with disabilities who are preparing to attend postsecondary schools. This pamphlet also explains the obligations of a postsecondary school to provide academic adjustments, including auxiliary aids and services, to ensure the school does not discriminate on the basis of disability.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibit discrimination on the basis of disability. Practically every school district and postsecondary school in the United States is subject to one or both of these laws, which have similar requirements.*/[*/](#)

Although both school districts and postsecondary schools must comply with these same laws, the responsibilities of postsecondary schools are significantly different from those of school districts.

Moreover, you will have responsibilities as a postsecondary student that you do not have as a high school student. OCR strongly encourages you to know your responsibilities and those of postsecondary schools under Section 504 and Title II. Doing so will improve your opportunity to succeed as you enter postsecondary education.

The following questions and answers provide more specific information to help you succeed.

As a student with a disability leaving high school and entering postsecondary education, will I see differences in my rights and how they are addressed?

Yes. Section 504 and Title II protect elementary, secondary and postsecondary students from discrimination. Nevertheless, several of the requirements that apply through high school are different from the requirements that apply beyond high school. For instance, Section 504 requires a school district to provide a free appropriate public education (FAPE) to each child with a disability in the district's jurisdiction. Whatever the disability, a school district must identify an individual's education needs and provide any regular or special education and related aids and services necessary to meet those needs as well as it is meeting the needs of students without disabilities.

Unlike your high school, your postsecondary school is not required to provide FAPE. Rather, your postsecondary school is required to provide appropriate academic adjustments as necessary to ensure that it does not discriminate on the basis of disability. In addition, if your postsecondary school provides housing to nondisabled students, it must provide comparable, convenient and accessible housing to students with disabilities at the same cost.

Other important differences you need to know, even before you arrive at your postsecondary school, are addressed in the remaining questions.

May a postsecondary school deny my admission because I have a disability?

No. If you meet the essential requirements for admission, a postsecondary school may not deny your admission simply because you have a disability.

Do I have to inform a postsecondary school that I have a disability?

No. However, if you want the school to provide an academic adjustment, you must identify yourself as having a disability. Likewise, you should let the school know about your disability if you want to ensure that you are assigned to accessible facilities. In any event, your disclosure of a disability is always voluntary.

What academic adjustments must a postsecondary school provide?

The appropriate academic adjustment must be determined based on your disability and individual needs. Academic adjustments may include auxiliary aids and modifications to academic requirements as are necessary to ensure equal educational opportunity. Examples of such adjustments are arranging for priority registration; reducing a course load; substituting one course for another; providing note takers, recording devices, sign language interpreters, extended time for testing and, if telephones are provided in dorm rooms, a TTY in your dorm room; and equipping school computers with screen-reading, voice recognition or other adaptive software or hardware.

In providing an academic adjustment, your postsecondary school is not required to lower or effect substantial modifications to essential requirements. For example, although your school may be required to provide extended testing time, it is not required to change the substantive content of the test. In addition, your postsecondary school does not have to make modifications that would fundamentally alter the nature of a service, program or activity or would result in undue financial or administrative burdens. Finally, your postsecondary school does not have to provide personal attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature, such as tutoring and typing.

If I want an academic adjustment, what must I do?

You must inform the school that you have a disability and need an academic adjustment. Unlike your school district, your postsecondary school is not required to identify you as having a disability or assess your needs.

Your postsecondary school may require you to follow reasonable procedures to request an academic adjustment. You are responsible for knowing and following these procedures. Postsecondary schools usually include, in their publications providing general information, information on the procedures and contacts for requesting an academic adjustment. Such publications include recruitment materials, catalogs and student handbooks, and are often available on school Web sites. Many schools also have staff whose purpose is to assist students with disabilities. If you are unable to locate the procedures, ask a school official, such as an admissions officer or counselor.

When should I request an academic adjustment?

Although you may request an academic adjustment from your postsecondary school at any time, you should request it as early as possible. Some academic adjustments may take more time to provide than others. You should follow your school's procedures to ensure that your school has enough time to review your request and provide an appropriate academic adjustment.

Do I have to prove that I have a disability to obtain an academic adjustment?

Generally, yes. Your school will probably require you to provide documentation that shows you have a current disability and need an academic adjustment.

What documentation should I provide?

Schools may set reasonable standards for documentation. Some schools require more documentation than others. They may require you to provide documentation prepared by an appropriate professional, such as a medical doctor, psychologist or other qualified diagnostician. The required documentation may include one or more of the following: a diagnosis of your current disability; the date of the diagnosis; how the diagnosis was reached; the credentials of the professional; how your disability affects a major life activity; and how the disability affects your academic performance. The documentation should provide enough information for you and your school to decide what is an appropriate academic adjustment.

Although an individualized education program (IEP) or Section 504 plan, if you have one, may help identify services that have been effective for you, it generally is not sufficient documentation. This is because postsecondary education presents different demands than high school education, and what you need to meet these new demands may be different. Also in some cases, the nature of a disability may change.

If the documentation that you have does not meet the postsecondary school's requirements, a school official should tell you in a timely manner what additional documentation you need to provide. You may need a new evaluation in order to provide the required documentation.

Who has to pay for a new evaluation?

Neither your high school nor your postsecondary school is required to conduct or pay for a new evaluation to document your disability and need for an academic adjustment. This may mean that you have to pay or find funding to pay an appropriate professional for an evaluation. If you are eligible for services through your state vocational rehabilitation agency, you may qualify for an evaluation at no cost to you. You may locate your state vocational rehabilitation agency through the following Web page:

<http://www.jan.wvu.edu/cgi-win/TypeQuery.exe?902>

Once the school has received the necessary documentation from me, what should I expect?

The school will review your request in light of the essential requirements for the relevant program to help determine an appropriate academic adjustment. It is important to remember that the school is not required to lower or waive essential requirements. If you have requested a specific academic adjustment, the school may offer that academic adjustment or an alternative one if the alternative would also be effective. The school may also conduct its own evaluation of your disability and needs at its own expense.

You should expect your school to work with you in an interactive process to identify an appropriate academic adjustment. Unlike the experience you may have had in high school, however, do not expect your postsecondary school to invite your parents to participate in the process or to develop an IEP for you.

What if the academic adjustment we identified is not working?

Let the school know as soon as you become aware that the results are not what you expected. It may be too late to correct the problem if you wait until the course or activity is completed. You and your school should work together to resolve the problem.

May a postsecondary school charge me for providing an academic adjustment?

No. Furthermore, it may not charge students with disabilities more for participating in its programs or activities than it charges students who do not have disabilities.

What can I do if I believe the school is discriminating against me?

Practically every postsecondary school must have a person—frequently called the Section 504 Coordinator, ADA Coordinator, or Disability Services Coordinator—who coordinates the school's compliance with Section 504 or Title II or both laws. You may contact this person for information about how to address your concerns.

The school must also have grievance procedures. These procedures are not the same as the due process procedures with which you may be familiar from high school. However, the postsecondary school's grievance procedures must include steps to ensure that you may raise your concerns fully and fairly and must provide for the prompt and equitable resolution of complaints.

School publications, such as student handbooks and catalogs, usually describe the steps you must take to start the grievance process. Often, schools have both formal and informal processes. If you decide to use a grievance process, you should be prepared to present all the reasons that support your request.

If you are dissatisfied with the outcome from using the school's grievance procedures or you wish to pursue an alternative to using the grievance procedures, you may [file a complaint](#) against the school with OCR or in a court. You may learn more about the OCR complaint process from the brochure *How to File a Discrimination Complaint with the Office for Civil Rights*, which you may obtain by contacting us at the addresses and phone numbers below, or at <http://www.ed.gov/ocr/docs/howto.html>.

If you would like more information about the responsibilities of postsecondary schools to students with disabilities, read the OCR brochure *Auxiliary Aids and Services for Postsecondary Students with Disabilities: Higher Education's Obligations Under Section 504 and Title II of the ADA*. You may obtain a copy by

contacting us at the address and phone numbers below, or at <http://www.ed.gov/ocr/docs/auxaids.html>.

Students with disabilities who know their rights and responsibilities are much better equipped to succeed in postsecondary school. We encourage you to work with the staff at your school because they, too, want you to succeed. Seek the support of family, friends and fellow students, including those with disabilities. Know your talents and capitalize on them, and believe in yourself as you embrace new challenges in your education.

To receive more information about the civil rights of students with disabilities in education institutions, you may contact us at:

Customer Service Team
Office for Civil Rights
U.S. Department of Education
Washington, D.C. 20202-1100
Phone: 1-800-421-3481
TDD: 1- 877-521-2172
Email: ocr@ed.gov
Web site: www.ed.gov/ocr

**/You may be familiar with another federal law that applies to the education of students with disabilities—the Individuals with Disabilities Education Act (IDEA). That law is administered by the Office of Special Education Programs in the Office of Special Education and Rehabilitative Services in the U.S. Department of Education. The IDEA and its Individualized Education Program (IEP) provisions do not apply to postsecondary schools. This pamphlet does not discuss the IDEA or state and local laws that may apply.*

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Appendix L: Additional Information for Diagnosticians and Professionals who Assess for Dyslexia

In order to make an appropriate identification of dyslexia, the §504 Committee will need to make decisions in three areas:

1. The pattern of weaknesses in a student with dyslexia will reflect one or more difficulties with low performance for the student's age and educational level in the following academic skills:
 - Reading real words in isolation
 - Decoding nonsense words
 - Reading fluency (both rate and accuracy)
 - Written spelling (an isolated difficulty in spelling would not be sufficient to identify dyslexia)

Questions for Decision Making:

- Does the student exhibit weaknesses in ability to read words in isolation with automaticity?
- Does the student exhibit difficulties with reading accuracy or rate when reading connected text?

2. Based on the data, if the committee determined weaknesses are indicated in the listed academic skills, then the committee will look next at the underlying cognitive processes for the difficulties seen in the student's word reading and spelling. These academic difficulties in reading and written spelling will typically be the result of a deficit in phonological or phonemic awareness.

The student may also demonstrate difficulties in other areas of cognitive processing, including one or both of the following:

- Rapid naming
- Orthographic processing

If the student exhibits reading and spelling difficulties and currently has appropriate phonological/phonemic processing, it is important to examine the student's history to determine if there is evidence of previous difficulty with phonological/phonemic awareness. NOTE: Because previous effective instruction in phonological/phonemic awareness may remediate phonological awareness skills in isolation, average phonological awareness scores alone do not rule out dyslexia. Ongoing phonological processing deficits can be exhibited in word reading and/or written spelling.

Questions for Decision Making:

- Does the student exhibit academic weaknesses in reading and spelling?
- Does the student exhibit a deficit in phonological/phonemic awareness?
- If assessment data does not indicate a deficit in phonological/phonemic awareness, is there a history of the student having difficulty with phonological/phonemic awareness?
- If there is a previous history, is there data to indicate intervention was provided in this area?

3. If the committee determines the student exhibits weaknesses in reading and written spelling that are the result of a deficit in phonological/phonemic awareness, the committee will then examine the student's data to determine whether these difficulties are **unexpected** for the student in relation to the student's other cognitive abilities (the ability to learn in the absence of print) and **unexpected** in relation to the provision of effective classroom instruction.

Questions to help in determining unexpectedness (not an exhaustive list):

- Does the student exhibit age-appropriate oral language skills, including listening comprehension, vocabulary development, the ability to follow directions, and the ability to tell a story?
- Does the student exhibit age-appropriate reading comprehension even though his or her word reading skills in isolation are deficient?
- Is the student's ability to learn in subjects that are not as heavily reliant on reading, such as science, social studies, and math, grade-appropriate?
- Is the student's ability to comprehend information read to him/her age-appropriate?
- If the student were not asked to read or interact with print, would he/she appear to be age/grade-appropriate?
- Is there data to support a student's lack of progress despite having received research-based intervention?
- Is the student's lack of progress due to sociocultural factors, such as language differences, irregular attendance, or lack of experiential background?

Based on the above information and guidelines, the §504 committee first determines whether the student has dyslexia. If the student has dyslexia, the committee also determines whether the student has a disability under the §504. Whether a student is eligible for §504 accommodations is a separate determination from the determination that the student has dyslexia. A student is considered to have a disability under §504 if the condition substantially limits the student's learning, including the specific activity of reading.

Additionally, the §504 committee, in determining whether a student has a disability that substantially limits the student in a major life activity, must **not** consider the ameliorating effects of any mitigating measures that student is using. If the committee does not identify dyslexia, but the student has another condition or disability that substantially limits the student's learning, eligibility for §504 services related to the student's other condition or disability should be considered.

Students with additional factors that complicate their dyslexia may require additional support or referral to special education. If a student is already qualified as a student with a disability under special education, the Admission, Review, and Dismissal (ARD) committee should determine the least restrictive environment for delivering the student's dyslexia intervention.

Appendix M: Section 504 Code of Federal Regulations

Section 504

Code of Federal Regulations

Title 34, Volume 1, Parts 1 to 299
Revised as of July 1, 1997

From the U.S. Government Printing Office via GPO Access
[CITE: 34CFR104]

TITLE 34--EDUCATION

CHAPTER I--OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION

PART 104--NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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Appendix B to Part 104--Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs
[Note]

Authority: 20 U.S.C. 1405; 29 U.S.C. 794.

Source: 45 FR 30936, May 9, 1980, unless otherwise noted.

Subpart A--General Provisions

Sec. 104.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Sec. 104.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Education and to each program or activity that receives or benefits from such assistance.

Sec. 104.3 Definitions.

As used in this part, the term:

- (a) The Act means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.
- (b) Section 504 means section 504 of the Act.
- (c) Education of the Handicapped Act means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.
- (d) Department means the Department of Education.
- (e) Assistant Secretary means the Assistant Secretary for Civil Rights of the Department of Education.
- (f) Recipient means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.
- (g) Applicant for assistance means one who submits an application, request, or plan required to be approved by a Department official or by a

recipient as a condition to becoming a recipient.

(h) Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) Handicapped person--(1) Handicapped persons means any person who

(i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) Physical or mental impairment means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) Is regarded as having an impairment means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (j)(2)(i) of this section but is treated by a recipient as having such an impairment.

(k) Qualified handicapped person means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool elementary, secondary, or adult educational services, a handicapped person (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under state law to provide such services to handicapped persons, or (iii) to whom a state is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(l) Handicap means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

Sec. 104.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

Sec. 104.5 Assurances required.

(a) Assurances. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

Sec. 104.6 Remedial action, voluntary action, and self-evaluation.

(a) Remedial action. (1) If the Assistant Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Assistant Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Assistant Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Assistant Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) Self-evaluation. (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons,

any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Assistant Secretary upon request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and any problems identified, and

(iii) A description of any modifications made and of any remedial steps taken.

Sec. 104.7 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

Sec. 104.8 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to Sec. 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

Sec. 104.9 Administrative requirements for small recipients.

The Assistant Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with Secs. 104.7 and 104.8, in whole or in part, when the Assistant Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

Sec. 104.10 Effect of state or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B--Employment Practices

Sec. 104.11 Discrimination prohibited.

(a) General. (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) Specific activities. The provisions of this subpart apply to:

- (1) Recruitment, advertising, and the processing of applications for employment;
- (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
- (3) Rates of pay or any other form of compensation and changes in compensation;
- (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (5) Leaves of absence, sick leave, or any other leave;
- (6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
- (7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (8) Employer sponsored activities, including social or recreational programs; and
- (9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

Sec. 104.12 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

- (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and
- (2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

- (1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;
- (2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and
- (3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

Sec. 104.13 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

- (1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and
- (2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Sec. 104.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to Sec. 104.6 (a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to Sec. 104.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, Provided, That:

- (1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and
- (2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in

paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, Provided, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C--Program Accessibility

Sec. 104.21 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

Sec. 104.22 Existing facilities.

(a) Program accessibility. A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of Sec. 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural

changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) Small health, welfare, or other social service providers. If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) Time period. A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) Transition plan. In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) Notice. The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

Sec. 104.23 New construction.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part. (b) Alteration. Each facility or part of a facility which is altered by, on

behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 30936, May 9, 1980; 45 FR 37426, June 3, 1980, as amended at 55 FR 52138, 52141, Dec. 19, 1990]

Subpart D--Preschool, Elementary, and Secondary Education

Sec. 104.31 Application of this subpart.

Subpart D applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

Sec. 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

- (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and
- (b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

Sec. 104.33 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of Secs. 104.34, 104.35, and 104.36.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) Free education--(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) Transportation. If a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) Residential placement. If placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section

and Sec. 104.34, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of Sec. 104.36.

(d) Compliance. A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time and in no event later than September 1, 1978.

Sec. 104.34 Educational setting.

(a) Academic setting. A recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Sec. 104.37(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) Comparable facilities. If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Sec. 104.35 Evaluation and placement.

(a) Preplacement evaluation. A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement. (b) Evaluation procedures. A recipient to which this subpart applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

- (1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;
- (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and
- (3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) Placement procedures. In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with Sec. 104.34.

(d) Reevaluation. A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

Sec. 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Sec. 104.37 Nonacademic services.

(a) General. (1) A recipient to which this subpart applies shall provide non-academic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipients, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) Counseling services. A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) Physical education and athletics. (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of Sec. 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Sec. 104.38 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

Sec. 104.39 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in Sec. 104.33(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of Secs. 104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of Secs. 104.34, 104.37, and 104.38.

Text of amendments passed Sept. 25, 2008:

PUBLIC LAW 110–325—SEPT. 25, 2008 122 STAT. 3553

Public Law 110–325 110th Congress

An Act

To restore the intent and protections of the Americans with Disabilities Act of 1990.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “ADA Amendments Act of 2008”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities” and provide broad coverage;

(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person’s right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual

under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

(5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to

be afforded by the ADA;

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

(7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term “substantially limits” to require a greater degree of limitation than was intended by Congress; and 42 USC 12101 note. ADA Amendments Act of 2008. 42 USC 12101 note. Sept. 25, 2008 [S. 3406]

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(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term “substantially limits” as “significantly restricted” are inconsistent with congressional intent, by expressing too high a standard.

(b) PURPOSES.—The purposes of this Act are—

(1) to carry out the ADA’s objectives of providing “a clear and comprehensive national mandate for the elimination of discrimination” and “clear, strong, consistent, enforceable standards addressing discrimination” by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court’s reasoning in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), that the terms “substantially” and “major” in the definition of disability under the ADA “need to be interpreted strictly to create a demanding standard for qualifying as disabled,” and that to be substantially limited in performing a major life activity under the ADA “an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives”;

(5) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) for “substantially limits”, and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation

necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term "substantially limits" as "significantly restricted" to be consistent with this Act, including the amendments made by this Act. SEC. 3. CODIFIED FINDINGS. Section 2(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society,

PUBLIC LAW 110–325—SEPT. 25, 2008 122 STAT. 3555 yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;”; (2) by striking paragraph (7); and (3) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) DEFINITION OF DISABILITY.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:
“SEC. 3. DEFINITION OF DISABILITY.

“As used in this Act: “(1) DISABILITY.—The term ‘disability’ means, with respect to an individual—

“(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

“(B) a record of such an impairment; or

“(C) being regarded as having such an impairment (as described in paragraph (3)).

“(2) MAJOR LIFE ACTIVITIES.—

“(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

“(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph

(1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

“(3) REGARDED AS HAVING SUCH AN IMPAIRMENT.—For purposes of paragraph (1)(C):

“(A) An individual meets the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

“(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

“(4) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY.—The definition of ‘disability’ in paragraph (1) shall be construed in accordance with the following: “(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

“(B) The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

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“(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

“(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

“(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

“(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

“(II) use of assistive technology;

“(III) reasonable accommodations or auxiliary aids or services; or

“(IV) learned behavioral or adaptive neurological modifications.

“(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

“(iii) As used in this subparagraph—

“(I) the term ‘ordinary eyeglasses or contact lenses’ means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

“(II) the term ‘low-vision devices’ means devices that magnify, enhance, or otherwise augment a visual image.”. (b) CONFORMING AMENDMENT.—The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended by adding after section 3 the following:

“SEC. 4. ADDITIONAL DEFINITIONS.

“As used in this Act:

“(1) AUXILIARY AIDS AND SERVICES.—The term ‘auxiliary aids and services’ includes—

“(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

“(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

“(C) acquisition or modification of equipment or devices; and

“(D) other similar services and actions.

“(2) STATE.—The term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.”.

(c) AMENDMENT TO THE TABLE OF CONTENTS.—The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12103).

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Act of 1990 is amended by striking the item relating to section

3 and inserting the following items: “Sec. 3. Definition of disability. “Sec. 4. Additional definitions.”.

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

(a) ON THE BASIS OF DISABILITY.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(1) in subsection (a), by striking “with a disability because of the disability of such individual” and inserting “on the basis of disability”; and

(2) in subsection (b) in the matter preceding paragraph

(1), by striking “discriminate” and inserting “discriminate against a qualified individual on the basis of disability”.(b) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Section 103 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection: “(c) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Notwithstanding section 3(4)(E)(ii), a

covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity." (c) CONFORMING AMENDMENTS.—

(1) Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended— (A) in the paragraph heading, by striking "WITH A DISABILITY"; and (B) by striking "with a disability" after "individual" both places it appears.

(2) Section 104(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12114(a)) is amended by striking "the term 'qualified individual with a disability' shall" and inserting "a qualified individual with a disability shall".

SEC. 6. RULES OF CONSTRUCTION. (a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) is amended—

(1) by adding at the end of section 501 the following: "(e) BENEFITS UNDER STATE WORKER'S COMPENSATION LAWS.— Nothing in this Act alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs. (f) FUNDAMENTAL ALTERATION.—Nothing in this Act alters the provision of section 302(b)

(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved. (g) CLAIMS OF NO DISABILITY.—Nothing in this Act shall provide the basis for a claim by an individual without a disability 42 USC 12201.

122 STAT. 3558 PUBLIC LAW 110–325—SEPT. 25, 2008 that the individual was subject to discrimination because of the individual's lack of disability. (h) REASONABLE ACCOMMODATIONS AND MODIFICATIONS.—A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C) of such section."; (2) by redesignating section 506 through 514 as sections 507 through 515, respectively, and adding after section 505 the following:

"SEC. 506. RULE OF CONSTRUCTION REGARDING REGULATORY

AUTHORITY.

"The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions of disability in section 3 (including rules of construction) and the definitions in section 4, consistent with the ADA Amendments Act of 2008."; and (3) in section 511 (as redesignated by paragraph (2)) (42 U.S.C. 12211), in subsection (c), by striking "511(b)(3)" and inserting "512(b)(3)". (b) The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by redesignating the items relating to sections 506 through 514 as the items relating to sections 507 through 515, respectively, and by inserting after the item relating to section 505 the following new item: "Sec. 506. Rule of construction regarding regulatory authority.".

SEC. 7. CONFORMING AMENDMENTS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in paragraph (9)(B), by striking "a physical" and all that follows through "major life activities", and inserting "the meaning given it in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)"; and

(2) in paragraph (20)(B), by striking "any person who" and all that follows through the period at the end, and inserting "any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)." 42 USC 12210. 42 USC 12205a. 42 USC 12206– 12211; 29 USC 706; 42 USC 12212, 12213.

PUBLIC LAW 110–325—SEPT. 25, 2008 122 STAT. 3559 LEGISLATIVE HISTORY—S. 3406: CONGRESSIONAL RECORD, Vol. 154 (2008): Sept. 11, considered and passed Senate. Sept. 17, considered and passed House.

Retrieved from http://learningdisabilities.about.com/library/regulations/ADA/section_504.pdf

COMPLIANCE STATEMENT

TITLE VI, CIVIL RIGHTS ACT OF 1964; THE MODIFIED COURT ORDER, CIVIL ACTION 5281, FEDERAL DISTRICT COURT, EASTERN DISTRICT OF TEXAS, TYLER DIVISION

Reviews of local education agencies pertaining to compliance with Title VI Civil Rights Act of 1964 and with specific requirements of the Modified Court order, Civil Action No. 5281, Federal District Court, Eastern District of Texas, Tyler Division are conducted periodically by staff representatives of the Texas Education Agency. These reviews cover at least the following policies and practices:

- 1) Acceptance policies on student transfers from other school districts
- 2) Operation of school bus routes or runs on a non-segregated basis
- 3) Nondiscrimination in extracurricular activities and the use of school facilities
- 4) Nondiscriminatory practices in the hiring, assigning, promoting, paying, demoting, reassigning, or dismissing of faculty and staff members who work with children
- 5) Enrollment and assignment of students without discrimination on the basis of race, color, or national origin
- 6) Nondiscriminatory practices relating to the use of a student's first language
- 7) Evidence of published procedures for hearing complaints and grievances

In addition to conducting reviews, the Texas Education Agency staff representatives check complaints of discrimination made by a citizen or citizens residing in a school district where it is alleged discriminatory practices have occurred or are occurring.

Where a violation of Title VI of the Civil Rights Act is found, the findings are reported to the Office for Civil Rights, U.S. Department of Education.

If there is a direct violation of the Court Order in Civil Action No. 5281 that cannot be cleared through negotiation, the sanctions required by the Court Order are applied.

TITLE VII, CIVIL RIGHTS ACT OF 1964; EXECUTIVE ORDERS 11246 AND 11375; TITLE IX, 1973 EDUCATION AMENDMENTS; REHABILITATION ACT OF 1973 AS AMENDED; 1974 AMENDMENTS TO THE WAGE-HOUR LAW EXPANDING.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; AND VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1972 AS AMENDED IN 1974.

It is the policy of the Texas Education Agency to comply fully with the nondiscrimination provisions of all federal and state laws and regulations by assuring that no person shall be excluded from consideration for recruitment, selection, appointment, training, promotion, retention, or any other personnel action, or be denied any benefits or participation in any programs or activities, which it operates on the grounds of race, religion, color, national origin, sex, handicap, age, or veteran status (except where age, sex, or handicap constitute a bona fide occupational qualification necessary to proper and efficient administration). The Texas Education Agency makes positive efforts to employ and advance in employment all protected groups.

There are several ways to obtain a copy of the Dyslexia Handbook:

- 1) Download or order from TEA at <http://www.tea.state.tx.us/index2.aspx?id=4434>.
- 2) Download or order at www.region10.org/dyslexia.
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