

**Advance Questions from the Dyslexia Training Institute
for the
Wrightslaw: Special Education Law and Advocacy Conference
San Diego, California**

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Most questions have been previously asked and are answered on Wrightslaw. See the numerous articles by Sue Whitney about reading. (Google the word **Whitney** on Wrightslaw.) Answers in red.

1. Who can diagnose dyslexia?

ANSWER: This may be variable from state to state, but the question also includes the concept as to whether the “disability” does adversely affect educational performance. (See definition of child with a disability in IDEA at 20 USC § 1401(c)) A child might have a disability identified by an evaluator qualified to make that determination, but that does make a child eligible. That must be done by the eligibility team.

Diagnosing dyslexia can be done by a qualified mental health practitioner, such as a psychologist. The new Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5, aka DSM5) places dyslexia under the label of a “Specific Learning Disorder.” It requires psycho-metric evidence from individually administered norm or criterion referenced test(s) of psycho-educational achievement. DSM-V notes that the evaluator must have “expertise” in that specific learning disorder and in psychological/cognitive assessments. The evaluation must be specific about each particular area, such as word reading accuracy, reading rate or fluency, and reading comprehension. There are three categories; impairment in reading, written expression, and math. Each category has specific academic domains and skills that are impaired which must be discussed by the evaluator.

At the same time, many others, as a part of their evaluations, note that the student has characteristics that are similar to those of a child with

dyslexia. In doing so, all evaluators should provide a visual picture, using words, describing the particular facts so that the person reading the report reaches the same opinion and conclusion.

2. The school approved an IEE, but will not let me use an evaluator who isn't on their "approved list" but says I must use an evaluator from their approved list. I want to use an evaluator who was recommended because she understands dyslexia and is qualified to do the testing. Do I have the right to choose the evaluator for an IEE?

ANSWER: Yes, you have the right to choose. Google IEE and also google "approved list" (with quotation marks) on Wrightslaw and you will find a number of articles. The key one is the February 20, 2004 letter from OSEP to the CA Dept. of Ed. See the article by attorney Gary Mayerson and also the article by attorney Wayne Steedman on Wrightslaw.com.

3. How does the new DSM-5 change how we diagnose/treat/talk about dyslexia?

ANSWER: See question # 1 and read the DSM-5 at www.dsm5.org and google the phrase dsm5 and dyslexia.

4. If my child is diagnosed with dyslexia, does the school have to add the term dyslexia to my child's IEP if I request it?

ANSWER: No, however the parent can write an IEP addendum entitled "Parent's IEP comments" re dyslexia and research about educational approaches to remediation of dyslexia and request that it be attached to the IEP.

5. Is dyslexia 'covered' under the law?

ANSWER: Yes, see the definition of a specific learning disability in IDEA 2004 at 20 USC § 1401(30) and page 55 in *Wrightslaw: Special Education Law, 2nd Ed.*

6. What should I do when the school says:

Dyslexia is just a general term and doesn't really mean anything
We do not have to provide services to kids with dyslexia
Your child is too smart to have dyslexia. He will be fine.
He is a boy, and just needs to focus more.

ANSWER: Do not argue with them. You will not change their attitudes and beliefs. Shift the discussion and focus on using the “5 W’s + H+E” - who, what, when, where, why, how and explain. Ask questions to flush out their positions so that you can figure out how to change their focus. A straight up argument is not persuasive and does not change their perspective, however, their own emotional response is impacted by empathy. Market to those emotions to change their thinking and perspective.

7. What should I do when the school wants to wait until third grade to provide any help because they think my child is “just developing slower” than most children?

ANSWER: Learn about the principles of early intervention and the importance of learning how to read up to third grade, and reading to learn, from third grade on. Try to help them see the damage created by waiting to fail rather than focus and intervention now, to avoid the damaging effects of failure. Children fall further behind and do not catch up.

8. The school claims that my child is making progress, but my child is very far behind and I don't see the progress.

ANSWER: Using the bell curve and Power Point percentile rank bar graphs, compare the child’s educational achievement test scores in reading, writing, arithmetic and spelling, on the same test, over time. If the child is making progress, that should be evident from the test data. If not, that too is evident. Data that is not objective and independent is not sufficient to determine progress.

9. What are appropriate goals for a student with dyslexia? The school

often leaves out goals in these areas: decoding at the word level, fluency and spelling.

ANSWER: What is appropriate for one child is not necessarily appropriate for another child, each with dyslexia. This information should be provided by and included in the report from the private sector evaluator and is unique to each child. A cookie cutter approach will not work.

10. What are appropriate accommodations for a student with dyslexia?

ANSWER: See the answer to question 9. The evaluator needs to address this. It might mean that some items are read aloud, but this is not a substitute for teaching a child how to read.

11. What should I do if the school only wants to give my child a Section 504 Plan for accommodations, but no remediation, especially in the higher grades (middle through high school)?

ANSWER: You must emphasize that your child needs to learn how to read. In the Shannon Carter US Supreme Court case, that was the issue. The school held out for Shannon to read at the 5.4 reading grade equivalent level even though she was a high school student with an above average IQ. Her parents wanted her to read at the high school level when she graduated from high school. The parents removed her from public school, placed her into an Orton-Gillingham school (Trident Academy) and she was reading on the high school level when she graduated. She prevailed before the US Supreme Court in a 9-0 victory. (Her attorney was Pete Wright.)

Have your evaluator emphasize that your child can learn how to read, if taught properly.

12. Can a student get other services through a 504 Plan or just accommodations?

ANSWER: In legal theory, your child can get FAPE under Section 504,

but the case law is meager and it is questionable as to what the child can receive and the quality of such services. However, for the college bound youngster, we recommend that the child have both an IEP and a Section 504 Plan since the colleges and universities give great weight to a high school Section 504 Plan, but much less to a prior IEP.

13. My child spends hours and hours on homework. How do I address this problem with the school?

ANSWER: It sounds like the real question is related to whether this child should be eligible for an IEP. To have favorable data in support of eligibility, keep a daily log as to the amount of time spent on homework. See OSEP's 1995 Letter to Lillie and Felton on Wrightslaw. If you are providing extra support, OSEP noted that it is "appropriate to consider information about outside or extra learning support provided to the child when determining whether a child who receives satisfactory grades is nevertheless not achieving at age-level. Such information may indicate that a child's current educational achievement reflects the service augmentation, not what the child's achievement would be without such help."

14. The prevailing opinion is that any RSP teacher who is credentialed to use any school approved reading materials is an appropriate teacher when all of the dyslexia research states otherwise. How do you make a case that a specific type of intervention, like Orton-Gillingham, and specific training is required for teachers of dyslexic students when school district staff and the judge don't know the difference?

ANSWER: The private evaluation needs to address, with specificity, the nature of the reading, writing, arithmetic and spelling errors made by the child, the basis for those types of errors, and specifically, what is needed to remediate those issues. The evaluator should provide visual factual examples rather than conclusion opinion statements. See Whitney, - Get a Reading Program that Works on Wrightslaw.

For High School Students:

15. The school says a student cannot take AP classes because s/he has a learning disability.

ANSWER: This is discrimination actionable under Section 504. The US Dept of Ed assumed that a child planning to go to college may well be taking AP classes. See August 14, 2006, Federal Register (“the Commentary”) at page 46668.

16. Can a student have accommodations in AP classes?

ANSWER: Of course, failure to do so again is a violation of Section 504 of the Rehabilitation Act.

17. A school did not provide FAPE, because they failed to provide remediation and/or appropriate accommodations. The student is in high school and his dyslexia is having a negative impact on the student’s grades which can affect his ability to get into college. Can the parent (or student) advocate (request?) to have their grades adjusted? For example, the student gets As and Bs on homework because he spends hours and hours on it, but he fails tests because accommodations in the IEP are not being provided, so he fails the class. Can it be required that the student’s grades be based on homework only in this situation?

ANSWER: No. You do not have the power nor is it in the law that grades can be based on homework alone. However, this is the wrong question to ask. See my North Carolina, *Brody v. Dare County* case in which the parent initially wanted accommodations and modifications because the child could not read upon entering high school. The most important question was “What will it take for my child to learn how to read?” The answer was Landmark School as subsequently ordered by the Hearing Officer and upheld by the Administrative Law Judge. It might mean intense daily tutoring or a private school placement, but changing grades is not the answer that will prepare the child for further education, employment and independent living. (See Purpose of IDEA 2004 at 20 USC § 1400(d))

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