Dyslexia and Other Specific Learning Disabilities: Understanding Legal and Practical Considerations
NYCASE Summer Institute
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Anne M. McGinnis, Ph.D.
Harris Beach PLLC
amcginis@harrisbeach.com
99 Garnsey Road
Pittsford, New York 14534
(585) 419-8613
www.harrisbeach.com

Agenda
 Definitions
 Federal Guidance
 Proposed State Legislation
 Practical Guidance
 Discussion

Introduction
 39 states have recently passed legislation that focused on identifying and remediating dyslexia.
 In 2017, there are more than 40 dyslexia bills pending.
 Content of legislation includes funding for interventions, professional development for teachers, and using screeners to identify students who are at-risk for dyslexia.
Definitions

Dyslexia

- A reading disability that includes:
  - Difficulty associating sounds with letters
  - Confusion when pronouncing words and phrases
  - Difficulty reading aloud with proper tone and fluency
  - Difficulty sounding out unfamiliar words
  - Difficulty writing and copying letters
  - Difficulty rhyming

Dyscalculia

- A math disorder that may include difficulty in making arithmetical calculations.
- Commonly accepted symptoms:
  - Difficulty with math concepts (e.g., counting, measuring, estimating, etc.)
  - Difficulty with reading and writing math numbers and symbols
  - Difficulty mastering basic mathematical operations (e.g., addition and subtraction)
Dysgraphia

- A **writing disorder** that causes an inability to write coherently, including difficulty with:
  - Spelling
  - Writing
  - The physical mechanics of writing (i.e., difficulty with holding a pencil, writing fatigue, etc.)

Federal Guidance

*Dear Colleague Letter, Office of Special Education and Rehabilitative Services (October 23, 2015)*

- The **IDEA does not** prohibit the use of *dyslexia, dyscalculia, and dysgraphia* on a student’s IEP.
- School districts must conduct evaluations to determine the need for special education or related services due to a **specific learning disability**.
- A student who has been diagnosed with dyslexia, dyscalculia, or dysgraphia is **not** automatically eligible for special education services or certain instructional methodologies or services.
Letter to Unnerstall, Office of Special Education Programs (April 25, 2016)

- A public school district is not required to identify a student as having dyslexia, dyscalculia, or dysgraphia as part of the special education evaluation process.
- A school district is only required to assess a student in the areas related to the student’s suspected disability.
  - This could include assessment for specific disorders.
  - Assessing for specific disorders should only occur when necessary to determine whether the student is a child with a disability and the student’s educational needs.
  - An evaluation from a licensed physician may be appropriate to determine a child’s medically related disability that results in the child’s need for special education and related services.

Letter to Unnerstall, Office of Special Education Programs (April 25, 2016)

- A public school district does not need to conduct a specific assessment merely because it is requested by the parent.
- Parents who disagree with a school district’s special education evaluation may request an independent educational evaluation (“IEE”) at public expense.

Proposed State Legislation
NY Senate Bill 5867/Assembly Bill 7639: Proposed Legislation that Defines “Dyslexia”

A specific learning disability that is neurobiological in origin. It is characterized at the level of a keen observer as frustration, withdrawal, anxiety, aversion to homework and schoolwork, underperformance, and an undoing of the personal sense of ability, psycho-somatic symptoms that are triggered by school-failure to read or perform well at spelling, written expression or other language tasks, or mixing up right and left hands. Other observable characteristics include 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 reduce reading experience that can impede growth of vocabulary and background knowledge.

NY Senate Bill 6581/Assembly Bill 8262: Proposed Legislation Requiring Guidance for SLD

- Directs Commissioner to issue guidance to school districts to inform them of the unique educational needs of students with dyslexia, dyscalculia, and dysgraphia.
- Directs Commissioner to clarify that school districts may reference or use the terms dyslexia, dyscalculia, and dysgraphia in evaluations, eligibility determinations, or in developing an IEP.

NY Senate Bill 2767/Assembly Bill 7086: Pilot Program for Dyslexia Screening/Intervention

- Directs Commissioner to develop pilot program to provide early screening/intervention for children at-risk for dyslexia, including low phonemic awareness.
- **Defines dyslexia**: A specific learning disorder that is neurological in origin and that is characterized by unexpected difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities not consistent with the person’s intelligence, motivation, and sensory capabilities, which difficulties typically result from a deficit in the phonological component of language.
NY Senate Bill 3814/Assembly Bill 3143: Legislation for “Twice Exceptional” Students

- Proposal to add to education law the term “twice exceptional.” Pupils who give evidence of the potential for high cognitive processing capabilities commensurate with or contrary to cognitive processing taken as norms of regular education in areas such as, but not limited to: specific academics, general intellectual ability, creativity, leadership, and/or visual, spatial or performing arts; and also give evidence of one or more disabilities as defined by federal or state eligibility criteria such as, but not limited to, specific learning disabilities, speech and language disorders, emotional/behavioral disorders, physical disabilities, autism spectrum, or other health impairments, such as ADHD.

NY Senate Bill 2534/Assembly Bill 1480: Proposed Legislation for Teacher Training and Dyslexia

- Requires certification or training of teachers, administrators, and instructors in the area of dyslexia and related disorders.

- Provides Commissioner with power to promulgate regulations and establish programs and training related to dyslexia, including successful completion of sufficient hours of coursework and supervised clinical experience.

- Defines dyslexia: A specific learning disorder that is neurological in origin and that is characterized by unexpected difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities not consistent with the person’s intelligence, motivation, and sensory capabilities, which difficulties typically result from a deficit in the phonological component of language.

NY Senate Bill 3630/Assembly Bill 501: Tiered Eligibility for OPWDD Services

- Directs Commissioner of Developmental Disabilities to develop and implement a program of tiered eligibility for OPWDD services for individuals with “learning disabilities and other complex neurological impairments.”

- Defines Learning Disability: A disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language, which may manifest itself as an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. This includes such condition as perceptual disabilities, minimal brain dysfunction, dyslexia, dysgraphia, dyscalculia, dyspraxia, and developmental aphasia.
Practical Guidance

Diagnosing Dyslexia, Dyscalculia, and Dysgraphia

• Federal and State special education regulations do not specifically include a special education classification for dyslexia, dyscalculia, or dysgraphia; rather, students with these disorders fall under the umbrella term of "specific learning disability."

Federal and State Special Education Classification: Specific Learning Disability

• A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself as the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

• This includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

• This does not include learning problems that are the result of visual, hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

34 CFR §300.304(c)(10); 8 NYCRR §200.1(zz)(6)
DSM-V Diagnostic Criteria:
Specific Learning Disorder

- Difficulties learning and using academic skills, as indicated in the presence of at least one of the following symptoms that have persisted for at least 6 months, despite the provision of interventions that target those difficulties:
  - Inaccurate or slow and effortful word reading
  - Difficulty understanding the meaning of what is read
  - Difficulties with spelling
  - Difficulties with written expression
  - Difficulties mastering number sense, number facts, or calculation
  - Difficulties with mathematical reasoning

DSM-V Note for Dyslexia

- Dyslexia is an alternative term used to refer to a pattern of learning difficulties characterized by problems with accurate or fluent word recognition, poor decoding, and poor spelling abilities.
- If dyslexia is used to specify this particular pattern of difficulties, it is important also to specify any additional difficulties that are present, such as difficulties with reading comprehension or math reasoning.

Additional NY State Requirements for Classifying a Student with LD

- Students suspected of having a learning disability must receive an individual evaluation that includes a variety of assessment tools and strategies.
  - The CSE may not rely on any single procedure as the sole criterion.
Additional NY State Requirements for Classifying a Student with LD (cont'd.)

- A student may be classified with a learning disability if the student does not achieve adequately for the student’s age or meet State-approved grade-level standards in oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving, and the student either:
  - Does not make sufficient progress to meet age or state-approved grade-level standards; or
  - Exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development.

- A CSE is not prohibited from considering whether there is a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematical calculation and/or mathematical problem solving.
  - Note: A CSE shall not use the severe discrepancy criteria to determine that a student in kindergarten through grade four has a learning disability in the area of reading.

NY State LD Requirements: Specific Documentation

- Whether the student has a learning disability;
- The basis for making the determination;
- The student’s relevant behavior, if any;
- The educationally relevant medical findings, if any;
- Whether classification is made based on:
  - failure to adequately achieve and student has not made sufficient progress, or
  - Pattern of strengths and weaknesses in performance and/or achievement;
- The determination regarding any visual, hearing, or motor disability; an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency; and
- If the student participated in RII, examination of data collected, and parent notification.
Practical Tips: What to do if a Parent Requests an Evaluation for Dyslexia, Dyscalculia, or Dysgraphia?

- A parent’s request for testing specific to dyslexia, dyscalculia, or dysgraphia does not automatically require a school district to specifically test for that disorder or refer to an outside evaluator for testing and diagnosis.

- It also does not relieve the district of its obligation to assess a student for special education eligibility.

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Practical Tips: What to do if a Parent Requests an Evaluation for Dyslexia, Dyscalculia, or Dysgraphia? (cont’d.)

- Once a request for specific testing is made by a parent, have a discussion with the parent to identify the particular area of suspected disability.
  - A little bit of parent education can go a long way.
  - The parent should receive an explanation of how the school district’s testing will address the suspected area of disability.

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Practical Tips: What to do if a Parent Requests an Evaluation for Dyslexia, Dyscalculia, or Dysgraphia? (cont’d.)

- Develop an assessment plan that includes a thorough evaluation of the suspected area of disability.
  - This does not mean that specific assessments must be used based on specific diagnoses.
  - Assessments should be chosen based on how they measure the area of suspected disability.
Practical Tips: What to do if a Parent Requests an Evaluation for Dyslexia, Dyscalculia, or Dysgraphia? (cont’d.)

- Collect data from a variety of sources and compare with federal and state special education regulations to determine whether a student meets criteria for a specific learning disability classification.
- Utilize input from the school psychologist when determining whether the evaluative data demonstrate a specific learning disability in one or more areas.

Questions??

THANK YOU!