THE DYSLEXIA HANDBOOK

REVISED 2014

Procedures Concerning Dyslexia and Related Disorders

TEXAS EDUCATION AGENCY • AUSTIN, TEXAS

July 2014

THE DYSLEXIA HANDBOOK

REVISED 2014

Procedures Concerning
Dyslexia and Related Disorders

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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.

The Dyslexia Handbook—Revised 2014: Procedures Concerning Dyslexia and Related Disorders (*The Dyslexia Handbook*) is the result of new legislation passed in the 82nd and 83rd Legislative Sessions. The handbook contains the SBOE-approved procedures concerning dyslexia and related disorders. *The Dyslexia 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). This handbook replaces all previous handbooks and guidelines.

There are also designated consultants at each ESC available to assist district stakeholders with implementing state law and SBOE rules and procedures regarding dyslexia. Appendix D of this handbook contains information for the 20 regional education service centers. Or visit http://www.tea.state.tx.us/regional_services/esc/.

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.

Acknowledgments

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Preface

In the state of Texas, students who continue to struggle with reading, despite appropriate or intensified instruction, are provided organized systems of reading support. Some students struggle during early reading acquisition while others do not struggle until the later grades, even at the postsecondary level. Here they face more complex language demands (e.g., reading textbooks, academic texts, and other print material). For many struggling readers, the difficulty may be due to dyslexia. Dyslexia is found in all student populations and languages. Some students with dyslexia may be English language learners (ELLs) who struggle with reading not only in English, but in their native language as well. In Texas, assessment for dyslexia is conducted from kindergarten through grade 12.

The purpose of *The Dyslexia Handbook* is to provide procedures for school districts, charter schools, campuses, teachers, students, and parents/guardians in early identification of, instruction for, and accommodations for students with dyslexia. This handbook will be used by districts and charter schools as they develop their written procedures regarding students with dyslexia. It will also serve as a resource for educator preparation programs and other entities seeking guidance in serving students with dyslexia.

Texas Education Code (TEC) §38.003 defines dyslexia and related disorders, mandates testing students for dyslexia and providing instruction for students with dyslexia, and gives the State Board of Education (SBOE) authority to adopt rules and standards for administering testing and instruction. TEC §7.028(b) relegates the responsibility for school compliance with the requirements for state educational programs to the local school board. 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, §504, establishes assessment and evaluation standards and procedures for students (34 C.F.R. Part 104).

This handbook reflects current law as well as legislative action from the 82nd and 83rd sessions of the Texas Legislature and replaces all previous handbook editions. The new legislation includes the following:

- TEC §21.044(c)(2) outlines the curriculum requirement for institutions of higher education for teacher preparation to include the characteristics of dyslexia, identification of dyslexia, and multisensory strategies for teaching students with dyslexia.
- TEC §21.054(b) and TAC §232.11 mandate continuing education requirements for educators who teach students with dyslexia.
- TEC §28.021(b) establishes guidelines to districts based on best practices when considering factors for promotion and the student identified with dyslexia.
- TEC §38.003(b-1) (specific to K–12) and TEC §51.9701 (specific to institutions of higher education) both mandate that a student determined to have dyslexia may not be retested for dyslexia for the purpose of reassessing that student's need for accommodations until the district/institution of higher education reevaluates the information obtained from previous testing of the student.
- TEC §38.0031 establishes the online technology tool for students identified with dyslexia.
- TEC §42.006(a-1) mandates the collection of data for students identified with dyslexia to be reported in the Public Education Information Management System (PEIMS).
- TAC §230.23 requires TEA to provide accommodations for persons with dyslexia who take licensing examinations.

The following chapters are included in this handbook:

I. Definitions and Characteristics of Dyslexia
II. Procedures for the Assessment and Identification of Students with Dyslexia
III. Instruction for Students with Dyslexia

The Dyslexia Handbook has nine appendices:

A. Sources of Laws and Rules for Dyslexia Identification and Instruction
B. State Statutes Related to Dyslexia
C. Questions and Answers
D. Contacts for Further Information
E. Associated Terms
F. Bibliography
G. Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities
H. Section 504 Code of Federal Regulations and Americans with Disabilities Act Amendments Act of 2008
I. History of Dyslexia Law

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Chapter I
Definitions & Characteristics

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I. Definitions and Characteristics of Dyslexia

The student who struggles with reading and spelling often puzzles teachers and parents. The student displays 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.

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" include disorders similar to or related to dyslexia such as developmental auditory imperceptions, 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 International Dyslexia Association defines "dyslexia" in the following way:

> 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, November 12, 2002)

Students identified as having dyslexia typically experience primary difficulties in phonological awareness, including phonemic awareness and manipulation, single-word reading, reading fluency, and spelling. Consequences may include difficulties in reading comprehension and/or written expression. These difficulties in phonological awareness are unexpected for the student's age and educational level and are not primarily the result of language difference factors. Additionally, there is often a **family history** of similar difficulties.

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

- Difficulty reading words in isolation
- Difficulty accurately decoding unfamiliar words
- Difficulty with oral reading (slow, inaccurate, or labored)
- Difficulty spelling

It is important to note that individuals demonstrate differences in degree of impairment.

The reading/spelling characteristics are most often associated with the following:

- Segmenting, blending, and manipulating sounds in words (phonemic awareness)
- Learning the names of letters and their associated sounds

- Holding information about sounds and words in memory (phonological memory)
- Rapidly recalling the names of familiar objects, colors, or letters of the alphabet (rapid naming)

Consequences of dyslexia may include the following:

- Variable difficulty with aspects of reading comprehension
- Variable difficulty with aspects of written language
- Limited vocabulary growth due to reduced reading experiences

Sources for Characteristics and Consequences of Dyslexia

Branum-Martin, L., Fletcher, J. M., & Stuebing, K. K. (2013). Classification and identification of reading and math disabilities: The special case of comorbidity. *Journal of Learning Disabilities*, *12*, 906–915.

Fletcher, J. M., Lyon, G. R., Fuchs, L. S., & Barnes, M. A. (2007). *Learning disabilities: From identification to intervention.* New York, NY: The Guilford Press.

Moats, L. C., Carreker, S., Davis, R., Meisel, P., Spear-Swerling, L., & Wilson, B. (2010). *Knowledge and practice standards for teachers of reading.* The International Dyslexia Association, Professional Standards and Practices Committee. Retrieved from www.interdys.org/ewebeditpro5/upload/KPSJul2013.pdf

Moats, L. C., & Dakin, K. E. (2008). *Basic facts about dyslexia and other reading problems*. Baltimore, MD: The International Dyslexia Association.

Connecting Research and Practice

New research in understanding dyslexia as a neurodevelopmental disorder is ongoing. Future research will assist in learning more about the phonological awareness deficit and how this deficit interacts with other risk factors related to dyslexia. Research also is now focusing on the developmental cause of neural abnormalities and how these predict treatment response.

Pennington, B. F. (2009). *Diagnosing learning disorders: A neuropsychological framework* (2nd ed.). New York, NY: The Guilford Press.

Peterson, R. L., & Pennington, B. F. (2012). Developmental dyslexia. *The Lancet, 379*(9830), 1997–2007.

Common Risk Factors Associated with Dyslexia

If the following behaviors are unexpected for an individual's age, educational level, or cognitive abilities, they may be risk factors associated with dyslexia. A student with dyslexia usually exhibits several of these behaviors that persist over time and interfere with his/her learning. A **family history** of dyslexia may be present; in fact, recent studies reveal that the whole spectrum of reading disabilities is strongly determined by genetic predispositions (inherited aptitudes) (Olson, Keenan, Byrne, & Samuelsson, 2014).

Preschool

- Delay in learning to talk
- Difficulty with rhyming

- Difficulty pronouncing words (e.g., “pusgetti” for “spaghetti,” “mawn lower” for “lawn mower”)
- Poor auditory memory for nursery rhymes and chants
- Difficulty in adding new vocabulary words
- Inability to recall the right word (word retrieval)
- Trouble learning and naming letters and numbers and remembering the letters in his/her name
- Aversion to print (e.g., doesn’t enjoy following along if book is read aloud)

Kindergarten and First Grade

- Difficulty breaking words into smaller parts (syllables) (e.g., “baseball” can be pulled apart into “base” “ ball” or “napkin” can be pulled apart into “nap” “kin”)
- Difficulty identifying and manipulating sounds in syllables (e.g., “man” sounded out as /m/ /ă/ /n/)
- Difficulty remembering the names of letters and recalling their corresponding sounds
- Difficulty decoding single words (reading single words in isolation)
- Difficulty spelling words the way they sound (phonetically) or remembering letter sequences in very common words seen often in print (e.g., “sed” for “said”)

Second Grade and Third Grade

Many of the previously described behaviors remain problematic along with the following:

- Difficulty recognizing common sight words (e.g., “to,” “said,” “been”)
- Difficulty decoding single words
- Difficulty recalling the correct sounds for letters and letter patterns in reading
- Difficulty connecting speech sounds with appropriate letter or letter combinations and omitting letters in words for spelling (e.g., “after” spelled “eftr”)
- Difficulty reading fluently (e.g., slow, inaccurate, and/or without expression)
- Difficulty decoding unfamiliar words in sentences using knowledge of phonics
- Reliance on picture clues, story theme, or guessing at words
- Difficulty with written expression

Fourth Grade through Sixth Grade

Many of the previously described behaviors remain problematic along with the following:

- Difficulty reading aloud (e.g., fear of reading aloud in front of classmates)
- Avoidance of reading (e.g., particularly for pleasure)
- Acquisition of less vocabulary due to reduced independent reading
- Use of less complicated words in writing that are easier to spell than more appropriate words (e.g., “big” instead of “enormous”)
- Reliance on listening rather than reading for comprehension

Middle School and High School

Many of the previously described behaviors remain problematic along with the following:

- Difficulty with the volume of reading and written work
- Frustration with the amount of time required and energy expended for reading
- Difficulty with written assignments
- Tendency to avoid reading (particularly for pleasure)
- Difficulty learning a foreign language

Postsecondary

Some students will not be identified prior to entering college as having dyslexia. The early years of reading difficulties evolve into slow, labored reading fluency. Many students will experience extreme frustration and fatigue due to the increasing demands of reading as the result of dyslexia. In making a diagnosis for dyslexia, a student's reading history, familial/genetic predisposition, and assessment history are critical. Many of the previously described behaviors may remain problematic along with the following:

- Difficulty pronouncing names of people and places or parts of words
- Difficulty remembering names of people and places
- Difficulty with word retrieval
- Difficulty with spoken vocabulary
- Difficulty completing the reading demands for multiple course requirements
- Difficulty with note-taking
- Difficulty with written production
- Difficulty remembering sequences (e.g., mathematical and/or scientific formulas)

Appendix G: Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities has been included for additional information.

Since dyslexia is a neurological, language-based disability that persists over time and interferes with an individual's learning, it is critical that identification and intervention occur as early as possible.

Associated Academic Difficulties and Other Conditions

The behaviors in the previous sections represent common difficulties that students with dyslexia may exhibit. In addition, students with dyslexia may have problems in written expression, reading comprehension, and mathematics, as well as other complicating conditions and/or behaviors.

Besides academic struggles, some students with dyslexia may exhibit other complex conditions and/or behaviors. The most common co-occurring disorders with dyslexia are attention deficit hyperactivity disorder (ADHD) and specific developmental language disorders (Snowling & Stackhouse, 2006, pp. 8–9). Some, though not all, students with dyslexia may also experience symptoms such as anxiety, anger, depression, lack of motivation, or low self-esteem. In such instances, appropriate instructional/referral services need to be provided.

These additional conditions can have a significant impact on the effectiveness of instruction provided to students with dyslexia. Motivation, in particular, has been shown to be critical to the success or failure of instructional practices. In regard to motivation, Torgesen states (as cited in Sedita, 2011), "Even technically sound instructional techniques are unlikely to succeed unless we can ensure that, most of the time, students are engaged and motivated to understand what they read" (p. 532). Therefore, all the factors that may affect learning must be considered when identifying and providing instruction for students with dyslexia. ADHD or symptoms of anxiety, anger, depression, or low self-esteem may lower a student's motivation and engagement in learning. Educators are responsible for providing an environment of affirmation that motivates and engages the student with dyslexia and complicating conditions.

Sources for Common Characteristics and Risk Factors of Dyslexia

Carreker, S. (2008, September). *Is my child dyslexic?* The International Dyslexia Association. Retrieved from www.interdys.org

Mather, N., & Wendling, B. J. (2012). *Essentials of dyslexia assessment and intervention.* Hoboken, NJ: John Wiley & Sons.

Moats, L. C., & Dakin, K. E. (2008). *Basic facts about dyslexia and other reading problems*. Baltimore, MD: The International Dyslexia Association.

Olson, R. K., Keenan, J. M., Byrne, B., & Samuelsson, S. (2014). Why do children differ in their development of reading and related skills? *Scientific Studies of Reading, 18*(1), 38–54.

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

Sources for Associated Academic Difficulties and Other Conditions

Gooch, D., Snowling, M., & Hulme, C. (2011). Time perception, phonological skills, and executive function in children with dyslexia and/or ADHD symptoms. *The Journal of Child Psychology and Psychiatry, 52*(2), 195–203.

Harpin, V., Mazzone, L., Raynaud, J. P., Kahle, J. R., & Hodgkins, P. (May 22, 2013). Long-term outcomes of ADHD: A systematic review of self-esteem and social function. *Journal of Attention Disorders*. doi:10.1177/1087054713486516

Kavale, K. A., & Forness, S. R. (1996). Social skill deficits and learning disabilities: A meta-analysis. *Journal of Learning Disabilities, 29*(3), 226–237.

Klassen, A. F., Miller, A., & Fine, S. (2004). Health-related quality of life in children and adolescents who have a diagnosis of attention-deficit/hyperactivity disorder. *Pediatrics*, *114*(5), 541-547.

Mazzone, L., Postorino, V., Reale, L., Guarnera, M., Mannino, V., Armando, M., Fatta, L., De Peppo, L., & Vicari, S. (2013). Self-esteem evaluation in children and adolescents suffering from ADHD. *Clinical Practice & Epidemiology in Mental Health 9*, 96–102.

Sawyer, M. G., Whaites, L., Rey, J., Hazell, P. L., Graetz, B. W., & Baghurst, P. (2002). Health-related quality of life of children and adolescents with mental disorders. Journal of the American Academy of Child and Adolescent Psychiatry *41*(5), 530–537.

Sedita, J. (2011). Adolescent literacy: Addressing the needs of students in grades 4–12. In J. R. Birsh (Ed.), *Multisensory teaching of basic language skills* (3rd ed., p. 532). Baltimore, MD: Paul H. Brookes Publishing.

Snowling, M. J., & Stackhouse, J. (2006). *Dyslexia, speech, and language: A practitioner's handbook* (2nd ed.). Hoboken, NJ: John Wiley & Sons.

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Chapter II
Assessment & Identification

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II. Procedures for the Assessment and Identification of Students with 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

The early identification of students with dyslexia as well as the corresponding early intervention program for these students will have significant implications for their future academic success. In the book *Straight Talk about Reading*, Hall and Moats (1999) state the following:

- "Early identification is critical because the earlier the intervention, the easier it is to remediate.
- Inexpensive screening measures identify at-risk children in mid-kindergarten with 85 percent accuracy.
- If intervention is not provided before the age of eight, the probability of reading difficulties continuing into high school is 75 percent" (pp. 279–280).

Research continues to support the need for early identification and assessment (Birsh, 2011; Sousa, 2005; Nevills & Wolfe, 2009). The rapid growth of the brain and its responsiveness to instruction in the primary years make the time from birth to age eight a critical period for literacy development (Nevills & Wolfe, 2009). Characteristics associated with reading difficulties are connected to spoken language. Difficulties in young children can be assessed through screenings of phonemic awareness and other phonological skills (Sousa, 2005).

Nevills, P., & Wolfe, P. (2009). *Building the reading brain, PreK–3* (2nd ed.). Thousand Oaks, CA: Corwin Press.

Sousa, D. A. (2005). *How the brain learns to read.* Thousand Oaks, CA: Corwin Press.

Keeping the above-referenced information in mind, it is important that the school district not delay identification and intervention processes until second or third grade for students suspected of having dyslexia. This identification process should be an individualized evaluation rather than a screening. Further, the evaluation should be conducted through §504 procedures or through the Individuals with Disabilities Education Act (IDEA 2004).

The identification and intervention process for dyslexia can be multifaceted. These processes involve both state and federal requirements that must be followed. In this chapter, the differences are discussed as needed for understanding. Generally in Texas, however, dyslexia identification and intervention most often happen through general education rather than special education. Special education and the assessment through IDEA 2004 may occur when dyslexia is associated with factors complicating dyslexia, thus requiring more support than what is available through the general education dyslexia program. The following link to the National Center for Learning Disabilities (NCLD) provides a §504 and IDEA 2004 comparison chart:

www.ncld.org/disability-advocacy/learn-ld-laws/adaaa-section-504/section-504-idea-comparison-chart?utm_source=threethings_sep_30_2013&utm_medium=email&utm_content=text&utm_campaign=threethings

In Texas and throughout the country, there is a focus on a Response to Intervention (RtI) or tiered intervention process as a vehicle for meeting the academic and behavioral needs of all students. The components of the Student Success Initiative (SSI) and other state-level programs offer additional support. Current federal legislation under the Elementary and Secondary Education Act (ESEA) calls for the use of benchmark assessments for early identification of struggling students before they fail. In fact, state law requires the use of early reading assessments that are built on substantial evidence of best practices. Carefully chosen, these assessments can give crucial information about a student's learning and can provide a basis for the tiered intervention model. Through the tiered intervention process, schools can document students' learning difficulties, provide ongoing assessment, and monitor reading achievement progress for students at risk for dyslexia or other reading difficulties.

Early intervention is further emphasized as the result of research using neuroimaging. Diehl, Frost, Mencl, and Pugh (2011) discuss the need to determine the role that deficits in phonological awareness and phonemic awareness play in reading acquisition, thus improving our methodology for early intervention. The authors note that future research will be enabled by longitudinal studies of phonology remediation using various treatments. "It will be especially important to take a multilevel analysis approach that incorporates genetics, neuroanatomy, neurochemistry, and neurocircuitry, and also to combine the strengths of the different neuroimaging techniques" (Diehl et al., 2011, p. 230). Evaluation followed by structured intervention that incorporate new scientific research must be embraced.

As referenced in the letter from the "Office of Special Education Programs (OSEP) to the State Directors of Special Education," states have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of the RtI process. For more information, please visit www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf.

Progression through tiered intervention is not required in order to begin the identification of dyslexia. The use of a tiered intervention process should not delay or deny an evaluation for dyslexia, especially when parent or teacher observations reveal the common characteristics of dyslexia. The needs of the students must be the foremost priority. Frequently, a child with dyslexia may be making what appears to be progress in the general education classroom based on report card grades or minor gains on progress measures. While various interventions may prove to be helpful in understanding curriculum, a child with dyslexia also requires a specialized type of intervention (See Chapter III: Instruction for Students with Dyslexia) to address his/her specific reading disability. The use of a tiered process should not delay the inclusion of a student in dyslexia intervention once dyslexia is identified.

Parents/guardians always have the right to request a referral for a dyslexia assessment at any time. Once a parent request for dyslexia assessment has been made, the school district is obligated to review the student's data history (both formal and informal data) to determine whether there is reason to believe the student has a disability. If a disability is suspected, the student needs to be evaluated following the guidelines outlined in this chapter. If the school does not suspect a disability and determines that evaluation would not be warranted, the parents/guardians must be given a copy of their due process rights. While §504 is silent on prior written notice, best practice is to provide a parent the reasons an evaluation is denied. The Office for Civil Rights (OCR) recommends that districts are able to provide documentation that the denial was based on data to support there is no disability. For more information regarding §504 compliance, visit the following: http://www.tea.state.tx.us/index2.aspx?id=2147496921 and http://www.hhs.gov/ocr/civilrights/clearance/exampleofasection504grievanceprocedure.html.

When a referral for dyslexia assessment is made, districts should ensure that evaluation procedures are followed in a reasonable amount of time. Section 504 does not require specific timelines; therefore, it is beneficial for districts to consider the timelines Texas has established for the completion of initial special education evaluations through TEC §29.004(a). The OCR looks to state timelines as a guideline when defining the "reasonable amount of time" should a complaint be filed regarding the evaluation procedures**.**

Diehl, J. D., Frost, S. J., Mencl, W. E., & Pugh, K. R. (2011). Neuroimaging and the phonological deficit hypothesis. In S. Brady, D. Braze, & C. Fowler (Eds.), *In explaining individual difference in reading theory and evidence* (pp. 217–237). New York, NY: Psychology Press.

Norlin, J. W. (2011). *What do I do when: The answer book on Section 504* (4th ed.). Horsham, PA: LRP Publications.

State and Federal Law Regarding Early Identification and Intervention Prior to Formal Assessment

Both state and federal legislation emphasize early identification and intervention for students who may be at risk for reading disabilities, such as dyslexia. Those professionals responsible for working with students with reading difficulties should be familiar with the legislation listed in Figure 2.1.

Figure 2.1. State and Federal Laws

Reading Diagnosis—TEC §28.006

This education code requires schools to administer early reading instruments to all students in kindergarten and grades 1 and 2 to assess their reading development and comprehension. Additionally, the law requires a reading instrument from the Commissioner's approved list be administered at the beginning of grade 7 to any student who did not demonstrate proficiency on the reading assessment administered under TEC §39.023(a). If, on the basis of the reading instrument results, students are determined to be at risk for dyslexia or other reading difficulties, the school must notify the students' parents/guardians. According to TEC §28.006(g), the 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.

Elementary and Secondary Education Act (ESEA)

The provisions offered to students who are reported to be at risk for dyslexia or other reading difficulties should align to the requirements of ESEA legislation, which requires schools to implement reading programs using scientifically based reading research (SBRR).

Equal Education Opportunity Act (EEOA)

This civil rights law ensures that all students are given equal access to educational services regardless of race, color, sex, religion, or national origin. Therefore, research-based interventions are to be provided to all students experiencing difficulties in reading, including English language learners (ELL), regardless of their proficiency in English.

Individuals with Disabilities Education Act (IDEA 2004)

The most recent reauthorization of this federal act is consistent with ESEA 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 individual states may use in determining whether a student has a specific learning disability, including dyslexia.

Procedures for Assessment

The identification of reading disabilities, including dyslexia, will follow one of two procedures. A district will typically evaluate for dyslexia through §504. On the other hand, if a student is suspected of having a disability within the scope of IDEA 2004, all special education procedures must be followed. These procedural processes require coordination among the teacher, campus administrators, diagnosticians, and other professionals as appropriate when factors such as a student's English language acquisition, previously identified disability, or other special needs are present.

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/guardians. The appropriate time for assessing is early in a student's school career (19 TAC §74.28). TEC §28.006 Reading Diagnosis requires assessment of reading development and comprehension for all students in kindergarten, first grade, second grade, and as appropriate, seventh grade. 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.

While schools must follow federal and state guidelines, they must also develop procedures that address the needs of their student populations. Schools shall recommend assessment for dyslexia if the student demonstrates the following:

- Poor performance in one or more areas of reading and spelling that is unexpected for the student's age/grade
- Characteristics and risk factors of dyslexia indicated in Chapter I: Definitions and Characteristics of Dyslexia

Districts or charter schools must establish written procedures for assessing students for dyslexia within general education. 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

Schools collect data on all students to ensure that instruction is appropriate and scientifically based. Essential components of reading instruction are defined in section 1208(3) of the ESEA/NCLB as "explicit and systematic instruction in (A) phonemic awareness; (B) phonics; (C) vocabulary development; (D) reading fluency, including oral reading skills; and (E) reading comprehension strategies."

Any time (from kindergarten through grade 12) a student continues to struggle with one or more components of reading, schools must collect additional information about the student. Schools should use previously collected as well as current information to evaluate the student's academic progress and determine what actions are needed to ensure the student's improved academic performance. The collection of various data, as indicated in Figure 2.2, will provide information regarding factors that may be contributing to or primary to the student's struggles with reading and spelling.

Cumulative Data

The academic history of each student will provide the school with the cumulative data needed to ensure that underachievement in a student suspected of having dyslexia is not due to lack of appropriate instruction in reading. This information should include data that demonstrates that the student was provided appropriate instruction and include data-based documentation of repeated assessments of achievement at reasonable intervals (progress monitoring), reflecting formal assessment of student progress during instruction. This cumulative data also includes information from parents/guardians. Sources and examples of cumulative data are provided in Figure 2.2.

Figure 2.2. Sources and Examples of Cumulative Data

- Vision screening
- Hearing screening
- Teacher reports of classroom concerns
- Classroom reading assessments
- Accommodations or interventions provided
- Academic progress reports (report cards)
- Gifted/talented assessments
- Samples of schoolwork
- Parent conference notes
- K –2 reading instrument results as required in TEC §28.006 (English and native language, if possible)
- 7th-grade reading instrument results as required in TEC §28.006
- State student assessment program results as described in TEC §39.022
- Observations of instruction provided to the student
- Full Individual Evaluation (FIE)
- Outside evaluations
- Speech and language assessment
- School attendance
- Curriculum-based assessment measures
- Instructional strategies provided and student's response to the instruction
- Universal screening

Environmental and Socioeconomic Factors

Information regarding a child's early literacy experiences, environmental factors, and socioeconomic status must be part of the data collected throughout the data gathering process. This data supports the determination that difficulties in learning are not due to cultural factors or environmental or economic disadvantage. Studies that have examined language development and the effects of home experiences on young children indicate that home experiences and socioeconomic status have dramatic effects on cumulative vocabulary development (Hart & Risley, 1995). Having data related to these factors may help in determining whether the student's struggles with reading are due to a lack of opportunity or a reading disability, including dyslexia.

Language Proficiency

Much diversity exists among ELLs. A student's language proficiency may be impacted by any of the following: native language, English exposure, parent education, socioeconomic status of the family, amount of time in the United States, experience of formal schooling, immigration status, community demographics, and ethnic heritage (Bailey, Heritage, Butler, & Walqui, 2000). ELLs may be students served in bilingual and ESL programs as well as students designated Limited English Proficient (LEP) whose parents have denied services. In addition to the information discussed in the previous section of this chapter, the Language Proficiency Assessment Committee (LPAC) maintains documentation (TEC §89.1220(g)-(i)) that is necessary to consider when identifying ELLs with dyslexia. Since the identification

and service delivery process for dyslexia must be aligned to the student's linguistic environment and educational background, involvement of LPAC is required. Additional data sources for ELLs are provided in Figure 2.3.

Figure 2.3. Additional Data Sources for English Language Learners

- Home Language Survey
- Assessment related to identification for limited English proficiency (oral language proficiency test and norm-referenced tests—all years available)
- Texas English Language Proficiency Assessment System (TELPAS) information for four language domains (listening, speaking, reading, and writing)
- Instructional interventions provided to address language needs
- Information regarding previous schooling inside and/or outside the United States
- Type of language program model provided and language of instruction

2. Formal Assessment

After data gathering, the next step in the evaluation process is formal assessment. This is not a screening; rather, it is an individualized assessment used to gather evaluation data. Formal assessment includes both formal and informal data. All data will be used to determine whether the student demonstrates a pattern of evidence for dyslexia. Information collected from the parents/guardians also provides valuable insight into the student's early years of language development. This history may help to explain why students come to the evaluation with many different strengths and weaknesses; therefore, findings from the formal assessment will be different for each child. Professionals conducting assessment for the identification of dyslexia will need to look beyond scores on standardized assessments alone and examine the student's classroom reading performance, educational history, and early language experiences to assist with determining reading and spelling abilities and difficulties.

Notification and Permission

When formal assessment is recommended, the school completes the evaluation process as outlined in §504 or IDEA 2004. At times, students will display additional factors/areas (e.g., oral language deficits, written expression difficulties, math difficulties) that complicate the identification of dyslexia through the §504 process and will require a referral for special education and possible identification as a child with a disability within the meaning of IDEA 2004 (20 U.S.C. §1400 et seq.).

Through the §504 process, the school completes the evaluation as outlined using the following procedures:

1. Notify parents/guardians of the proposal to assess student for dyslexia (§504).
2. Inform parents/guardians of their rights under §504.
3. Obtain permission from parents/guardians to assess the student for dyslexia.
4. 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: The §504 process is used most frequently unless a referral to special education is indicated.

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 requested, IDEA 2004 procedures must be followed. Information regarding special education procedures may be found on *The Legal Framework for the Child-Centered Special Education Process* website at https://framework.esc18.net. The notices and consents must be provided in the native language of parents/guardians or other mode of communication used by parents/guardians unless it is clearly not feasible to do so (§504, §74.28(d)).

Tests and Other Evaluation Materials

In compliance with §504 and IDEA 2004, test instruments and other evaluation materials must meet the following criteria:

- 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, 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
- Be used for the purpose for which the assessment or measures are valid or reliable
- Be provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information regarding what the child can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer

Additional Considerations for English Language Learners

A professional involved in the assessment, interpretation of assessment results, and identification of ELLs with dyslexia needs to have the following training/knowledge:

- Knowledge of first and second language acquisition theory
- Knowledge of the written system of the first language—transparent (Spanish, Italian, German), syllabic (Japanese-kana), Semitic (Arabic, Hebrew), and morphosyllabic (Chinese-Kanji)
- Knowledge of student's literacy skills in native and second language
- Knowledge of how to interpret results from a cross-linguistic perspective
- Knowledge of how to interpret the TELPAS (Texas English Language Proficiency Assessment System)

- Knowledge of how to interpret the results of the student's oral language proficiency in two or more languages in relation to the results of the tests measuring academic achievement and cognitive processes as well as academic data gathered and economic and socioeconomic factors

Although data from previous formal testing of the student's oral language proficiency may be available, as required by TEC §29.056, additional assessment of oral language proficiency should be completed for a dyslexia evaluation due to the importance of the information for

- consideration in relation to academic challenges,
- planning the assessment, and
- interpreting assessment results.

If there is not a test in the native language of the student, informal measures of evaluation such as reading a list of words or listening comprehension in the native language may be used.

Domains to Assess

Academic Skills

The school administers measures that are related to the student's educational needs. Difficulties in the areas of letter knowledge, word decoding, and fluency (rate and accuracy) may be evident depending upon the student's age and stage of reading development. In addition, many students with dyslexia may have difficulty with reading comprehension and written composition.

Cognitive Processes

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, learn the alphabetic principle, decode words, and spell accurately. Rapid naming skills may or may not be weak, but if deficient, they are often associated with difficulties in automatically naming letters, reading words fluently, and reading connected text at an appropriate rate. Memory for letter patterns, letter sequences, and the letters in whole words (orthographic processing) may be selectively impaired or may coexist with phonological processing weaknesses. Finally, various language processes, such as morpheme and syntax awareness, memory and retrieval of verbal labels, and the ability to formulate ideas into grammatical sentences, may also be factors affecting reading (Berninger & Wolf, 2009, pp. 134–135).

Possible Additional Areas

Based on the student's academic difficulties and characteristics and/or language acquisition, additional areas related to vocabulary, listening comprehension, oral language proficiency, written expression, and other cognitive abilities may need to be assessed. Areas for assessment are provided in Figure 2.4.

Figure 2.4. Areas for Assessment

Academic Skills

- Letter knowledge (name and associated sound)
- Reading words in isolation
- Decoding unfamiliar words accurately
- Reading fluency (both rate and accuracy are assessed)
- Reading comprehension
- Spelling

Cognitive Processes

- Phonological/phonemic awareness
- Rapid naming of symbols or objects

Possible Additional Areas

- Vocabulary
- Listening comprehension
- Verbal expression
- Written expression
- Handwriting
- Memory for letter or symbol sequences (orthographic processing)
- Mathematical calculation/reasoning
- Phonological memory
- Verbal working memory
- Processing speed

Berninger, V. W., & Wolf, B. (2009). *Teaching students with dyslexia and dysgraphia lessons from teaching and science*. Baltimore, MD: Paul H. Brookes Publishing.

Mather, N., & Wendling, B. J. (2012). *Essentials of dyslexia assessment and intervention*. Somerset, NJ: John Wiley & Sons.

Procedures for Identification

The identification of dyslexia is made by a §504 committee or, in the case of a special education referral, the admission, review, and dismissal (ARD) committee. In order to make an informed determination, either committee must include members who are knowledgeable about the

- student being assessed,
- assessments used, and
- meaning of the collected data.

Additionally, the committee members must have knowledge regarding

- the reading process;
- dyslexia and related disorders;
- dyslexia instruction; and
- district or charter school, state, and federal guidelines for assessment.

Review and Interpretation of Data and Assessments

To appropriately **understand** evaluation data, the committee of knowledgeable persons (§504 or ARD) must **interpret** test results in light of the student's educational history, linguistic background, environmental or socioeconomic factors, and any other pertinent factors that affect learning.

The committee (§504 or ARD) must first determine if a student's difficulties in the areas of reading and spelling reflect a pattern of evidence for the primary characteristics of dyslexia with unexpectedly low performance for the student's age and educational level in some or all of the following areas:

- Reading words in isolation
- Decoding unfamiliar words accurately and automatically
- Reading fluency for connected text (both rate and/or accuracy)
- Spelling (An isolated difficulty in spelling would not be sufficient to identify dyslexia.)

The evaluation data collected also may include information on reading comprehension, mathematics, and written expression. Dyslexia often coexists with learning difficulties in these related areas.

Another factor to consider when interpreting test results is the student's linguistic background. The nature of the writing system of a language impacts the reading process. Thus, the identification guideposts of dyslexia in languages other than English may differ. For example, decoding in a language with a transparent written language (e.g., Spanish, German) may not be as decisive an indicator of dyslexia as reading rate. A transparent written language has a close letter/sound correspondence (Joshi & Aaron, 2006). Students with dyslexia who have or who are being taught to read and write a transparent language may be able to decode real and nonwords adequately but demonstrate serious difficulties in reading rate with concurrent deficiencies in phonological awareness and rapid automatized naming (RAN).

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. It is important to note that 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 spelling.

Based on the above information and guidelines, should the committee (§504 or ARD) determine that the student exhibits weaknesses in reading and spelling, the committee will then examine the student's data to determine whether these difficulties are **unexpected** in relation to the student's other abilities, sociocultural factors, language difference, irregular attendance, or lack of appropriate and effective instruction. For example, the student may exhibit strengths in areas such as reading comprehension, listening comprehension, math reasoning, or verbal ability yet still have difficulty with reading and spelling. Therefore, it is not one single indicator but a preponderance of data (both informal and formal) that provide the committee with evidence for whether these difficulties are unexpected.

If the student's difficulties are unexpected, in relation to other abilities, the committee (§504 or ARD) must then determine if the student has dyslexia. If the student has dyslexia, the committee also determines whether the student has a disability under §504. A student is disabled under §504 if the physical or mental impairment (dyslexia) substantially limits one or more major life activities, such as the specific activity of reading (34 C.F.R. §104.3(j)(1)). Additionally, the §504 committee, in determining whether a student has a disability that substantially limits the student in a major life activity (reading), must not consider the ameliorating effects of any mitigating measures that student is using. If the §504 committee does not identify dyslexia, but the student has another condition or disability that substantially limits the student, eligibility for §504 services related to the student's other condition or disability should be considered. The §504 committee will also consider whether the student is eligible for accommodations. This is a separate determination from the determination that the student has dyslexia.

See Figure 2.5 for a list of questions to be considered when making a determination.

Figure 2.5. Questions to Be Considered When Making a Determination

- Do the data show a pattern of low reading and spelling skills that is **unexpected** for the student in relation to the student's other cognitive abilities and provision of effective classroom instruction?
- Does this pattern indicate the student has dyslexia?
- Does the student have a disability under §504?

Based on the data, if the committee (§504 or ARD) determines that weaknesses are indicated in reading and spelling, the committee, based on the student's pattern of performance over time, test profile, and response to instruction, will determine the intervention plan. Refinement of that plan will occur as the student's response to instruction is observed.

Review of Data by the Admission, Review, and Dismissal (ARD) Committee—When Is It Appropriate?

At any time during the assessment for dyslexia, identification process, or instruction related to dyslexia, students may be referred for evaluation for special education services. At times, students will display additional factors 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 a sufficient rate of 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. §1400 et seq.) should be made.

If the student with dyslexia is found eligible for special education services in the area of reading, and the ARD committee determines that 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 components and delivery of dyslexia instruction listed in Chapter III: Instruction for Students with Dyslexia. If a student has previously met special education eligibility, the ARD committee should include goals that reflect the need for dyslexia instruction in the IEP and determine the least restrictive environment for delivering the student's dyslexia intervention.

In IDEA 2004, §1401(30), dyslexia is considered one of a variety of etiological foundations for "specific learning disability (SLD)." Section 34 C.F.R. §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://framework.esc18.any/Webforms/ESC18-FW-Citation.aspx?ID=2137

The term "SLD" does not apply to children who have learning difficulties that are primarily the result of visual, hearing, or motor disabilities; of intellectual disability; 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 C.F.R. §300.309(a)(1) specifically designate the following areas for a learning disability in reading: basic reading skills, reading fluency skills, and/or reading comprehension.

Reevaluation for Dyslexia Identification and Accommodations

"Dyslexia is a lifelong condition. However, with proper help, many people with dyslexia can learn to read and write well. Early identification and treatment is the key to helping individuals with dyslexia achieve in school and in life."

—The International Dyslexia Association
http://www.interdys.org/ewebeditpro5/upload/DyslexiaBasicsREVMay2012.pdf

TEC §38.003(a) was passed in 1985 to ensure that students enrolling in public schools in this state are tested for dyslexia and related disorders. In 2011, Senate Bill 866 added into law Subsection (b-1) to ensure that districts consider previously collected data before reevaluating students already identified as having dyslexia.

TEC §38.003(b-1) reads as follows:

> Unless otherwise provided by law, a student determined to have dyslexia during testing under Subsection (a) or accommodated because of dyslexia may not be retested for dyslexia for the purpose of reassessing the student's need for accommodations until the district reevaluates the information obtained from previous testing of the student.
>
> http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.38.htm#38.003

There are many initiatives, programs, assessments, and data available for use in identification, placement, and program planning for students, including ELLs, who struggle with dyslexia. Assessment and ongoing progress monitoring are key components that must be considered by trained personnel.

Sources for Procedures and Assessment for Students Identified with Dyslexia

Berninger, V. W. & Wolf, B. (2009). *Teaching students with dyslexia and dysgraphia lessons from teaching and science.* Baltimore, MD: Paul H. Brookes Publishing.

Diehl, J. D., Frost, S. J., Mencl, W. E., & Pugh, K. R. (2011). Neuroimaging and the phonological deficit hypothesis. In S. Brady, D. Braze, & C. Fowler (Eds.), *In explaining individual difference in reading theory and evidence* (pp. 217–237). New York, NY: Psychology Press.

Mather, N., & Wendling, B. J. (2012). *Essentials of dyslexia assessment and intervention.* Hoboken, NJ: John Wiley & Sons.

Nevills, P., & Wolfe, P. (2009). *Building the reading brain, PreK–3* (2nd ed.). Thousand Oaks, CA: Corwin Press.

Norlin, J. W. (2011). *What do I do when: The answer book on Section 504* (4th ed.). Horsham, PA: LRP Publications.

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Chapter III
Instruction

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III. Instruction for Students with Dyslexia

"Although dyslexia affects individuals over the life span . . . , reading skills can be increased with the right early intervention and prevention programs."

—Birsh, 2011

TEC §38.003(b) states, "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."

www.statutes.legis.state.tx.us/Docs/ED/htm/ED.38.htm#38.003

Effective literacy instruction is essential for all students and is especially critical for students identified with dyslexia. High-quality core classroom reading instruction can give students identified with dyslexia a foundation upon which intervention instruction can have a more significant impact. Specialized instruction for students with dyslexia is discussed in this chapter.

Each school must provide an 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. While the components of instruction for students with dyslexia include good teaching principles for all teachers, the explicitness and intensity of the instruction, fidelity to program descriptors, grouping formats, and training and skill of the teachers are wholly different from core classroom instruction.

Specialized Dyslexia Intervention

For the student who has not benefited from the research-based core reading instruction, the components of instruction will include additional specialized instruction as appropriate for the reading needs of the student with dyslexia. It is important to remember that while intervention is most preventative when provided in kindergarten and first grade, older children with reading disabilities will also benefit from focused and intensive remedial instruction.

Instructional decisions for a student with dyslexia must be made by a committee (§504 or ARD) that is knowledgeable about the instructional components and approaches for students with dyslexia. In accordance with 19 TAC §74.28(c), districts shall purchase or develop a reading program for students with dyslexia and related disorders that incorporates **all** the components of instruction and instructional approaches in the following sections.

Critical, Evidence-Based Components of Dyslexia Instruction

- **Phonological awareness**—"Phonological awareness is the understanding of the internal sound structure of words. A phoneme is the smallest unit of sound in a given language that can be recognized as being distinct from other sounds. An important aspect of phonological awareness is the ability to segment spoken words into their component phonemes" (Birsh, 2011, p. 19).
- **Sound-symbol association**—Sound-symbol association is the knowledge of the various speech sounds in any language to the corresponding letter or letter combinations that represent those speech sounds. The mastery of sound-symbol association (alphabetic principle) is the foundation for the ability to read (decode) and spell (encode) (Birsh, 2011, p. 19). "Explicit phonics refers to

an organized program in which these sound symbol correspondences are taught systematically" (Berninger & Wolf, 2009, p. 53).

- **Syllabication**—"A syllable is a unit of oral or written language with one vowel sound. The six basic types of syllables in the English language include the following: closed, open, vowel-consonant-e, r-controlled, vowel pair (or vowel team), and consonant-le (or final stable syllable). Rules for dividing syllables must be directly taught in relation to the word structure" (Birsh, 2011, p. 19).
- **Orthography**—Orthography is the written spelling patterns and rules in a given language. Students must be taught the regularity and irregularity of the orthographic patterns of a language in an explicit and systematic manner. The instruction should be integrated with phonology and sound-symbol knowledge.
- **Morphology**—"Morphology is the study of how a base word, prefix, root, suffix (morphemes) combine to form words. A morpheme is the smallest unit of meaning in a given language" (Birsh, 2011, p. 19).
- **Syntax**—"Syntax is the sequence and function of words in a sentence in order to convey meaning. This includes grammar and sentence variation and affects choices regarding mechanics of a given language" (Birsh, 2011, p. 19).
- **Reading comprehension**—Reading comprehension is the process of extracting and constructing meaning through the interaction of the reader with the text to be comprehended and the specific purpose for reading. The reader's skill in reading comprehension depends upon the development of accurate and fluent word recognition, oral language development (especially vocabulary and listening comprehension), background knowledge, use of appropriate strategies to enhance comprehension and repair it if it breaks down, and the reader's interest in what he or she is reading and motivation to comprehend its meaning (Birsh, 2011, pp. 9 and 368; Snow, 2002).
- **Reading fluency**—"Reading fluency is the ability to read text with sufficient speed and accuracy to support comprehension"(Moats & Dakin, 2008, p. 52). Teachers can help promote fluency with several interventions that have proven successful in helping students with fluency (e.g., repeated readings, word lists, and choral reading of passages) (Henry, 2010, p. 104).

In addition, other areas of language processing skills, such as written expression, which require integration of skills, are often a struggle for students with dyslexia. Moats and Dakin (2008) posit the following:

> The ability to compose and transcribe conventional English with accuracy, fluency, and clarity of expression is known as basic writing skills. Writing is dependent on many language skills and processes and is often even more problematic for children than reading. Writing is a language discipline with many component skills that must be directly taught. Because writing demands using different skills at the same time, such as generating language, spelling, handwriting, and using capitalization and punctuation, it puts a significant demand on working memory and attention. Thus, a student may demonstrate mastery of these individual skills, but when asked to integrate them all at once, mastery of an individual skill, such as handwriting, often deteriorates. To write on demand, a student has to have mastered, to the point of being automatic, each skill involved (p. 55).

Both the teacher of dyslexia and the regular classroom teacher should provide multiple opportunities to support intervention and to strengthen these skills; therefore, responsibility for teaching reading and

writing must be shared by classroom teachers, reading specialists, interventionists, and teachers of dyslexia programs.

Delivery of Dyslexia Instruction

While it is necessary that students are provided instruction in the above content, it is also critical that the way in which the content is delivered be consistent with research-based practices. Principles of effective intervention for students with dyslexia include **all** of the following:

- **Simultaneous, multisensory (VAKT)**—"Multisensory instruction utilizes all learning pathways in the brain (visual, auditory, kinesthetic-tactile) simultaneously in order to enhance memory and learning" (Birsh, 2011, p. 19). "Children are actively engaged in learning language concepts and other information, often by using their hands, arms, mouths, eyes, and whole bodies while learning" (Moats & Dakin, 2008, p. 58).
- **Systematic and cumulative**—"Systematic and cumulative instruction requires the organization of material follow order of the language. The sequence must begin with the easiest concepts and progress methodically to more difficult concepts. Each step must also be based on elements previously learned. Concepts taught must be systematically reviewed to strengthen memory" (Birsh, 2011, p. 19)**.**
- **Explicit instruction**—"Explicit instruction is explained and demonstrated by the teacher one language and print concept at a time, rather than left to discovery through incidental encounters with information. Poor readers do not learn that print represents speech simply from exposure to books or print" (Moats & Dakin, 2008, p. 58). Explicit Instruction is "an approach that involves direct instruction: The teacher demonstrates the task and provides guided practice with immediate corrective feedback before the student attempts the task independently" (Mather & Wendling, 2012, p. 326).
- **Diagnostic teaching to automaticity**—"Diagnostic teaching is knowledge of prescriptive instruction that will meet individual student needs of language and print concepts. The teaching plan is based on continual assessment of the student's retention and application of skills" (Birsh, 2011, p. 19.). "This teacher knowledge is essential for guiding the content and emphasis of instruction for the individual student"(Moats & Dakin, 2008, p. 58). "When a reading skill becomes automatic (direct access without conscious awareness), it is performed quickly in an efficient manner" (Berninger & Wolf, 2009, p. 70).
- **Synthetic instruction**—"Synthetic instruction presents the parts of any alphabetic language (morphemes) to teach how the word parts work together to form a whole (e.g., base word, derivative)" (Birsh, 2011, p. 19).
- **Analytic instruction**—"Analytic instruction presents the whole (e.g., base word, derivative) and teaches how the whole word can be broken into its component parts (e.g., base word, prefix, root, and suffix)" (Birsh, 2011, p. 19).

Sources for Critical, Evidence-Based Components and Delivery of Dyslexia Instruction

Berninger, V. W., & Wolf, B. (2009). *Teaching students with dyslexia and dysgraphia: Lessons from teaching and science.* Baltimore, MD: Paul H. Brookes Publishing.

Birsh, J. R. (2011). Connecting research and practice. In J. R. Birsh, *Multisensory teaching of basic language skills* (3rd ed., pp.1–24). Baltimore, MD: Paul H. Brookes Publishing.

Henry, M. K. (2010). *Unlocking literacy: Effective decoding and spelling instruction* (2nd ed.). Baltimore, MD: Paul H. Brookes Publishing.

The International Multisensory Structured Language Council. (2013). *Multisensory structured language programs: Content and principles of instruction*. Retrieved from www.imslec.org/directory.asp?action=instruction.

Mather, N., & Wendling, B. J. (2012). *Essentials of dyslexia assessment and intervention*. Hoboken, NJ: John Wiley & Sons.

Moats, L. C, & Dakin, K. E. (2008). *Basic facts about dyslexia and other reading problems.* Baltimore, MD: The International Dyslexia Association.

As appropriate intervention is provided, students with dyslexia make significant gains in reading. Effective instruction is highly-structured, systematic, and explicit, and it lasts for sufficient duration. With regard to explicit instruction, Torgesen (2004) states, "Explicit instruction is instruction that does not leave anything to chance and does not make assumptions about skills and knowledge that children will acquire on their own" (p. 353).

In addition, because effective intervention requires highly structured and systematic delivery, it is critical that those who provide intervention for students with dyslexia be trained in the program used and that the program is implemented with fidelity.

Instructional Intervention Consideration for English Language Learners (ELLs) with Dyslexia

Learning to read, write, and spell in two languages can be facilitated by building on a student's native language knowledge and helping to transfer that knowledge to a second language. While direct, systematic instruction is still required for all aspects of reading, additional explicit instruction will be needed to address the similarities and differences in sounds, syllable structure, morphology, orthography, and syntax between the first and second languages.

For example, instructional considerations may include capitalizing on familiar sound-symbol correspondences. Direct and systematic instruction of the cross-linguistic correlations is beneficial for ELLs. Instruction can subsequently include those sound-symbol correlations that partially overlap or present a slight variation from the native language to the second language. Unfamiliar phonemes and graphemes then can be presented to ELLs. A systematic approach will enhance instruction and assist the bilingual student in transferring native language and literacy knowledge to second language and literacy acquisition.

For ELLs learning to read in English and not in their native language, progress in reading may be hindered due to limited vocabulary in English. Therefore, in addition to all the components of effective instruction previously discussed, intervention for ELLs also must emphasize oral language development (Cardenas-Hagan, 2011). Because the English language is derived from Anglo-Saxon, Latin, Greek, French, and other languages, ELLs can expand their oral language and vocabulary knowledge by understanding the cognates (baseball/béisbol or leader/lider) that exist in their native language and English. The similarities of words in the native language and English must be explicitly taught.

It is also necessary to incorporate ESL strategies during the intervention process and in all content areas. In Texas, school districts are required to implement the English Language Proficiency Standards (ELPS) as

an integral part of each subject area in the required curriculum (TAC §74.4). Dyslexia instruction for ELLs must incorporate the ELPS. A few strategies to consider include the following:

- Establish routines so that ELLs understand what is expected of them.
- Provide native language support when giving directions or when students do not understand the task.
- Provide opportunities for repetition and rehearsal so that the new information can be learned to mastery.
- Adjust the rate of speech and the complexity of the language used according to the second language proficiency level of each student.
- Provide extra time for the ELL to process the English language. This is especially necessary during the early stages of second language development.
- Provide extra time for the ELL to formulate oral and written responses.
- Emphasize text that includes familiar content, and explain the structure of the text.

Source for Instructional Intervention Consideration for English Language Learners (ELLs) with Dyslexia

Cardenas-Hagan, E. (2011). Language and literacy development among English language learners. In J. R. Birsh, *Multisensory teaching of basic language skills* (3rd ed.) (pp. 605–630).Baltimore, MD: Paul H. Brookes Publishing.

http://ritter.tea.state.tx.us/rules/tac/chapter074/ch074a.html

Research-Based Best Practices

It is important to note that in Texas, the approach to teaching students with dyslexia is founded on research-based best practices. The ideas upon which the state's approach is based are summarized here:

- Gains in reading can be significant if students with reading problems are provided systematic, explicit, and intensive reading instruction of sufficient duration in phonemic awareness, phonics, fluency, vocabulary (e.g., the relationships among words and the relationships among word structure, origin, and meaning), reading comprehension strategies, and writing.

- A failure to learn to read impacts a person's life significantly. The key to preventing this failure for students with dyslexia is early identification and early intervention.

- Instruction by a highly skilled and knowledgeable educator who has specific preparation in the remediation of dyslexia is necessary.

The following research reflects the essential components of specialized dyslexia instruction discussed in the previous bullets and may serve as additional sources of information for those working with students identified with dyslexia. The similarities between the state's approach and the research are noted in bold. Unless otherwise indicated, the following pages contain excerpts from the resources cited.

1. August and Shanahan (2006, pp. 3–5) state the following:
    - **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.
    - **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.
    - Oral proficiency and literacy in the first language can be used to facilitate literacy development in English.

August, D., & 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, NJ: Lawrence Erlbaum.

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2. Berninger and Wolf (2009, p. 49–50) state the following:

    Until children are reading without effort, each reading lesson should consist of **teacher-directed, explicit, systematic instruction** in 1) phonological awareness; 2) applying phonics (alphabetic principle) and morphology to decoding; 3) applying background knowledge already learned to unfamiliar words or concepts in material to be read (activating prior knowledge); 4) both oral reading and silent reading, with appropriate instructional materials; 5) activities to develop oral reading fluency; and 6) reading comprehension.

Berninger, V. W., & Wolf, B. J. (2009). *Teaching students with dyslexia and dysgraphia: Lessons from teaching and science.* Baltimore, MD: Paul H. Brookes Publishing.

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3. Birsh (2011, p. 1) states the following:

    Teachers need to undergo extensive **preparation in the disciplines inherent in literacy**, which include the following:
    - Language development
    - **Phonology** and **phonemic awareness**
    - Alphabetic knowledge
    - Handwriting
    - **Decoding (reading)**
    - **Spelling (encoding)**
    - **Fluency**
    - **Vocabulary**
    - **Comprehension**
    - Composition
    - Testing and assessment
    - Lesson planning

- Behavior management
- Study skills
- History of the English language
- Technology
- Needs of older struggling students

Birsh, J. R. (2011). Connecting research and practice. In J. R. Birsh, *Multisensory teaching of basic language skills* (3rd ed., pp. 1–24). Baltimore, MD: Paul H. Brookes Publishing.

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4. Clark and Uhry (2004, pp. 89–92) state the following:
    - Children with dyslexia need the following:
        - **Direct, intensive, and systematic** input from and interaction with the teacher
        - Immediate feedback from the teacher
        - Careful pacing of instruction
        - **Systematic** structured progression from the simple to the complex
    - Other components of instruction include the following:
        - Learning to mastery
        - Multisensory instruction

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

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5. Henry (2010, p. 21) states the following:

> By teaching the concepts inherent in the word origin and word structure model across a decoding-spelling continuum from the early grades through at least eighth grade, and by using technology when it serves to reinforce these concepts, teachers ensure that students have strategies to decode and spell most words in the English language. This framework and continuum readily organize a large body of information for teachers and their students. Not only do students gain a better understanding of English word structure, but they also become better readers and spellers.

Henry, M. K. (2010). *Unlocking literacy: Effective decoding and spelling instruction* (2nd ed.). Baltimore, MD: Paul H. Brookes Publishing.

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6. Mather and Wendling (2012, p. 171) state the following:

> Individuals with dyslexia need to
>
> - understand how phonemes (sounds) are represented with graphemes (letters);
> - learn how to blend and segment phonemes to pronounce and spell words;
> - learn how to break words into smaller units, such as syllables, to make them easier to pronounce;

- learn to recognize and spell common orthographic graphic patterns (e.g., -tion);
- learn how to read and spell words with irregular elements (e.g., ocean); and
- spend time engaged in meaningful reading and writing activities.

Mather, N. M., & Wendling, B. J. (2012). *Essentials of dyslexia assessment and intervention*. Hoboken, NJ: John Wiley & Sons.

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7. Moats (1999, pp. 7–8) states that

   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; and
   - frequent **writing** of prose to enable a deeper understanding of what is read.

Moats, L. C. (1999). *Teaching reading is rocket science: What expert teachers of reading should know and be able to do* (Item No. 39-0372). Washington, DC: American Federation of Teachers.

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8. Moats (1999, pp. 7– 20) states the following:

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

   - The psychology of reading and reading development
     - Basic facts about reading
     - 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

Moats, L. C. (1999). *Teaching reading is rocket science: What expert teachers of reading should know and be able to do* (Item No. 39-0372). Washington, DC: American Federation of Teachers.

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9. The National Reading Panel's (2000) *Report of the National Reading Panel* highlights the following:

   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**.

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.

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10. Shaywitz (2003, pp. 257–262) outlines the following essentials for a successful reading intervention and effective early intervention program:

    Essentials of a successful reading intervention include the following:

    - **Early intervention**—The best intervention begins in kindergarten with remediation beginning in first grade.
    - **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.
    - **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.
    - **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.

    Essentials of an effective **early intervention** program include the following:

    - 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

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

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11. Torgesen (2004, p. 376) states the following:

> 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.

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, MD: Paul H. Brookes Publishing.

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12. Vaughn and Linan-Thompson (2003, pp. 299–320) state the following:

    - 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.

Vaughn, S., & Linan-Thompson, S. (2003). Group size and time allotted to intervention. In B. Foorman (Ed.), *Preventing and remediating reading difficulties* (pp. 275–320). Parkton, MD: York Press.

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13. The International Dyslexia Association (2009, pp. 1–2) states the following:

> 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.

The International Dyslexia Association. (2009, March). *Position statement: Dyslexia treatment programs*. Retrieved from

www.interdys.org/EWEBEDITPRO5/UPLOAD/IDA_POSITION_STATEMENT_DYSLEXIA_TREATMENT_PROGRAMS_TEMPLATE(1).PDF.

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14. The International Dyslexia Association's *Knowledge and Practice Standards for Teachers of Reading* provides **standards for teachers** of students with dyslexia.

The International Dyslexia Association. (2010). *Knowledge and practice standards for teachers of reading*. Retrieved from www.interdys.org/EWEBEDITPRO5/UPLOAD/KPS3-1-12.PDF.

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15. The International Multisensory Structured Language Education Council (IMSLEC) provides accreditation in quality training courses for the professional preparation of multisensory **structured language education specialists**.

International Multisensory Structured Language Education Council (IMSLEC): http://www.imslec.org

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Instructional Accommodations for Students with Disabilities

By receiving specialized instruction that contains the components described in this chapter, the student with dyslexia is better equipped to meet the demands of grade-level or course instruction. In addition to specialized instruction, accommodations provide the student with dyslexia effective and equitable access to grade-level or course instruction in the general education classroom. Accommodations are not a one size fits all; rather, the impact of dyslexia on each individual student determines the accommodation. Listed below are **examples** of reasonable classroom accommodations:

- Copies of notes (e.g., teacher- or peer-provided)
- Note-taking assistance
- Additional time on class assignments and tests
- Reduced/shortened assignments (e.g., chunking assignments into manageable units, fewer items given on a classroom test or homework assignment without eliminating concepts, or student planner to assist with assignments)
- Alternative test location that provides a quiet environment and reduces distractions
- Priority seating assignment
- Oral reading of directions or written material
- Word banks
- Formula charts

When making decisions about accommodations, instruction is always the foremost priority. Not all accommodations used in the classroom are allowed during a state assessment. However, an educator's ability to meet the individual needs of a student with dyslexia should not be limited by whether an accommodation is allowable on a state assessment.

Accommodations are changes to materials, actions, or techniques, including the use of technology, that enable students with disabilities to participate meaningfully in grade-level or course instruction. The use of accommodations occurs primarily during classroom instruction as educators use various instructional

strategies to meet the needs of each student. A student may need an accommodation only temporarily while learning a new skill, or a student might require the accommodation throughout the school year or over several years.

In order to make accommodation decisions for students, educators should have knowledge of the Texas Essential Knowledge and Skills (TEKS) and how a student performs in relation to them. Educators should also collect and analyze data pertaining to the use and effectiveness of accommodations (e.g., assignment/test scores with and without the accommodation, observational reports) so that informed educational decisions can be made for each student. By analyzing data, an educator can determine if the accommodation becomes inappropriate or unnecessary over time due to the student's changing needs. Likewise, data can confirm for the educator that the student still struggles in certain areas and should continue to use the accommodation.

For more information, see Critical Information about Accommodations for Students with Disabilities available at http://www.tea.state.tx.us/student.assessment/accommodations/staar-telpas/.

For more information about technology integration, see http://www.region10.org/dyslexia/techplan/.

Access to Instructional Materials for Students with Disabilities

Accessible instructional materials (AIM) are textbooks and related core instructional materials that have been converted into specialized formats (e.g., Braille, audio, digital text, or large print) for students who are blind or have low vision, have a physical disability, or have a reading disability such as dyslexia. Digital books or text-to-speech functions on computers and mobile devices provide access to general education curriculum for students with dyslexia. Bookshare and Learning Ally provide electronic access to digitally recorded materials for students with print disabilities. TEA provides links to these resources as well as other accessible instructional materials for students with disabilities at http://www.tea.state.tx.us/index2.aspx?id=2147487109.

Texas State Student Assessment Program Accommodations for Students with Disabilities

Educators, parents, and students must understand that accommodations provided during classroom instruction and testing might differ from accommodations allowed for use on state assessments. The state assessment is a standardized tool for measuring every student's learning in a reliable, valid, and secure manner. An accommodation used in the classroom for learning may invalidate or compromise the security and integrity of the state assessment; therefore, not all accommodations suitable for instruction are allowed during the state assessments. It is important to keep in mind that the policies for accommodation use on state assessments **should not** limit an educator's ability to develop individualized materials and techniques to facilitate student learning. **Instruction comes first** and can be customized to meet the needs of each student.

For the purposes of the statewide assessments, students needing accommodations due to a disability include the following:

- Students with an identified disability who receive special education services and meet established eligibility criteria for certain accommodations.

- Students with an identified disability who receive §504 services and meet established eligibility criteria for certain accommodations.
- Students with a disabling condition who do not receive special education or §504 services but meet established eligibility criteria for certain accommodations.

For students who receive special education or §504 services, the decision for student use of accommodations during the statewide assessments is made by the ARD committee or §504 placement committee. In those rare instances where a student does not receive services but meets the eligibility criteria due to a disabling condition, the decision about using accommodations on the state-wide assessments is made by the appropriate team of people at the campus level, such as the RtI team or student assistance team. For more information about accommodations on statewide assessments, visit www.tea.state.tx.us/student.assessment/accommodations/staar-telpas/.

Enrollment in Gifted/Talented and Advanced Academic Programs

A student who has been identified with dyslexia can also be a gifted learner, or a twice-exceptional learner. A twice-exceptional learner is a child or youth who performs at or shows the potential for performing at a remarkably high level of accomplishment when compared to others of the same age, experience, or environment and who exhibits high-performance capability in an intellectual, creative, or artistic area; possesses an unusual capacity for leadership; or excels in a specific academic field (TEC §29.121) and who also gives evidence of one or more disabilities as defined by federal or state eligibility (IDEA 2004) (300.8) (§504) criteria such as learning disabilities, speech and language disorders, emotional/behavioral disorders, physical disabilities, sensory disabilities (hearing impaired, visually impaired, blind-deaf), traumatic brain injury, autism spectrum disorder, or other health impairments such as ADHD.

Assessment and identification of twice-exceptional learners can be challenging and requires those vested in the education of these learners to be knowledgeable of the unique characteristics and behaviors demonstrated by these learners. Often the disability masks the giftedness, which places emphasis on barriers to learning instead of the potential that the learner has as a result of the gifted attributes. Conversely, the giftedness may mask the disability, which may result in the learner's experiencing gaps in learning compounded by the disability, thus affecting how the learner perceives his or her abilities.

Twice-exceptional students must be provided access to all service and course options available to other students. The US Department of Education's Office for Civil Rights offers information for addressing students with disabilities seeking enrollment in advanced academic programs (e.g., Advanced Placement and International Baccalaureate). For more information, see www2.ed.gov/about/offices/list/ocr/letters/colleague-20071226.pdf.

Additional support, information, and resources are available through the Equity in Gifted/Talented (G/T) Education website at www.gtequity.org/index.php. The *Texas State Plan for the Education of Gifted/Talented Students*, available at www.tea.state.tx.us/index2.aspx?id=6420, mandates that once any student is identified as gifted, he/she must be provided gifted/talented services that are commensurate with his/her abilities (1.4C, 1.6C, 2.1C, and 3.3C). Additionally, due to the disability, twice-exceptional learners should have an IEP through special education services or a §504 plan through

general education. Additional support for districts serving twice-exceptional students is available at www.gtequity.org/twice.php.

Legislative Action to Assist Teachers

Even though students with dyslexia are to receive extensive and intensive intervention according to the district-selected program, two pieces of Texas legislation require additional attention by districts.

Technology Integration for Students with Dyslexia (TEC §38.0031)
The research is definitive regarding technology and instruction for students with dyslexia. When students have access to effective technology, their overall educational performance improves. One of the best ways to use technology is in combination with instruction in reading strategies and processes (Pisha & O'Neill, 2003). Technology is not intended to take the place of quality reading instruction. It should be used in combination with teacher-directed instruction and intervention. Technology should never be used as a substitute for quality instruction; it is intended to supplement, not supplant. In fact, technology shows mixed results in improving phonemic awareness, phonics, and vocabulary, with computer-mediated approaches having no clear advantage over teacher-directed instruction (Hecker & Engstrom, 2011).

The *Technology Integration for Students with Dyslexia* online tool (TEC §38.0031) is a resource developed to support instructional decisions regarding technology that benefits students with dyslexia. To view this source, visit www.region10.org/dyslexia/techplan.

Professional Development Relative to Dyslexia for All Teachers
Research consistently confirms the impact that a knowledgeable teacher can have on the success or failure of even the best reading programs (Shaywitz, 2003). To ensure that teachers are knowledgeable about dyslexia, TEC §21.054(b) and TAC §232.11(e) require educators who teach students with dyslexia to be trained in new research and practices related to dyslexia as a part of their continuing professional education (CPE) hours.

http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.21.htm

http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=19&pt=7&ch=232&rl=11

The effort to train professionals who work with students with dyslexia is also supported by The International Dyslexia Association (IDA) Position Statement: Dyslexia Treatment Programs (March, 2009), which states the following:

> 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).

Teachers of students with dyslexia must be prepared to use the techniques, **tools,** and strategies outlined in the previous sections of this chapter. They may also serve as trainers and consultants in the area of dyslexia and related disorders for regular, remedial, and special education teachers.

Both pieces of legislation just presented provide opportunities to present ancillary ways for students to acquire information and produce written lessons. These allow for more ease in staying on level in content-laden courses. Both technology and the additional professional development offered to all teachers enhance these opportunities, and the administration and the board of a school district are responsible for ensuring that procedures providing appropriate instructional services to the student are implemented in the district.

http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.21.htm

http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=19&pt=7&ch=232&rl=11

Texas Department of State Health Services (DSHS) Occupations Code Chapter 403: Dyslexia Therapist and Dyslexia Practitioner Licensing Program

In Texas K–12 education, dyslexia practitioner licensure is voluntary. K–12 educators can provide services to those with dyslexia without being licensed. K–12 educators must have training in the components and delivery of dyslexia instruction outlined earlier in this chapter.

DSHS administers the Dyslexia Therapist and Dyslexia Practitioner Licensing Program, established by Occupations Code, Chapter 403. For more information, visit www.dshs.state.tx.us/dyslexia/default.shtm.

Educator Preparation Programs
According to TEC §21.044(c)(2), all university candidates completing an educator preparation program must receive instruction in detection and education of students with dyslexia. This legislation ensures that newly certified teachers will have knowledge of dyslexia prior to entering the classroom.

http://www.statutes.legis.state.tx.us/Docs/ED/htm/ED.21.htm

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Appendices A & B
Laws and Rules

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

- Texas Education Code (TEC) §7.028(b)
- Texas Education Code (TEC) §21.044
- Texas Education Code (TEC) §21.054
- Texas Education Code (TEC) §28.006
- Texas Education Code (TEC) §28.021
- Texas Education Code (TEC) §38.003
- Texas Education Code (TEC) §38.0031
- Texas Education Code (TEC) §42.006(a-1)
- Texas Education Code (TEC) §51.9701
- Texas Occupations Code, Chapter 54
- Texas Occupations Code, Chapter 403
- Texas Administrative Code (TAC) §74.28 (State Board of Education Rule)
- Texas Administrative Code (TAC) §228.35
- Texas Administrative Code (TAC) §230.23
- Texas Administrative Code (TAC) §232.11
- *The Dyslexia Handbook—Revised 2014: Procedures Concerning Dyslexia and Related Disorders*
- Individuals with Disabilities Education Act (IDEA 2004)
- Rehabilitation Act of 1973, Section 504 (§504), as amended in 2008

Summary

School boards MUST ensure the following:

- Procedures for identifying a student with dyslexia or a related disorder are implemented in the district (TAC §74.28).
- Procedures for providing appropriate instructional services to the student are implemented in the district (TAC §74.28).
- 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 (*The Dyslexia Handbook* and TAC §74.28).
- Provide training about dyslexia to educators (TAC §74.28(c))(TAC §232.11).
- Ensure that 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).
- Ensure that assessment for the purposes of accommodations does not occur until after current testing has been reviewed (TEC 38.003(b-1)).
- Meet the requirements of §504 when assessment for dyslexia is recommended (*The Dyslexia Handbook*).
- Provide treatment (instruction) for students with dyslexia (TEC §38.003).
- Purchase or develop programs that include descriptors listed in *The Dyslexia Handbook* (TAC §74.28).
- Inform parents of all services and options available to students eligible under §504 (TAC §74.28).
- Provide students with services of a teacher trained in dyslexia (TAC §74.28).
- Provide a parent education program (TAC §74.28).
- Report through PEIMS information regarding the number of students enrolled in the district or school who are identified as having dyslexia (TEC §42.006(a-1)).

The following is a checklist of procedures for ensuring compliance with state and federal laws and rules:

- Notify parents/guardians of proposal to assess student for dyslexia (§504).
- Inform parents/guardians of their rights under §504.
- Obtain parents/guardians 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 (TAC §74.28).
- Ensure that 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).
- Provide ongoing training opportunities for teachers (TEC §21.054(b)).

The following is a checklist of written documentation that is recommended to ensure compliance with §504:

- Documentation that the notice of evaluation has been given to parents/guardians
- Documentation that parents/guardians were given their rights under §504
- Documentation of parent/guardian consent for the evaluation (Letter to Durheim. 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 B: State Statutes Related to Dyslexia

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 Education Code §21.044 (State Law)

§ 21.044 Educator Preparation

(a) The board shall propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program. The board shall specify the minimum academic qualifications required for a certificate.

(b) Any minimum academic qualifications for a certificate specified under Subsection (a) that require a person to possess a bachelor's degree must also require that the person receive, as part of the curriculum for that degree, instruction in detection and education of students with dyslexia. This subsection does not apply to a person who obtains a certificate through an alternative certification program adopted under Section 21.049.

(c) The instruction under Subsection (b) must:

(1) be developed by a panel of experts in the diagnosis and treatment of dyslexia who are:

(A) employed by institutions of higher education; and
(B) approved by the board; and

(2) include information on:

(A) characteristics of dyslexia;
(B) identification of dyslexia; and
(C) effective, multisensory strategies for teaching students with dyslexia.

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

Amended by: Acts 2011, 82nd Leg., R.S., Ch. 635, Sec. 1, eff. June 17, 2011.

Texas Education Code §21.054 (State Law)

§21.054. Continuing Education

(a) The board shall propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements.

(b) Continuing education requirements for an educator who teaches students with dyslexia must include training regarding new research and practices in educating students with dyslexia.

(c) The training required under Subsection (b) may be offered in an online course.

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

Amended by: Acts 2005, 79th Leg., Ch. 675, Sec. 2, eff. June 17, 2005, Acts 2009, 81st Leg., R.S., Ch. 596, Sec. 1, eff. September 1, 2009, Acts 2009, 81st Leg., R.S., Ch. 895, Sec. 67(a), eff. June 19, 2009, Acts 2011, 82nd Leg., R.S., Ch. 635, Sec. 2, eff. June 17, 2011.

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).

(c-1) Each school district shall administer at the beginning of the seventh grade a reading instrument adopted by the commissioner to each student whose performance on the assessment instrument in reading administered under Section 39.023(a) to the student in grade six did not demonstrate reading proficiency, as determined by the commissioner. 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.

(3) Using the school readiness certification system provided to the school district in accordance with Section 29.161 (e), report electronically each student's raw score on the reading instrument to the agency for use in the school readiness certification system.

(d-1) The agency shall contract with the State Center for Early Childhood Development to receive and use scores under Subsection (d) (3) on behalf of the agency.

(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.

(g-1) A school district shall provide additional reading instruction and intervention to each student in seventh grade assessed under Subsection (c-1), as appropriate to improve the student's reading skills in the relevant areas identified through the assessment instrument. Training and support for activities required by this subsection shall be provided by regional education service centers and teacher reading academies established under Section 21.4551, and may be provided by other public and private providers.

(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 §28.021 (State Law)

§28.021 Student Advancement

(a) A student may be promoted only on the basis of academic achievement or demonstrated proficiency of the subject matter of the course or grade level.

(b) In measuring the academic achievement or proficiency of a student who is dyslexic, the student's potential for achievement or proficiency in the area must be considered.

(c) In determining promotion under Subsection (a), a school district shall consider:

(1) the recommendation of the student's teacher;

(2) the student's grade in each subject or course;

(3) the student's score on an assessment instrument administered under Section 39.023(a), (b), or (l), to the extent applicable; and

(4) any other necessary academic information, as determined by the district.

(d) By the start of the school year, a district shall make public the requirements for student advancement under this section.

(e) The commissioner shall provide guidelines to districts based on best practices that a district may use when considering factors for promotion.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 28, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 307 (H.B. 2135), Sec. 1, eff. June 17, 2011.

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.

(b-1) Unless otherwise provided by law, a student determined to have dyslexia during testing under Subsection (a) or accommodated because of dyslexia may not be retested for dyslexia for the purpose of reassessing the student's need for accommodations until the district reevaluates the information obtained from previous testing of the student.

(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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 635, Sec.3, eff. June 17, 2011.

The original version of this statute was passed in 1985 through HB 157, Texas Legislature, and 69th Regular Session. Subsection (b-1) was added by the 82nd Texas Legislature in 2011.

Texas Education Code §38.0031 (State Law)

§38.0031 Classroom Technology Plan for Students with Dyslexia

(a) The agency shall establish a committee to develop a plan for integrating technology into the classroom to help accommodate students with dyslexia. The plan must;

(1) Determine the classroom technologies that are useful and practical in assisting public schools in accommodating students with dyslexia, considering budget constraints of school districts; and

(2) Develop a strategy for providing those effective technologies to students.

(b) The agency shall provide the plan and information about the availability and benefits of the technologies identified under Subsection (a) (1) to school districts.

(c) A member of the committee established under Subsection (a) is not entitled to reimbursement for travel expenses incurred by the member under this section unless agency funds are available for that purpose.

Added by Acts 2011, 82nd Leg., R.S., Ch. 635, Sec. 4, eff. June 17, 2011

Texas Education Code §42.006(a-1) (State Law)

§42.006 Public Education Information Management System (PEIMS)

(a-1) The commissioner by rule shall require each school district and open-enrollment charter school to report through the Public Education Information Management System information regarding the number of students enrolled in the district or school who are identified as having dyslexia. The agency shall maintain the information provided in accordance with this subsection.

Amended by Acts 2013, 83rd Leg., R.S., Ch. 295 (H.B.1264), sec. 1, eff. June 14, 2013.

Texas Education Code §51.9701 (State Law)

§51.9701 Assessment for Dyslexia

Unless otherwise provided by law, an institution of higher education, as defined by Section 61.003, may not reassess a student determined to have dyslexia for the purpose of assessing the student’s need for accommodations until the institution of higher education reevaluates the information obtained from previous assessments of the student.

Added by Acts 2011, 82nd Leg., R.S., Ch. 635, Sec. 5, eff. June 17, 2011.

Texas Occupations Code Chapter 54

EXAMINATION ON RELIGIOUS HOLY DAY; EXAMINATION ACCOMMODATION FOR PERSON WITH DYSLEXIA

Section 2. Amends Chapter 54 Occupations Code, by adding Section 54.003, as follows:

Sec. 54.003. EXAMINATION ACCOMMODATIONS FOR PERSON WITH DYSLEXIA (a) Defines, in this section, “dyslexia,”

(b) Requires a state agency, for each licensing examination administered by the agency, to provide reasonable examination accommodations to an examinee diagnosed as having dyslexia.

(c)Requires each state agency to adopt rules as necessary to implement this section, including rules to establish the eligibility criteria and examinee must meet for accommodation under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 418, Sec. 2, eff. September 1, 2011.

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 hearings 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.

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 Administrative Code §228.35 (State Board of Education Rule)

(a) Coursework and/or Training for Candidates Seeking Initial Certification.

(1) An educator preparation program shall provide coursework and/or training to ensure the educator is effective in the classroom.

(2) Professional development should be sustained, intensive, and classroom focused.

(3) An educator preparation program shall provide each candidate with a minimum of 300 clock-hours of coursework and/or training that includes at least six clock-hours of explicit certification test preparation that is not embedded in other curriculum elements. A candidate who does not qualify as a late hire who is issued a probationary certificate after September 1, 2012, may not be employed by a school district as a teacher of record until the candidate completes a minimum of 15 clock-hours of field-based experience, student teaching, or clinical teaching in which the candidate is actively engaged in instructional or educational activities under supervision at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose, as provided in this section. Unless a candidate qualifies as a late hire, a candidate shall complete the following prior to any student teaching, clinical teaching, or internship:

(A) a minimum of 30 clock-hours of field-based experience. Up to 15 clock-hours of this field-based experience may be provided by use of electronic transmission, or other video or technology-based method; and

(B) 80 clock-hours of coursework and/or training.

(4) An educator preparation program that is not an alternative certification program must require, as part of the curriculum for a bachelor's degree that is a prerequisite for educator certification, that a candidate receive instruction in detection and education of students with dyslexia. This instruction must:

(A) be developed by a panel of experts in the diagnosis and treatment of dyslexia who are:

(i) employed by institutions of higher education; and

(ii) approved by the State Board for Educator Certification (SBEC); and

(B) include information on:

(i) characteristics of dyslexia;

(ii) identification of dyslexia; and

(ii) effective, multisensory strategies for teaching students with dyslexia.

(5) All coursework and/or training shall be completed prior to educator preparation program completion and standard certification.

6) With appropriate documentation such as certificate of attendance, sign-in sheet, or other written school district verification, 50 clock-hours of training may be provided by a school district and/or campus that is an approved TEA continuing professional education provider.

(7) Each educator preparation program must develop and implement specific criteria and procedures that allow candidates to substitute prior or ongoing experience and/or professional training for part of the educator preparation requirements, provided that the experience or training is not also counted as a part of the internship, clinical teaching, student teaching, or practicum requirements, and is directly related to the certificate being sought.

(b) Coursework and/or Training for Professional Certification (i.e. superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher). An educator preparation program shall provide coursework and/or training to ensure that the educator is effective in the professional assignment. An educator preparation program shall provide a candidate with a minimum of 200 clock-hours of coursework and/or training that is directly aligned to the state standards for the applicable certification field.

(c) Late Hire Provisions. A late hire for a school district teaching position may begin employment under a probationary certificate before completing the pre-internship requirements of subsection (a)(3) of this section and, if applicable, 15 clock-hours of active, supervised experience, but shall complete these requirements within 90 school days of assignment.

(d) Educator Preparation Program Delivery. An educator preparation program shall provide evidence of on-going and relevant field-based experiences throughout the educator preparation program, as determined by the advisory committee as specified in §228.20 of this title (relating to Governance of Educator Preparation Programs), in a variety of educational settings with diverse student populations, including observation, modeling, and demonstration of effective practices to improve student learning.

(1) For initial certification, each educator preparation program shall provide field-based experiences, as defined in §228.2 of this title (relating to Definitions), for a minimum of 30 clock-hours. The field-based experiences must be completed prior to assignment in an internship, student teaching, or clinical teaching. Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission, or other video or technology-based method.

(2) For initial certification, each educator preparation program shall also provide one of the following:
(A) student teaching, as defined in §228.2 of this title, for a minimum of 12 weeks;

(B) clinical teaching, as defined in §228.2 of this title, for a minimum of 12 weeks; or

(C) internship, as defined in §228.2 of this title, for a minimum of one academic year (or 180 school days) for the assignment that matches the certification field for which the individual is accepted into the educator preparation program. The individual would hold a probationary certificate and be classified as a "teacher" as reported on the campus Public Education Information Management System (PEIMS) data. An educator preparation program may permit an internship of up to 30 school days less than the minimum if due to maternity leave, military leave, illness, or late hire date.

(i) An internship, student teaching, or clinical teaching for an Early Childhood-Grade 4 and Early Childhood-Grade 6 candidate may be completed at a Head Start Program with the following stipulations:

(I) a certified teacher is available as a trained mentor;

(II) the Head Start program is affiliated with the federal Head Start program and approved by the TEA;

(III) the Head Start program teaches three and four-year-old students; and

(IV) the state's pre-kindergarten curriculum guidelines are being implemented.

(iii) An internship, student teaching, clinical teaching, or practicum experience must take place in an actual school setting rather than a distance learning lab or virtual school setting.

(3) For candidates seeking professional certification as a superintendent, principal, school counselor, school librarian, or an educational diagnostician, each educator preparation program shall provide a practicum, as defined in §228.2 of this title, for a minimum of 160 clock-hours.

(4) Subject to all the requirements of this section, the TEA may approve a school that is not a public school accredited by the TEA as a site for field-based experience, internship, student teaching, clinical teaching, and/or practicum.

(A) All Department of Defense Education Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC) are approved by the TEA for purposes of field-based experience, internship, student teaching, clinical teaching, and/or practicum.

(B) An educator preparation program may file an application with the TEA for approval, subject to periodic review, of a public school, a private school, or a school system located within any state or territory of the United States, as a site for field-based experience, or for video or other technology-based depiction of a school setting. The application shall be in a form developed by the TEA staff and shall include, at a minimum, evidence showing that the instructional standards of the school or school system align with those of the applicable Texas Essential Knowledge and Skills (TEKS) and SBEC certification standards. To prevent unnecessary duplication of such applications, the TEA shall maintain a list of the schools, school systems, videos, and other technology-based transmissions that have been approved by the TEA for field-based experience.

(C) An educator preparation program may file an application with the TEA for approval, subject to periodic review, of a public or private school located within any state or territory of the United States, as a site for an internship, student teaching, clinical teaching, and/or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum:

(i) the accreditation(s) held by the school;

(ii) a crosswalk comparison of the alignment of the instructional standards of the school with those of the applicable TEKS and SBEC certification standards;

(iii) the certification, credentials, and training of the field supervisor(s) who will supervise candidates in the school; and

(iv) the measures that will be taken by the educator preparation program to ensure that the candidate's experience will be equivalent to that of a candidate in a Texas public school accredited by the TEA.

(D) An educator preparation program may file an application with the SBEC for approval, subject to periodic review, of a public or private school located outside the United States, as a site for student teaching or clinical teaching required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum, the same elements required in subparagraph (C) of this paragraph for schools located within any state or territory of the United States, with the addition of a description of the on-site program personnel and program support that will be provided and a description of the school's recognition by the U.S. State Department Office of Overseas Schools.

(e) Campus Mentors and Cooperating Teachers. In order to support a new educator and to increase teacher retention, an educator preparation program shall collaborate with the campus administrator to assign each candidate a campus mentor during his or her internship or assign a cooperating teacher during the candidate's student teaching or clinical teaching experience. The educator preparation program is responsible for providing mentor and/or cooperating teacher training that relies on scientifically-based research, but the program may allow the training to be provided by a school district, if properly documented.

(f) On-Going Educator Preparation Program Support. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first three weeks of

assignment. The field supervisor shall document instructional practices observed, provide written feedback through an interactive conference with the candidate, and provide a copy of the written feedback to the candidate's campus administrator. Informal observations and coaching shall be provided by the field supervisor as appropriate.

(1) Each observation must be at least 45 minutes in duration and must be conducted by the field supervisor.

(2) An educator preparation program must provide the first observation within the first six weeks of all assignments.

(3) For an internship, an educator preparation program must provide a minimum of two formal observations during the first semester and one formal observation during the second semester.

(4) For student teaching and clinical teaching, an educator preparation program must provide a minimum of three observations during the assignment, which is a minimum of 12 weeks.

(5) For a practicum, an educator preparation program must provide a minimum of three observations during the term of the practicum.

(g) Exemption. Under the Texas Education Code (TEC), §21.050(c), a candidate who receives a baccalaureate degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.214, is exempt from the requirements of this chapter relating to field-based experience or internship consisting of student teaching.

Source Note: The provisions of this §228.35 adopted to be effective December 14, 2008, 33 TexReg 10016; amended to be effective December 26, 2010, 35 TexReg 11239; amended to be effective August 12, 2012, 37 TexReg 5747.

Texas Administrative Code §230.23 (State Board of Education Rule)

Testing Accommodations for Persons with Dyslexia

The Texas Education Agency (TEA) shall provide examination accommodations for persons with dyslexia.

(1) For each licensing examination administered, the TEA and its testing vendor shall provide reasonable examination accommodations to an examinee diagnosed as having dyslexia as that term is defined in the Texas Education Code, §51.970.

(2) The TEA and its testing vendor shall provide examination accommodations to an examinee diagnosed with dyslexia, provided acceptable medical or diagnostic documentation has been received and reviewed by the vendor prior to the administration of the examination.

Source: The provisions of this §230.23 adopted to be effective August 12, 2012, 37 TexReg 5753.

Texas Administrative Code §232.11 (State Board of Education Rule)

Number and Content of Required Continuing Professional Education Hours

(e)The required CPE for educators who teach students with dyslexia must include training regarding new research and practices in educating students with dyslexia. The required training may be satisfied through an online course approved by Texas Education Agency staff**.**

Source: The provisions of this §232.11 adopted to be effective August 12, 2012, 37 TexReg 5764.

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Appendix C
Q & A

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Appendix C: 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 open-enrollment charter schools implement the state dyslexia laws 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 accommodations 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 the committee of knowledgeable persons (§504 Committee) 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 identified with dyslexia "disabled" within the meaning of §504?

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 C.F.R. §104.3(j)), and affects the student's education. Reading is now a major life activity. Congress added to the list in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). The list now includes major bodily functions as well as eating, sleeping, standing, lifting, bending, **reading**, concentrating, thinking, and communicating (42 U.S.C. §12101(2)(A)).Therefore, a student with dyslexia **may be considered** to have a disability within the scope of §504 if the condition substantially limits the student's reading.

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

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

- Documentation that the notice of evaluation has been given to parents/guardians
- Documentation that parents/guardians were given their rights under §504
- Documentation of parent/guardian consent for the evaluation (Letter to Durheim. 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 open-enrollment charter school meets the needs of students and protects the rights of students and parents/guardians.

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

- If the student is suspected of having a disability within the scope of IDEA 2004, the procedural protections provided 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/guardians may file a request for a hearing with the school district or charter school. The school district or open-enrollment 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/guardians. Decisions of the hearing officer may be appealed to state or federal court.

5. Can parents/guardians refuse §504 eligibility but accept dyslexia services?

For the student who has been evaluated and determined to be §504 eligible, OCR has indicated that parents/guardians can refuse the initial provision of §504 services and revoke consent for continued §504 services. However, there is no authority in the §504 regulations or in published OCR guidance for the proposition that a parent/guardian can unilaterally remove §504 eligibility. All the parent/guardian can remove is the services; the nondiscrimination protections of §504 will remain.

IDEA 2004 works differently because of a specific regulation. IDEA 2004 contains a clear mechanism for parents/guardians to reject eligibility (by way of refusing consent for initial special education placement or revoking consent for continued special education placement) that serves to transform the formerly IDEA-eligible student into a non-IDEA eligible student. Section 504 has no similar regulation. Consequently, a parent/guardian could conceivably reject dyslexia services via a §504 plan and ask for dyslexia services outside that plan, but OCR would likely find that since the student remains §504 eligible, the nondiscrimination provisions of the law would still apply to the dyslexia services.

6. What is the difference between the SBOE rules and SBOE procedures?

The SBOE rules require school districts and charter schools to follow *The Dyslexia Handbook—Revised 2014: Procedures Concerning Dyslexia and Related Disorders* (*The Dyslexia Handbook*). The procedures, as stated in the *Dyslexia Handbook*, are guidelines developed to assist school districts and charter schools in complying with state and federal laws.

7. What are the responsibilities of a school district or open-enrollment charter school in implementing the state dyslexia laws?

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 the Assessment and Identification of Students with Dyslexia.) An ARD or §504 committee 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 school district or charter school is responsible for ensuring that dyslexia instructional services are provided directly on the student's campus as defined in TAC §74.28(f). Each school must provide each identified student access at his/her campus to instructional programs required in subsection (c) of TAC §74.28 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/guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his/her campus.

If parents/guardians receive assessment information related to their child's reading difficulties from a private individual or entity, the school district or open-enrollment charter school must consider the information provided by the parent/guardian. However, the school district or charter school must follow state law, rules, and procedures as well as local dyslexia policy to make the final determination of student eligibility for dyslexia and related disorders.

8. Who is responsible for overseeing the implementation of the dyslexia laws within a school district or open-enrollment charter school?

The local school board or board of trustees for each school district and open-enrollment 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).

9. What can parents/guardians do if the school district or open-enrollment charter school is not following state requirements related to dyslexia?

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

10. 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. Students with dyslexia may also be served through programs available to districts free of charge from the state, including the Texas Students Using Curriculum Content to Ensure Sustained Success (Texas SUCCESS) programs.

11. Each district is now required to report information regarding the number of students identified with dyslexia. How is this done and which students should be reported?

The data is reported through the Public Education Information Management System (PEIMS). It should include all students enrolled in the district or school who have been identified as having dyslexia or a related disorder as defined in TEC §38.003.

Assessment Recommendation

12. When should a student who is experiencing reading difficulties 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.

13. Should all students be routinely reviewed for dyslexia?

TEC §28.006 requires school districts or open-enrollment charter schools to administer a reading instrument at the kindergarten, first-grade, and second-grade levels and to notify the parent/guardian of each student in kindergarten, first grade, or second grade who is determined, on the basis of the reading instrument results, to be at risk for dyslexia or other reading difficulties. School districts and charter schools must also administer a reading instrument to grade 7 students who did not demonstrate proficiency on the grade 6 state reading assessment. Additionally, data related to the reading achievement and progress of all students should be continuously monitored and reviewed. A student who demonstrates poor performance in reading and spelling that is **unexpected** for the student's age/grade and exhibits the characteristics of dyslexia **shall** be tested for dyslexia or a related disorder as defined in TEC §38.003.

14. Can students in kindergarten and first grade be assessed for dyslexia?

Yes. The identification of dyslexia in young students in kindergarten and first grade will often occur through the observation of parents/guardians and educators that, despite engaged participation in comprehensive reading instruction, a child with good thinking and language ability shows limited reading progress. Early reading instruments (TEC §28.006) in grades K–2 assess the emerging reading skills that are key components to the identification of dyslexia. These skills include phonological awareness, letter knowledge (graphophonemic knowledge), decoding, and word reading. These instruments serve as an important early screening for many reading difficulties, including dyslexia. When a child does not meet the basic standards of these early reading instruments, the pattern of difficulty may indicate risk factors for dyslexia. A child whose skills have not reached the normative standards of these instruments requires intensified reading instruction and possible consideration for assessment for dyslexia. With the decision to assess for dyslexia in a young child (K–1), it is important to note that current standardized test instruments available to school districts are not particularly sensitive to the skill variations for these students. The identification will require data gathering that is not limited to standardized instruments and includes information from these early reading instruments and classroom performance patterns.

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

No. There is not a grade-level requirement for assessment to occur; students 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; teacher's input; and input from the parents/guardians.

16. May a parent/guardian recommend that a student be assessed for dyslexia?

Yes. A parent/guardian may request to have his/her child assessed for dyslexia and related disorders by staff at the school district or open-enrollment charter school. (If the school district has data to support refusal of the parent/guardian 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.)

17. Can the parent/guardian bring an assessment from a private evaluator or source?

Yes. A parent/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 Chapter II: Procedures for the Assessment and Identification of Students with Dyslexia of this handbook.

The §504 regulations provide that the group of knowledgeable people have a duty to "document and carefully consider" all sources of evaluation data (34 C.F.R. §104.35(c)(2)). While an outside assessment may be brought to the §504 committee and must be reviewed, it is part of the evaluation data but does not, independently, create eligibility. Instead, the §504 committee determines eligibility based on a review "of data from a variety of sources" (34 C.F.R. §104.35(c)(1).

18. 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.

19. 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 dyslexia 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.

20. When a student does not attend the local school district, what procedures are followed for identification of dyslexia?

State statute related to dyslexia, TEC §38.003, indicates that the law pertains to students enrolled in public schools. However, when formal assessment is recommended, the school district or open-enrollment charter school completes the evaluation process as outlined in §504 (unless under IDEA 2004). Under §504, upon receiving notice of a parent's belief that a child has a disability, the school should follow §504 procedures. The school has no duty to provide services unless the student is enrolled in public school.

21. 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 certified speech-language pathologist typically provides services for students with identified language or speech problems in accordance with the decisions of the admission, review, and dismissal (ARD) committee.

22. Should parents/guardians be notified if a school district or open-enrollment 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 student's parents/guardians 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 parents/guardians at this time. The notices and consent must be provided in the native language of the parents/guardians or other mode of communication used by the parents/guardians, unless it is clearly not feasible to do so.

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

No. School districts and open-enrollment charter schools should use multiple data sources, including formal and informal measures (e.g., day-to-day anecdotal information) that are appropriate for determining whether a student has dyslexia and 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 words in isolation
- Decoding unfamiliar words accurately
- Reading fluency (both rate and accuracy are assessed)
- Reading comprehension
- Spelling

Cognitive Processes

- Phonological/phonemic awareness
- Rapid naming of symbols or objects

Possible Additional Areas That MAY Be Assessed

- Vocabulary
- Listening comprehension
- Verbal expression
- Written expression
- Handwriting
- Memory for letter or symbol sequences (orthographic processing)
- Mathematical calculations/reasoning
- Phonological memory
- Verbal working memory
- Processing speed

24. Why is it important to assess both rate and accuracy for reading fluency when conducting a dyslexia evaluation?

The evaluator/diagnostician considers both rate and accuracy, along with other factors, when assessing for a pattern of evidence for dyslexia. A test of oral-reading fluency must include the various components of reading fluency. A student may read words in a passage accurately, but very slowly, or a student may read the passage quickly with many errors. Therefore, measures of both rate and accuracy allow the examiner to observe and analyze a student's errors and miscues for diagnosis as well as inform instructional planning.

25. What kinds of data and how much data are required for a §504 evaluation?

Section 504 evaluation data include but are not limited to student grades, language surveys, parent information, standardized-test scores, teacher observation, and health information. The §504 committee decides how much data is required to evaluate the student. Information obtained from all sources is to be documented and carefully considered (C.F.R. §104.35(c)(1) & (2)).

26. Are there special forms to record assessment results and data collection?

Although there is no uniform or required format for this record keeping, it is important that school districts and open-enrollment charter schools keep this information **in writing** to ensure that the school district or open-enrollment charter school meets the needs of its students and protects the rights of students and their parents/guardians and to provide document should the OCR investigate a formal complaint.

27. Can special education assess for dyslexia?

Yes; however, special education assessments are used to determine eligibility under IDEA 2004 and are not specific to identification of dyslexia.

IDEA 2004 regulations related to assessment (34 C.F.R. §300.304(c)(4)) indicate that a student should be assessed in all areas related to the suspected disability. Although dyslexia is a condition that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, it is not considered one of the 13 eligible disability categories listed in the IDEA 2004 regulations (34 C.F.R. §300.8(c)).

IDEA 2004 regulations related to specific learning disability (SLD) (34 C.F.R. §300.8(c)(10)(i)) define SLD as 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 do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, **dyslexia**, and development aphasia. IDEA 2004 regulations (34 §CFR 300.309(a)(1)) specifically designate the following areas for a SLD: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skill, reading comprehension, mathematics calculation, and/or mathematics problem solving.

A student with severe dyslexia or related disorders who is unable to make adequate academic progress may be referred to special education for evaluation and possible identification as a child with a disability within the meaning of IDEA 2004.

28. 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.

1. 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.

2. Section 504 requires that tests, assessments, and other evaluation materials be administered by trained personnel and conform to the instructions provided by the producer of the evaluation materials.

A school district or open-enrollment 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).

29. 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 sufficient progress, further assessment should be considered.
- If a student is not enrolled in public school (i.e., private school or 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 dyslexia services (TEC §38.003).

Identification of a Student with Dyslexia

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

Identification and placement decisions for dyslexia must be made by the §504 committee of knowledgeable persons formed at the district, charter school, or campus level. Under federal law, the committee must be knowledgeable of the child, the meaning of the evaluation data, and the placement options. For dyslexia program eligibility decisions, the committee of knowledgeable persons should also include knowledge of the student being assessed; the reading process; dyslexia and related disorders; dyslexia instruction; district, charter school, state, and federal guidelines for assessment; the assessments that were used; and the meaning of the collected data. In addition, while not required under §504, it is suggested that the parents/guardians of the student be a part of the identification and placement process. If the student is limited English proficient (LEP), the committee should also include a member of the Language Proficiency Assessment Committee (LPAC) knowledgeable in second language acquisition.

This answer does not necessarily apply to students covered by IDEA 2004. If a student is covered by IDEA 2004, the placement decision would be made by the student's ARD committee, which should also include members of the committee of knowledgeable persons previously described for students with dyslexia.

31. What factors must the §504 committee consider before placing a student into a dyslexia program?

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, 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 parents/guardians
- 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 Proficiency Assessment 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

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

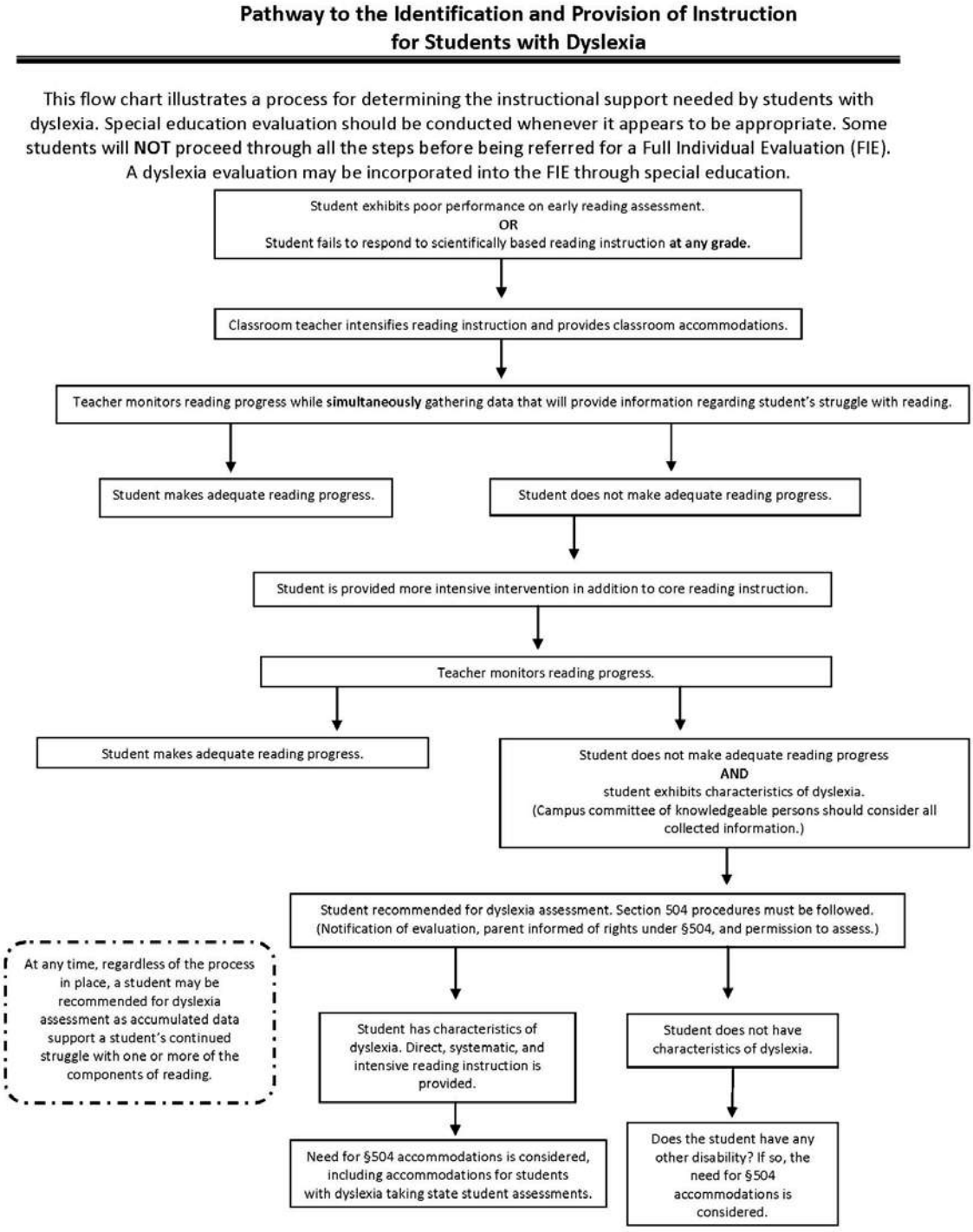
No. The most current definition of dyslexia from the International Dyslexia Association (IDA) indicates that the difficulties the student exhibits in reading should be **unexpected** in relation to the student's other cognitive abilities **and** the provision of effective classroom instruction. Examples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

33. Question 31 refers to difficulties "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 research-based reading instruction in the classroom? Was the student identified as at risk (TEC §28.006)? 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.

34. Is there a specific process for the identification and provision of instruction for students with dyslexia?

TEC §38.003(a) mandates the identification of dyslexia, and TAC §74.28(a) ensures that procedures for identifying a student with dyslexia or a related disorder and providing appropriate services to the student are implemented in the district. The following flow chart is one example of the identification and provision of instruction that may serve to help illustrate this process.



35. Should the student be retested to determine accommodations every 3 years?

Unless otherwise provided by law, students accommodated because of dyslexia may not be retested for dyslexia for the purpose of reassessing the student's need for accommodations until the school district or open-enrollment charter school reevaluates the information obtained from previous testing of the student (TEC §38.003(b-1)).

36. How does a student receive additional accommodations without being reassessed for dyslexia?

As students progress through their academic careers, grade and course demands change; therefore, students' need for or use of specific accommodations may also change. Accommodations already in use must be evaluated regularly to determine effectiveness and to help plan for accommodations the students will need in any given year; therefore, documentation of effective accommodation use is important.

This information is necessary to support decisions made by the appropriate committee (§504 or ARD), and accommodations are added to the appropriate committee (§504 or ARD) paperwork.

Instruction

37. 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/guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his/her campus.

38. What must be in a curriculum used by the specialist for teaching students with dyslexia, as required by Texas legislation?

A locally developed program must align to descriptors (TAC §74.28(c)) found in this handbook under the sections titled "Critical, Evidence-Based Components of Dyslexia Instruction" and "Delivery of Dyslexia Instruction." In addition, as with a purchased reading program, a locally developed dyslexia program must be evidence-based.

39. Must each campus offer specialized dyslexia intervention for students identified as having dyslexia at each grade level?

Yes. All students identified with dyslexia must receive instruction that is appropriate for their literacy needs. The instruction must match the descriptors (TAC §74.28(c)) in this handbook and contain reading, writing, and spelling components as appropriate for the student. This handbook does not specify or endorse a specific program.

40. What does Texas require in terms of scheduling specialized dyslexia intervention?

Scheduling specialized dyslexia intervention is a local district decision. School districts and open-enrollment charter schools should consider the impact of specialized dyslexia intervention occurring when required core curriculum is being provided. While scheduling can be difficult, school districts and open-enrollment charter schools should maintain recommended program intensity.

41. Must the dyslexia program be delivered with fidelity?

The reauthorized Elementary and Secondary Education Act, commonly referred to as No Child Left Behind (NCLB), states that all reading intervention should be research based. In order to be a valid research-based methodology, material, or strategy, the intervention must be delivered to replicate the intervention cited in the research. If it is not provided with fidelity, the intervention is no longer research based and, thus, is out of compliance with that component of the law.

The delivery of a dyslexia program must be in accordance with the way the program was designed to be delivered. Therefore, when a district or open-enrollment charter school has purchased a program, the amount of time for instruction/intervention reflected in the author's/publisher's program mandates the amount of time required to deliver the instruction (e.g., 45 minutes, 5 times per week).

42. How is the rate of progress for intervention determined?

The data collected from progress-monitoring assessments will inform how well a student is responding or not responding to the specialized dyslexia intervention (program). Research has provided general expectations for the rate of progress for students with reading difficulties. "Rapid gains are made within the first 12 hours of instruction; after that, progress continues, but the pace can seem very slow to students, parents, and teachers. Many factors contribute to the rate of progress for students, including intervention fidelity, duration of the intervention, determination, motivation of the student, and parent support" (Moats and Dakin, 2008).

43. 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 III: 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 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 critical, evidence-based components of dyslexia instruction found in Chapter III of this handbook.

School districts and open-enrollment 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 environment (LRE) with nondisabled peers and have instruction that enables the students to participate and progress in the

general curriculum. Students who are eligible for special education and who also meet the Texas identification criteria for dyslexia and related disorders

- 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;
- may not be denied access to the school district's or open-enrollment charter school's programs for students with dyslexia unless the ARD committee determines such a program would deny the students a Free and Appropriate Public Education (FAPE) and educational benefit; and
- must have the range of services available for all students with dyslexia and the least restrictive educational placement for the students, to the extent possible.

44. How long should a student remain in a specialized dyslexia intervention/instructional setting designed for students with dyslexia and related disorders?

The school district or open-enrollment charter school should establish data-based criteria for exit. Even after exit, the student may require continuing support and accommodations in the general program in order to be successful. Additionally, the campus should routinely monitor the progress of the student to be sure that the student maintains successful performance.

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

The Dyslexia Handbook lists and describes the components of instruction that must be included in the program 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 and be trained in instructional strategies that use individualized, intensive, and multisensory methods. (See *The Dyslexia Handbook,* Chapter III: Instruction for Students with Dyslexia.)

46. 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 IDA (2009) stated, "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." The Florida Center for Reading Research (FCRR) has posted a PDF document titled "A Principal's Guide to Intensive Reading Interventions for Struggling Readers in Reading-First Schools," which states, "Research shows that computer-assisted instruction can provide effective supplemental practice for students if it is carefully monitored and delivered with enough regularity and frequency. However, computer programs are not yet well-developed enough to be depended on as the major source of intervention for our most struggling readers."

47. Should a student's dyslexia diagnosis be a consideration when making decisions about accelerated instruction, promotion, and/or retention?

Yes. In measuring the academic achievement or proficiency of a student who is dyslexic, the student's potential for achievement or proficiency in the area must be considered. When making determinations about promotion, a school district shall consider the recommendation of the student's teacher, the student's grade in each subject or course, the student's score on a state assessment instrument, and any other necessary academic information, as determined by the district (TEC §28.021(b)-(c)).

Teachers of Students with Dyslexia

48. What certification should teachers of specialized dyslexia intervention programs for students with dyslexia and related disorders have?

Texas does not have a certification requirement specific to teachers providing intervention to students identified with dyslexia. School districts or open-enrollment charter schools must consider the needs of students and the qualification of teachers. It is important that teachers have appropriate training in dyslexia and the relevant instructional components as outlined in Chapter III of *The Dyslexia Handbook*. Certified teachers 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. Licensed dyslexia practitioners or licensed dyslexia therapists may also be considered. These teachers should be trained to deliver instruction that is described in Chapter III of *The Dyslexia Handbook*. Certified educational aides, per TAC guidelines (Title I, Section 1119(g)(2)), may perform assigned tasks under the guidance and supervision of a certified teacher or teaching team.

49. To what degree are classroom teachers trained to recognize characteristics of dyslexia, its remediation, and accommodation in regular content classes?

Continuing education for "an educator who teaches students with dyslexia must include training regarding new research and practices in educating students with dyslexia" (TEC §21.054(b)). Such training may be offered in an online course (TEC §21.054(c)). Local policy will determine the number of professional development hours classroom teachers are trained regarding the characteristics of dyslexia, its remediation, and accommodations in regular content classes.

50. Are there requirements for preservice teachers to have dyslexia training?

Yes. As part of teacher certification for preservice teachers who began enrollment in an institution of higher education during the 2011–2012 academic year or later, each candidate must receive, as part of her/his bachelor degree, curriculum instruction in detection and education of students with dyslexia (TEC §21.044(b)).

51. How does a special education teacher or a teacher delivering specialized instruction for students with dyslexia become trained to serve students with dyslexia?

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

Relationship between Dyslexia and Special Education

52. If a student is currently receiving special education services and is identified as needing additional services for dyslexia, does the ARD committee need to document in the ARD report the dyslexia identification process and the instruction specific to dyslexia?

- The 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 potential accommodations on the state assessment program for students who have been identified with dyslexia, the dyslexia identification should be noted in the ARD Report.
- 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 III of *The Dyslexia Handbook*.

53. 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?

Yes. 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/guardians, identify what additional data, if any, are needed to make an informed decision regarding the identification of dyslexia. 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 dyslexia evaluation should be determined by the ARD committee.

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

Chapter III: Instruction for Students with Dyslexia of *The Dyslexia Handbook* indicates that teachers who provide specialized instruction for students with dyslexia must be trained in instructional strategies that use individualized, intensive, multisensory, phonetic methods, and a variety of writing and spelling components (TEC §74.28(c)).

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

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 III: Instruction for Students with Dyslexia.

56. May the educational diagnostician or LSSP use the same diagnostic data that was gathered for the IDEA 2004 identification process to identify a student with dyslexia? Must the determination of dyslexia be made by the §504 Committee or the 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* as 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 Chapters II and III of *The Dyslexia Handbook*.

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

TAC §74.28 indicates that assessment should be done by professionals who are trained to assess students for dyslexia and related disorders.

While the educational diagnostician or LSSP possesses the underlying knowledge on how to administer and interpret formal assessments, additional training may be needed to better understand the characteristics of dyslexia, increase awareness of the domains to assess for dyslexia, and identify the strengths and weaknesses typically exhibited when a student has dyslexia.

58. 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 school district or open-enrollment charter school policies and procedures and if he/she meets the qualifications required in TAC §74.28 and §504. However, the identification should be made by the appropriate committee. For a student receiving special education services, this committee would be the ARD committee, which should include member(s) who are knowledgeable about dyslexia and the reading process as indicated in Chapter II: Procedures for the Assessment and Identification of Students with Dyslexia of The Dyslexia Handbook. Proper implementation of the evaluation process should be followed as noted in the evaluation framework of the legal framework.

59. How do school districts and open-enrollment charter schools 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 ARD committee has the ultimate responsibility for consistency of methodology and documentation concerning the collaboration between the two services. The ARD committee will also need to determine the most appropriate environment in which the student receives instruction.

60. What considerations need to be given to least restrictive environment (LRE) 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)?

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.

> Since LRE demands that special education students be educated with regular or non-IDEA students to the maximum extent appropriate, the ARD must consider for the IDEA-student with dyslexia, whether the student's reading needs can be appropriately met outside of special education settings, namely in dyslexia labs or classes. If the ARD determines that the student's reading needs can be met through the regular dyslexia program, then LRE considerations would require the ARD to use the dyslexia lab or regular education dyslexia program rather than a resource setting (Council of Educators for Students with Disabilities, Inc., 2013).

For any student receiving special education services, including a student identified with dyslexia, the placement decision is made by the ARD committee, which has the sole responsibility for determining the placement options (as per the ARD committee recommendation), and it is made in conformity with the LRE provisions of IDEA 2004. The child's placement is determined at least annually and is based on the child's IEP.

61. Is the district or open-enrollment charter school responsible for conducting assessments or reevaluations required by colleges and universities for students with dyslexia to receive accommodations?

No. The local education agency's (LEA's) duty to evaluate only applies for purposes of determining eligibility and services in the school's programs and activities during the period in which the student is eligible. According to the OCR, 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 G: Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities.) All IDEA rights conclude upon issuance of LEA diploma.

TEC §51.9701 states that "unless otherwise provided by law, an institution of higher education, as defined by §61.003, may not reassess a student determined to have dyslexia for the purpose of assessing the student's need for accommodations until the institution of higher education reevaluates the information obtained from previous assessments of the student."

English Language Learners

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

There is no fixed amount of time that an English language learner (ELL) must receive Bilingual/ESL 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.

63. What determines the language of instruction for dyslexia services related to an ELL?

To determine the language of instruction of dyslexia services for an ELL, the committee of knowledgeable persons (§504 or ARD) should include a member of the LPAC and 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?

Accommodations for Students with Dyslexia in the General Education Classroom

64. Are there accommodations exclusively for students with dyslexia specific to classroom instruction and testing?

While accommodations for students with disabilities are intended to provide students effective and equitable access to grade-level or course curriculum and assessments, accommodations specific to dyslexia exclusively do not exist. It is important to remember that accommodations that are effective in the classroom may not be appropriate or allowed for use on a state assessment.

For more information, visit **www.tea.state.tx.us/student.assessment/accommodations/staar-telpas/**.

65. What data will support the need for instructional and test-related accommodations in the general education classroom for a student identified as having dyslexia?

Educators should collect and analyze data pertaining to the need for instructional and test-related accommodations in the general education classroom for a student identified as having dyslexia that will support educational decisions made by the §504 or ARD committee. Data should include multiple sources, formal and informal, provided by parents/guardians, teachers, and/or others knowledgeable of the student. By analyzing data, the committee of knowledgeable persons (§504 or ARD) can determine if the accommodation is appropriate or unnecessary. Over time, data can confirm the continuation or justify the removal of any accommodation(s).

Technology Integration for Students with Dyslexia

66. Can technology benefit students with dyslexia?

Yes. The research is definitive regarding technology and instruction for students with dyslexia. When students have access to technology, their overall performance improves. Technology tools allow students with dyslexia to be equal participants in school-based learning experiences (TEC §38.0031). Technology is not to take the place of direct and explicit instruction, but to provide access to grade level and course curriculum. The online tool *Technology Integration for Students with Dyslexia* available at www.region10.org/dyslexia/techplan may provide assistance in identifying appropriate technologies.

67. Do the §504 regulations contain references addressing technology?

No. While there are no §504 regulations concerning technology, students may need access to existing technology; therefore, the Free Appropriate Public Education (FAPE) rules determine what technology (if any) is required. Nondiscrimination rules apply to instructional technology.

68. Is the district required to provide technology devices for §504 students identified with dyslexia?

No. If the student is able to access the general education curriculum without a specified technology device, and FAPE has not been violated, the district has no obligation to provide the device.

Texas State Assessment Program Accommodations for Students with Dyslexia

69. Are there specific accommodations for students with dyslexia during state assessments?

Certain accommodations used in the classroom would invalidate the content being assessed or compromise the security and integrity of the state assessment. For this reason, not all accommodations suitable for instruction are allowed during the state assessments. The decision to use an accommodation should be made on an individual student basis and take into consideration the needs of the student and whether the student routinely receives the accommodation during classroom instruction and testing. For more information, view the accommodation triangle on TEA's web page and look for specific dyslexia eligibility criteria under each accommodation (e.g., oral administration, extra time (same day)).

www.tea.state.tx.us/student.assessment/accommodations/staar-telpas/

Appendix D
Contacts

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Appendix D: 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) 984-7655	Region 2	209 N. Water St. Corpus Christi, TX 78401-2528 (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 W. Tidwell Rd. Houston, TX 77092-2096 (713) 462-7708 Fax (713) 744-6514
Region 5	Edison Plaza, 350 Pine St. Beaumont, TX 77701 (409) 951-1700 Fax (409) 951-1840	Region 6	3332 Montgomery Rd Huntsville, TX 77340-6499 (936) 435-8400 Fax (936) 435-8484
Region 7	1909 N. Longview St. Kilgore, TX 75662-6827 (903) 988-6700 Fax (903) 988-6708	Region 8	4845 U S Hwy 271 N Pittsburg, TX 75686-8551 (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 Rd Richardson, TX 75081-5101 (972) 348-1700 Fax (972) 231-3642
Region 11	3001 N. Freeway Fort Worth, TX 76106-6596 (817) 740-3600 Fax (817) 740-7600	Region 12	PO Box 23409 Waco, TX 76702-3409 (254) 297-1212 Fax (254) 666-0823
Region 13	5701 Springdale Rd 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	PO Box 5199 San Angelo, TX 76902-5199 (325) 658-6571 Fax (325) 658-6571	Region 16	5800 Bell St. Amarillo, TX 79109-6230 (806) 677-5000 Fax (806) 677-5001
Region 17	1111 W. Loop 289 Lubbock, TX 79416-5029 (806) 792-4000 Fax (806) 792-1523	Region 18	PO Box 60580 Midland, TX 79711-0580 (432) 563-2380 Fax (432) 567-3290
Region 19	PO Box 971127 El Paso, TX 79997-1127 (915) 780-1919 Fax (915) 780-6537	Region 20	1314 Hines Ave 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
(800) 232-3030
www.region10.org

Statewide English Language Arts/Reading Coordinator
Texas Education Agency
Division of Curriculum
1701 N. Congress Ave
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 St., Suite 1620
Dallas, TX 75201
(214) 661-9600
Fax (214) 661-9587

Training Providers

Note: This is ***not*** a TEA-endorsed list but is intended to provide additional sources for information about dyslexia and related disorders. The following training centers may serve districts with dyslexia-related professional development opportunities and assist districts and parents in the diagnosis and treatment of students with dyslexia. Additional centers may be available in your area.

ALLIANCE **The Alliance for Accreditation and Certification** 14070 Proton Rd, Suite 100, LB9 Dallas, TX 75244 (972) 233-9107 ext. 213 Fax (972) 490-4219 www.allianceaccreditation.org	**ALTA** **Academic Language Therapy Association** 14070 Proton Rd, Suite 100, LB9 Dallas, TX 75244 (972) 233-9107 ext. 226 Fax (972) 490-4219 HOPELINE 1-866-283-7133 www.altaread.org
Bookshare—Texas Support 480 S. California Ave. Palo Alto, CA 94306 (650) 352-0198 Fax (650) 475-1066 www.bookshare.org	**Department of Pediatrics/University of Texas at Houston** **Children's Learning Institute** 7000 Fannin Suite 2300 Houston, TX 77030 http://cli.uth.tmc.edu/
EDMAR Educational Associates **MTS Publications** 415 N. McGraw Forney, TX 75126-0002 (877) 552-1090 (toll free) Fax (972) 552-9889 www.mtsedmar.com	**IDA** **International Dyslexia Association** 40 York Rd Baltimore, MD 21204 (410) 296-0232 Fax (410) 321-5069 www.interdys.org
IMSLEC **International Multisensory Structured Language Education Council** 15720 Hillcrest Rd Dallas, TX 75248 (972) 774-1772 www.imslec.org	**IRA** **International Reading Association** PO Box 8139 Newark, DE 19714-8139 (800) 336-7323 Fax (302) 731-1057 www.reading.org
JPWMF and Learning Center* 403 W. Washington Dr. San Angelo, TX 76903 (325) 655-2331 www.jpwlearningcenter.com	**LDA** **Learning Disabilities Association of America** 4156 Library Rd Pittsburgh, PA 15234-1349 (412) 341-1515 Fax (412) 344-0224 www.ldanatl.org

LDAT **Learning Disabilities Association of Texas** 1011 W. 31st Street Austin, TX 78705 PO Box 831392 Richardson, TX 75083-1392 (512) 458-8234 (800) 604-7500 (Texas residents only) www.ldat.org	**Learning Ally—Texas Support** 20 Roszel Road Princeton, NJ 08540 (800) 221-4792 (832) 830-6380
Learning Ally Southwest Region—Texas Location 1314 W. 45th Street Austin, TX 78756 (512) 323-9390	**Midwestern State University** 3410 Taft Blvd. Wichita Falls, TX 76308 (941) 397-4000 www.mwsu.edu
McKinney Christian Multisensory Teacher Training* 3601 Bois D'Arc Rd McKinney, TX 75071 (214) 544-2658 Ext. 4329 www.mckinneychristian.org	**Neuhaus Education Center*** 4433 Bissonnet Bellaire, TX 77401 (713) 664-7676 Fax (713) 664-4744 www.neuhaus.org
National Center for Learning Disabilities (NCLD) 381 Park Avenue S. Suite 1401 New York, NY 10016 (888) 575-7373 (toll free) Fax (212) 545-9665 www.ncld.org	**Scottish Rite Learning Center of South Texas*** 308 Avenue E San Antonio, TX 78205 (210) 222-0133 Fax (210) 222-0136 www.srlearningcenter.org
LEAD* **Literacy Education & Academic Development, Inc.** PO Box 822494 Dallas, TX 75231-2494 (214) 536-9046 Fax (214) 536-7917 www.leadabcd.com	**Scottish Rite Learning Center of West Texas*** 1101 70th St. Lubbock, TX 79412 (806) 765-9150 Fax (806) 765-9564 www.lubbockscottishrite.org

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	**TALE** **Texas Association for Literacy Education** The University of the Incarnate Word 4301 Broadway, CPO 293 San Antonio, TX 78209 www.texasreaders.org
Texas Scottish Rite Hospital for Children, Luke Waites Center Dyslexia and Learning Disorders* 2222 Welborn St. Dallas, TX 75219-9813 (214) 559-7816 Fax (214) 559-7808 www.tsrhc.org	**West Texas A&M University** **Center for Learning Disabilities** Suite 700, Room 711 PO Box 1218 Amarillo, TX 79101 (806) 651-8240 www.wtamu.edu/learningdisabilities
Shelton School* **Shelton Outreach/Training** 15720 Hillcrest Rd Dallas, TX 75248 (972)774-1772 ext 2223 Fax (877) 229-5004 www.shelton.org	

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

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Appendices E & F
Terms & Bibliography

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Appendix E: 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 school district or open-enrollment 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

Modifications/changes should not be made to the state curriculum standards known as the Texas Essential Knowledge and Skills (TEKS).

Adaptive behavior: the effectiveness with 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

Assistive technology: any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability (IDEA)

Assistive technology does not include a medical device that is surgically implanted or the replacement of such device (34 C.F.R. §300.5).

At risk for dyslexia: a term used to describe students who are not making adequate progress in the areas of reading and/or reading development but who have not yet been identified as students with dyslexia

The students considered at risk are at the preidentification level. These students must be provided accelerated reading instruction (intensive, research-based instruction that addresses the reading needs of the student).

Child Find: a school district's system for identifying, locating, and evaluating individuals with disabilities (birth through 21 years of age) who reside in its jurisdiction and who may need special education and related services

Cognate: a word in one language that looks and means the same as a word in another language (family (English)/familia (Spanish)/família (Portugese)/famiglia (Italian)/famille (French)/família (Catalan)/familie (Romanian)).

Cross-linguistic: relating to the comparison of different languages and the influence that knowledge of one language has on an individual's learning or use of another language

Developmental auditory imperception: the inability to receive and understand sounds and words

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: a process used to recognize students' varying background knowledge, readiness, language, preferences in learning, and interests

Differentiated instruction is a process used 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.

Dominant language: the language of an individual that is strongest and most developed

Dyslexia: specific learning disability that is neurological in origin

It is characterized by difficulties with accurate and/or fluent word recognition and 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).

Dysphasia: a delay in the development of comprehension and/or expression of oral language; terms commonly used to describe this condition include "developmental language disorder" and "specific language impairment"

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.

Evidence-based reading instruction: programs or instructional practices that have a record of success

This will include reliable, trustworthy, and valid evidence suggesting that when the program is used with a given group of students, the students can be expected to make adequate gains in reading achievement. Other terms that are sometimes used to convey the same idea are "research-based instruction" and "scientifically based research."
http://www.reading.org/general/AboutIRA/PositionStatements/EvidencedBasedPosition.aspx

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.

Free Appropriate Public Education (FAPE): an educational right of a child with disabilities in the United States to be provided with an education, including specialized instruction and related services, that prepares the child for further education, employment, and independent living

In 1975, Congress passed Public Law 94-142, also known as the Education for All Handicapped Children Act, which defined and outlined that all public schools should provide all students with a free appropriate public education at public expense without additional charges to parents or students and must be under public supervision and be appropriate for the child's needs.

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 ability level.

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

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 nonacademic 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, such as the word "book"

A morpheme is also a component of a word, as the letter "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.

Morphosyllabic writing systems: writing systems composed of several thousand characters that are visually complex and each represents a morpheme not a phoneme

An example of a morphosyllabic writing system is Japanese Kanji or Chinese Hanzi.

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

Orthographic awareness: the ability to perceive and manipulate aspects of a writing system and the visual aspects of reading and spelling, such as letters, letter patterns, and words

Orthographic memory: the memory for letter patterns and word spellings

Orthography: the writing system of a language, including the spelling, punctuation, and capitalization rules

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: a method of teaching reading that helps students build understanding of sound-symbol relationships and spelling patterns

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

Phonological memory: passive short-term memory that briefly stores speech-based information in phonological form

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 5 minutes) assessment 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, school district, or open-enrollment charter school staff, and/or the parent or guardian that a student be assessed for dyslexia

Following the recommendation, the school district or open-enrollment 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: the required standard in professional development and the foundation of academic instruction called for in the guidelines of the Elementary and Secondary Education Act (ESEA). Under the ESEA 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

Semitic writing system: a writing system where each symbol usually stands for a consonant sound and the reader must supply the appropriate vowel sound

Examples of Semitic languages are Hebrew and Arabic.

Specific developmental dyslexia: another term for dyslexia

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

Syllabic writing system: writing systems in which each symbol represents a syllable
Examples of syllabic writing systems are Japanese kana, Korean, Hangual, and many of the Asian-Indian languages.

Syntax: the study of rules and patterns for the formation of grammatical sentences and phrases in a language

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.

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Appendix G
Postsecondary Education

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Appendix G: Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities

Reproduction and ordering information

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 Section 504 and Title II apply to both school districts and postsecondary schools, the responsibilities of postsecondary schools differ significantly 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 educational 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, however, 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 that 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. But 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 services, as well as modifications to academic requirements as necessary to ensure equal educational opportunity. Examples of 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 substantially modify 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 adjustments that would fundamentally alter the nature of a service, program, or activity, or that would result in an undue financial or administrative burden. 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 to 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 those procedures. In their publications providing general information, postsecondary schools usually include 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 websites. 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 the 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 showing that 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, as well as supporting information, such as the date of the diagnosis, how that diagnosis was reached, and the credentials of the diagnosing professional; information on how your disability affects a major life activity; and information on 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.

An individualized education program (IEP) or Section 504 plan, if you have one, may help identify services that have been effective for you. This is generally not sufficient documentation, however, because of the differences between postsecondary education and high school education. What you need to meet the new demands of postsecondary education may be different from what worked for you in high school. 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. You may, therefore, 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 at http://rsa.ed.gov by clicking on "Info about RSA," then "People and Offices," and then "State Agencies/ Contacts."

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

To determine an appropriate academic adjustment, the school will review your request in light of the essential requirements for the relevant program. 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 it may offer an effective alternative. 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. Nor may it 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,Title II, or both laws. You may contact that 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. But 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 that 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 of the school's grievance procedures or wish to pursue an alternative to using those 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 H
§504 & ADA AA 2008

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Appendix H: Section 504 Code of Federal Regulations and Americans with Disabilities Act Amendments Act of 2008

believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to paragraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

Subpart M—Definitions

§ 101.131 Definitions.

The definitions contained in §100.13 of this subtitle apply to this part, unless the context otherwise requires, and the term ''reviewing authority'' as used herein includes the Secretary of Education, with respect to action by that official under §101.106.

Transition provisions: (a) The amendments herein shall become effective upon publication in the FEDERAL REGISTER.

(b) These rules shall apply to any proceeding or part thereof to which part 100 of this title applies. In the case of any proceeding or part thereof governed by the provisions of 34 CFR, part 100 (Title VI regulations of the Department of Education) as that part existed prior to the amendments published in the FEDERAL REGISTER on Oct. 19, 1967 (effective on that date), the rules in this part 101 shall apply as if those amendments were not in effect.

PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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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

§ 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.

§ 104.2 Application.

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

[65 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 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) *Program or activity* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

(l) *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.

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

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 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 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 or activity;

(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 aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such aid, benefits, or services 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 or activity 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 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 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) *Aid, benefits, or services limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 104.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program or activity 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.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 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 or activity but who were participants in the program or activity when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity 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.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 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.

§ 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 program or activity. The notification shall also include an identification of the responsible employee designated pursuant to §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.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 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 §§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.

§ 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

§ 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 or activities 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 apprenticeships.

(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 absense, 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 those that are social or recreational; 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.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§ 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 or activity.

(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 or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity 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.

[45 FR 30936, May 9, 2000, as amended at 65 FR 68054, Nov. 13, 2000]

§ 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).

§ 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 §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 §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—Accessibility

§ 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.

§ 104.22 Existing facilities.

(a) *Accessibility.* A recipient shall operate its program or activity so that when each part is viewed in its entirety, it 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 §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 serve 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 accessibility in order to comply with paagraph (a) of this section 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.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§ 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 phusical 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

§ 104.31 Application of this subpart.

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

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§ 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program or activity 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.

[45 FR 30936, May 9, 2000, as amended at 65 FR 68054, Nov. 13, 2000]

§ 104.33 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program or activity 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 §§ 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 or refer such a person for aid, benefits, or services other than those that it operates or provides 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 or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. 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 or refers such person for aid, benefits, or services not operated or provided 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 aid, benefits, or services 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 aid, benefits, or services operated by the recipient.

(3) *Residential placement.* If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of his or her handicap, the placement, 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 § 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 a free appropriate public education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 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.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§ 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 §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.

§104.35 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program or activity 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 belived to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education 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 §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.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program or activity 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.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

§ 104.37 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic 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 aid, benefits, or services 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.

(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 §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.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§ 104.38 Preschool and adult education.

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

[65 FR 68055, Nov. 13, 2000]

§ 104.39 Private education.

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

(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 provides special education shall do so in accordance with the provisions of §§104.35 and 104.36. Each recipient to which this section applies is subject to the provisions of §§104.34, 104.37, and 104.38.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Subpart E—Postsecondary Education

§ 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs or activities, including postsecondary vocational education programs or activities, that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§ 104.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §104.6(a) or 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 §104.6(b), the recipient may invite applicants for admission 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 action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training,

housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, and education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its program or activity in the most integrated setting appropriate.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§ 104.44 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§ 104.45 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations

is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 104.46 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not,

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates subpart B.

§ 104.47 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services 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 intercollegiate, 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 only if separation or differentiation is consistent with the requirements of § 104.43(d) 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.

(b) *Counseling and placement 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. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Subpart F—Health, Welfare, and Social Services

§ 104.51 Application of this subpart.

Subpart F applies to health, welfare, and other social service programs or activities that receive Federal financial assistance and to recipients that operate, or that receive Federal financial assistance for the operation of, such programs or activities.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

§ 104.52 Health, welfare, and other social services.

(a) *General.* In providing health, welfare, or other social services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in §104.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Assistant Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 104.53 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

§ 104.54 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity that provides aid, benefits or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in §104.3(k)(2), in its program or activity is provided an appropriate education, as defined in §104.33(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Subpart G—Procedures

§ 104.61 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in §§100.6–100.10 and part 101 of this title.

APPENDIX A TO PART 104—ANALYSIS OF FINAL REGULATION

SUBPART A—GENERAL PROVISIONS

Definitions—1. *Recipient.* Section 104.23 contains definitions used throughout the regulation.

One comment requested that the regulation specify that nonpublic elementary and secondary schools that are not otherwise recipients do not become recipients by virtue of the fact their students participate in certain federally funded programs. The Secretary believes it unnecessary to amend the regulation in this regard, because almost identical language in the Department's regulations implementing title VI and title IX of the Education Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are indirectly subject to the substantive requirements of this regulation through the application of §104.4(b)(iv), which prohibits recipients from assisting agencies that discriminate on the basis of handicap in providing services to beneficiaries of the recipients' programs.

2. *Federal financial assistance.* In §104.3(h), defining federal financial assistance, a clarifying change has been made: procurement contracts are specifically excluded. They are covered, however, by the Department of Labor's regulation under section 503. The Department has never considered such contracts to be contracts of assistance; the explicit exemption has been added only to avoid possible confusion.

The proposed regulation's exemption of contracts of insurance or guaranty has been retained. A number of comments argued for its deletion on the ground that section 504, unlike title VI and title IX, contains no statutory exemption for such contracts. There is no indication, however, in the legislative history of the Rehabilitation Act of 1973 or of the amendments to that Act in 1974, that Congress intended section 504 to have a broader application, in terms of federal financial assistance, than other civil rights statutes. Indeed, Congress directed that section 504 be implemented in the same manner as titles VI and IX. In view of the long established exemption of contracts of insurance or guaranty under title VI, we think it unlikely that Congress intended section 504 to apply to such contracts.

3. *Handicapped person.* Section 104.3(j), which defines the class of persons protected under the regulation, has not been substantially changed. The definition of handicapped person in paragraph (j)(1) conforms to the statutory definition of handicapped person that is applicable to section 504, as set forth in section 111(a) of the Rehabilitation Act Amendments of 1974, Pub. L. 93–516.

The first of the three parts of the statutory and regulatory definition includes any person who has a physical or mental impairment that substantially limits one or more major life activities. Paragraph (j)(2)(i) further defines physical or mental impairments. The definition does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list. The term includes, however, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and, as discussed below, drug addiction and alcoholism.

It should be emphasized that a physical or mental impairment does not constitute a handicap for purposes of section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities. Several comments observed the lack of any definition in the proposed regulation of the phrase ''substantially limits.'' The Department does not believe that a definition of this term is possible at this time.

A related issue raised by several comments is whether the definition of handicapped person is unreasonably broad. Comments suggested narrowing the definition in various ways. The most common recommendation was that only ''traditional'' handicaps be covered. The Department continues to believe, however, that it has no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps. The Department intends, however, to give particular attention in its enforcement of section 504 to eliminating discrimination against persons with the severe handicaps that were the focus of concern in the Rehabilitation Act of 1973.

The definition of handicapped person also includes specific limitations on what persons are classified as handicapped under the regulation. The first of the three parts of the definition specifies that only physical and mental handicaps are included. Thus, environmental, cultural, and economic disadvantage are not in themselves covered; nor are prison records, age, or homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental handicap, the person is included within the definition of handicapped person.

In paragraph (j)(2)(i), physical or mental impairment is defined to include, among other impairments, specific learning disabilities. The Department will interpret the term as it is used in section 602 of the Education of the Handicapped Act, as amended. Paragraph (15) of section 602 uses the term ''specific learning disabilities'' to describe

such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Paragraph (j)(2)(i) has been shortened, but not substantively changed, by the deletion of clause (C), which made explicit the inclusion of any condition which is mental or physical but whose precise nature is not at present known. Clauses (A) and (B) clearly comprehend such conditions.

The second part of the statutory and regulatory definition of handicapped person includes any person who has a record of a physical or mental impairment that substantially limits a major life activity. Under the definition of ''record'' in paragraph (j)(2)(iii), persons who have a history of a handicapping condition but no longer have the condition, as well as persons who have been incorrectly classified as having such a condition, are protected from discrimination under section 504. Frequently occurring examples of the first group are persons with histories of mental or emotional illness, heart disease, or cancer; of the second group, persons who have been misclassified as mentally retarded.

The third part of the statutory and regulatory definition of handicapped person includes any person who is regarded as having a physical or mental impairment that substantially limits one or more major life activities. It includes many persons who are ordinarily considered to be handicapped but who do not technically fall within the first two parts of the statutory definition, such as persons with a limp. This part of the definition also includes some persons who might not ordinarily be considered handicapped, such as persons with disfiguring scars, as well as persons who have no physical or mental impairment but are treated by a recipient as if they were handicapped.

4. *Drug addicts and alcoholics.* As was the case during the first comment period, the issue of whether to include drug addicts and alcoholics within the definition of handicapped person was of major concern to many commenters. The arguments presented on each side of the issue were similar during the two comment periods, as was the preference of commenters for exclusion of this group of persons. While some comments reflected misconceptions about the implications of including alcoholics and drug addicts within the scope of the regulation, the Secretary understands the concerns that underlie the comments on this question and recognizes that application of section 504 to active alcoholics and drug addicts presents sensitive and difficult questions that must be taken into account in interpretation and enforcement.

The Secretary has carefully examined the issue and has obtained a legal opinion from the Attorney General. That opinion concludes that drug addiction and alcoholism are ''physical or mental impairments'' within the meaning of section 7(6) of the Rehabilitation Act of 1973, as amended, and that drug addicts and alcoholics are therefore handicapped for purposes of section 504 if their impairment substantially limits one of their major life activities. The Secretary therefore believes that he is without authority to exclude these conditions from the definition. There is a medical and legal consensus that alcoholism and drug addiction are diseases, although there is disagreement as to whether they are primarily mental or physical. In addition, while Congress did not focus specifically on the problems of drug addiction and alcoholism in enacting section 504, the committees that considered the Rehabilitation Act of 1973 were made aware of the Department's long-standing practice of treating addicts and alcoholics as handicapped individuals eligible for rehabilitation services under the Vocational Rehabilitation Act.

The Secretary wishes to reassure recipients that inclusion of addicts and alcoholics within the scope of the regulation will not lead to the consequences feared by many commenters. It cannot be emphasized too strongly that the statute and the regulation apply only to discrimination against qualified handicapped persons solely by reason of their handicap. The fact that drug addiction and alcoholism may be handicaps does not mean that these conditions must be ignored in determining whether an individual is qualified for services or employment opportunities. On the contrary, a recipient may hold a drug addict or alcoholic to the same standard of performance and behavior to which it holds others, even if any unsatisfactory performance or behavior is related to the person's drug addiction or alcoholism. In other words, while an alcoholic or drug addict may not be denied services or disqualified from employment solely because of his or her condition, the behavioral manifestations of the condition may be taken into account in determining whether he or she is qualified.

With respect to the employment of a drug addict or alcoholic, if it can be shown that the addiction or alcoholism prevents successful performance of the job, the person need not be provided the employment opportunity in question. For example, in making employment decisions, a recipient may judge addicts and alcoholics on the same basis it judges all other applicants and employees. Thus, a recipient may consider—for all applicants including drug addicts and alcoholics—past personnel records, absenteeism, disruptive, abusive, or dangerous behavior, violations of rules and unsatisfactory work performance. Moreover, employers may enforce rules prohibiting the possession or use of alcohol or drugs in the work-place, provided

that such rules are enforced against all employees.

With respect to other services, the implications of coverage, of alcoholics and drug addicts are two-fold: first, no person may be excluded from services solely by reason of the presence or history of these conditions; second, to the extent that the manifestations of the condition prevent the person from meeting the basic eligibility requirements of the program or cause substantial interference with the operation of the program, the condition may be taken into consideration. Thus, a college may not exclude an addict or alcoholic as a student, on the basis of addiction or alcoholism, if the person can successfully participate in the education program and complies with the rules of the college and if his or her behavior does not impede the performance of other students.

Of great concern to many commenters was the question of what effect the inclusion of drug addicts and alcoholics as handicapped persons would have on school disciplinary rules prohibiting the use or possession of drugs or alcohol by students. Neither such rules nor their application to drug addicts or alcoholics is prohibited by this regulation, provided that the rules are enforced evenly with respect to all students.

5. *Qualified handicapped person*. Paragraph (k) of §104.3 defines the term ''qualified handicapped person.'' Throughout the regulation, this term is used instead of the statutory term ''otherwise qualified handicapped person.'' The Department believes that the omission of the word ''otherwise'' is necessary in order to comport with the intent of the statute because, read literally, ''otherwise'' qualified handicapped persons include persons who are qualified except for their handicap, rather than in spite of their handicap. Under such a literal reading, a blind person possessing all the qualifications for driving a bus except sight could be said to be ''otherwise qualified'' for the job of driving. Clearly, such a result was not intended by Congress. In all other respects, the terms ''qualified'' and ''otherwise qualified'' are intended to be interchangeable.

Section 104.3(k)(1) defines a qualified handicapped person with respect to employment as a handicapped person who can, with reasonable accommodation, perform the essential functions of the job in question. The term ''essential functions'' does not appear in the corresponding provision of the Department of Labor's section 503 regulation, and a few commenters objected to its inclusion on the ground that a handicapped person should be able to perform all job tasks. However, the Department believes that inclusion of the phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. Further, we are convinced that inclusion of the phrase is not inconsistent with the Department of Labor's application of its definition.

Certain commenters urged that the definition of qualified handicapped person be amended so as explicitly to place upon the employer the burden of showing that a particular mental or physical characteristic is essential. Because the same result is achieved by the requirement contained in paragraph (a) of §104.13, which requires an employer to establish that any selection criterion that tends to screen out handicapped persons is job-related, that recommendation has not been followed.

Section 104.3(k)(2) defines qualified handicapped person, with respect to preschool, elementary, and secondary programs, in terms of age. Several commenters recommended that eligibility for the services be based upon the standard of substantial benefit, rather than age, because of the need of many handicapped children for early or extended services if they are to have an equal opportunity to benefit from education programs. No change has been made in this provision, again because of the extreme difficulties in administration that would result from the choice of the former standard. Under the remedial action provisions of §104.6(a)(3), however, persons beyond the age limits prescribed in §104.3(k)(2) may in appropriate cases be required to be provided services that they were formerly denied because of a recipient's violation of section 504.

Section 104.3(k)(2) states that a handicapped person is qualified for preschool, elementary, or secondary services if the person is of an age at which nonhandicapped persons are eligible for such services or at which State law mandates the provision of educational services to handicapped persons. In addition, the extended age ranges for which recipients must provide full educational opportunity to all handicapped persons in order to be eligible for assistance under the Education of the Handicapped Act—generally, 3–18 as of September 1978, and 3–21 as of September 1980 are incorporated by reference in this paragraph.

Section 104.3(k)(3) defines qualified handicapped person with respect to postsecondary educational programs. As revised, the paragraph means that both academic and technical standards must be met by applicants to these programs. The term *technical standards* refers to all nonacademic admissions criteria that are essential to participation in the program in question.

6. *General prohibitions against discrimination*. Section 104.4 contains general prohibitions against discrimination applicable to all recipients of assistance from this Department.

Paragraph (b)(1(i) prohibits the exclusion of qualified handicapped persons from aids, benefits, or services, and paragraph (ii) requires that equal opportunity to participate

or benefit be provided. Paragraph (iii) requires that services provided to handicapped persons be as effective as those provided to the nonhandicapped. In paragraph (iv), different or separate services are prohibited except when necessary to provide equally effective benefits.

In this context, the term *equally effective*, defined in paragraph (b)(2), is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of handicapped persons to the same extent that the corresponding needs of nonhandicapped persons are met, adjustments to regular programs or the provision of different programs may sometimes be necessary. This standard parallels the one established under title VI of Civil Rights Act of 1964 with respect to the provision of educational services to students whose primary language is not English. See *Lau* v. *Nichols*, 414 U.S. 563 (1974). To be equally effective, however, an aid, benefit, or service need not produce equal results; it merely must afford an equal opportunity to achieve equal results.

It must be emphasized that, although separate services must be required in some instances, the provision of unnecessarily separate or different services is discriminatory. The addition to paragraph (b)(2) of the phrase ''in the most integrated setting appropriated to the person's needs'' is intended to reinforce this general concept. A new paragraph (b)(3) has also been added to §104.4, requiring recipients to give qualified handicapped persons the option of participating in regular programs despite the existence of permissibly separate or different programs. The requirement has been reiterated in §§104.38 and 104.47 in connection with physical education and athletics programs.

Section 104.4(b)(1)(v) prohibits a recipient from supporting another entity or person that subjects participants or employees in the recipient's program to discrimination on the basis of handicap. This section would, for example, prohibit financial support by a recipient to a community recreational group or to a professional or social organization that discriminates against handicapped persons. Among the criteria to be considered in each case are the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself. Paragraph (b)(1)(vi) was added in response to comment in order to make explicit the prohibition against denying qualified handicapped persons the opportunity to serve on planning and advisory boards responsible for guiding federally assisted programs or activities.

Several comments appeared to interpret §104.4(b)(5), which proscribes discriminatory site selection, to prohibit a recipient that is located on hilly terrain from erecting any new buildings at its present site. That, of course, is not the case. This paragraph is not intended to apply to construction of additional buildings at an existing site. Of course, any such facilities must be made accessible in accordance with the requirements of §104.23.

7. *Assurances of compliance.* Section 104.5(a) requires a recipient to submit to the Assistant Secretary an assurance that each of its programs and activities receiving or benefiting from Federal financial assistance from this Department will be conducted in compliance with this regulation. Many commenters also sought relief from the paperwork requirements imposed by the Department's enforcement of its various civil rights responsibilities by requesting the Department to issue one form incorporating title VI, title IX, and section 504 assurances. The Secretary is sympathetic to this request. While it is not feasible to adopt a single civil rights assurance form at this time, the Office for Civil Rights will work toward that goal.

8. *Private rights of action.* Several comments urged that the regulation incorporate provision granting beneficiaries a private right of action against recipients under section 504. To confer such a right is beyond the authority of the executive branch of Government. There is, however, case law holding that such a right exists. *Lloyd* v. *Regional Transportation Authority*, 548 F. 2d 1277 (7th Cir. 1977); *see Hairston* v. *Drosick*, Civil No. 75–0691 (S.D. W. Va., Jan. 14, 1976); *Gurmankin* v. *Castanzo*, 411 F. Supp. 982 (E.D. Pa. 1976); *cf. Lau* v. *Nichols*, *supra*.

9. *Remedial action.* Where there has been a finding of discrimination, §104.6 requires a recipient to take remedial action to overcome the effects of the discrimination. Actions that might be required under paragraph (a)(1) include provision of services to persons previously discriminated against, reinstatement of employees and development of a remedial action plan. Should a recipient fail to take required remedial action, the ultimate sanctions of court action or termination of Federal financial assistance may be imposed.

Paragraph (a)(2) extends the responsibility for taking remedial action to a recipient that exercises control over a noncomplying recipient. Paragraph (a)(3) also makes clear that handicapped persons who are not in the program at the time that remedial action is required to be taken may also be the subject of such remedial action. This paragraph has been revised in response to comments in order to include persons who would have been in the program if discriminatory practices had not existed. Paragraphs (a) (1), (2), and (3) have also been amended in response

to comments to make plain that, in appropriate cases, remedial action might be required to redress clear violations of the statute itself that occurred before the effective date of this regulation.

10. *Voluntary action.* In §104.6(b), the term ''voluntary action'' has been substituted for the term ''affirmative action'' because the use of the latter term led to some confusion. We believe the term ''voluntary action'' more accurately reflects the purpose of the paragraph. This provision allows action, beyond that required by the regulation, to overcome conditions that led to limited participation by handicapped persons, whether or not the limited participation was caused by any discriminatory actions on the part of the recipient. Several commenters urged that paragraphs (a) and (b) be revised to require remedial action to overcome effects of prior discriminatory practices regardless of whether there has been an express finding of discrimination. The self-evaluation requirement in paragraph (c) accomplishes much the same purpose.

11. *Self-evaluation.* Paragraph (c) requires recipients to conduct a self-evaluation in order to determine whether their policies or practices may discriminate against handicapped persons and to take steps to modify any discriminatory policies and practices and their effects. The Department received many comments approving of the addition to paragraph (c) of a requirement that recipients seek the assistance of handicapped persons in the self-evaluation process. This paragraph has been further amended to require consultation with handicapped persons or organizations representing them before recipients undertake the policy modifications and remedial steps prescribed in paragraphs (c) (ii) and (iii).

Paragraph (c)(2), which sets forth the recordkeeping requirements concerning self-evaluation, now applies only to recipients with fifteen or more employees. This change was made as part of an effort to reduce unnecessary or counterproductive administrative obligations on small recipients. For those recipients required to keep records, the requirements have been made more specific; records must include a list of persons consulted and a description of areas examined, problems identified, and corrective steps taken. Moreover, the records must be made available for public inspection.

12. *Grievance procedure.* Section 104.7 requires recipients with fifteen or more employees to designate an individual responsible for coordinating its compliance efforts and to adopt a grievance procedure. Two changes were made in the section in response to comment. A general requirement that appropriate due process procedures be followed has been added. It was decided that the details of such procedures could not at this time be specified because of the varied nature of the persons and entities who must establish the procedures and of the programs to which they apply. A sentence was also added to make clear that grievance procedures are not required to be made available to unsuccessful applicants for employment or to applicants for admission to colleges and universities.

The regulation does not require that grievance procedures be exhausted before recourse is sought from the Department. However, the Secretary believes that it is desirable and efficient in many cases for complainants to seek resolution of their complaints and disputes at the local level and therefore encourages them to use available grievance procedures.

A number of comments asked whether compliance with this section or the notice requirements of §104.8 could be coordinated with comparable action required by the title IX regulation. The Department encourages such efforts.

13. *Notice.* Section 104.8 (formerly §84.9) sets forth requirements for dissemination of statements of nondicrimination policy by recipients.

It is important that both handicapped persons and the public at large be aware of the obligations of recipients under section 504. Both the Department and recipients have responsibilities in this regard. Indeed the Department intends to undertake a major public information effort to inform persons of their rights under section 504 and this regulation. In §104.8 the Department has sought to impose a clear obligation on major recipients to notify beneficiaries and employees of the requirements of section 504, without dictating the precise way in which this notice must be given. At the same time, we have avoided imposing requirements on small recipients (those with fewer than fifteen employees) that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the Department.

Section 104.8(a), as simplified, requires recipients with fifteen or more employees to take appropriate steps to notify beneficiaries and employees of the recipient's obligations under section 504. The last sentence of §104.8(a) has been revised to list possible, rather than required, means of notification. Section 104.8(b) requires recipients to include a notification of their policy of nondiscrimination in recruitment and other general information materials.

In response to a number of comments, §104.8 has been revised to delete the requirements of publication in local newspapers, which has proved to be both troublesome and ineffective. Several commenters suggested that notification on separate forms be allowed until present stocks of publications and forms are depleted. The final regulation explicitly allows this method of compliance.

The separate form should, however, be included with each significant publication or form that is distributed.

Section 104 which prohibited the use of materials that might give the impression that a recipient excludes qualified handicapped persons from its program, has been deleted. The Department is convinced by the comments that this provision is unnecessary and difficult to apply. The Department encourages recipients, however, to include in their recruitment and other general information materials photographs of handicapped persons and ramps and other features of accessible buildings.

Under new §104.9 the Assistant Secretary may, under certain circumstances, require recipients with fewer than fifteen employees to comply with one or more of these requirements. Thus, if experience shows a need for imposing notice or other requirements on particular recipients or classes of small recipients, the Department is prepared to expand the coverage of these sections.

14. *Inconsistent State laws.* Section 104.10(a) states that compliance with the regulation is not excused by State or local laws limiting the eligibility of qualified handicapped persons to receive services or to practice an occupation. The provision thus applies only with respect to state or local laws that unjustifiably differentiate on the basis of handicap.

Paragraph (b) further points out that the presence of limited employment opportunities in a particular profession, does not excuse a recipient from complying with the regulation. Thus, a law school could not deny admission to a blind applicant because blind laywers may find it more difficult to find jobs than do nonhandicapped lawyers.

SUBPART B—EMPLOYMENT PRACTICES

Subpart B prescribes requirements for nondiscrimination in the employment practices of recipients of Federal financial assistance administered by the Department. This subpart is consistent with the employment provisions of the Department's regulation implementing title IX of the Education Amendments of 1972 (34 CFR, part 106) and the regulation of the Department of Labor under section 503 of the Rehabilitation Act, which requries certain Federal contractors to take affirmative action in the employment and advancement of qualified handicapped persons. All recipients subject to title IX are also subject to this regulation. In addition, many recipients subject to this regulation receive Federal procurement contracts in excess of $2,500 and are therefore also subject to section 503.

15. *Discriminatory practices.* Section 104.11 sets forth general provisions with respect to discrimination in employment. A new paragraph (a)(2) has been added to clarify the employment obligations of recipients that receive Federal funds under Part B of the Education of the Handicapped Act, as amended (EHA). Section 606 of the EHA obligates elementary or secondary school systems that receive EHA funds to take positive steps to employ and advance in employment qualified handicapped persons. This obligation is similar to the nondiscrimination requirement of section 504 but requires recipients to take additional steps to hire and promote handicapped persons. In enacting section 606 Congress chose the words ''positive steps'' instead of ''affirmative action'' advisedly and did not intend section 606 to incorporate the types of activities required under Executive Order 11246 (affirmative action on the basis of race, color, sex, or national origin) or under sections 501 and 503 of the Rehabilitation Act of 1973.

Paragraph (b) of §104.11 sets forth the specific aspects of employment covered by the regulation. Paragraph (c) provides that inconsistent provisions of collective bargaining agreements do not excuse noncompliance.

16. *Reasonable accommodation.* The reasonable accommodation requirement of §104.12 generated a substantial number of comments. The Department remains convinced that its approach is both fair and effective. Moreover, the Department of Labor reports that it has experienced little difficulty in administering the requirements of reasonable accommodation. The provision therefore remains basically unchanged from the proposed regulation.

Section 104.12 requires a recipient to make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Where a handicapped person is not qualified to perform a particular job, where reasonable accommodation does not overcome the effects of a person's handicap, or where reasonable accommodation causes undue hardship to the employer, failure to hire or promote the handicapped person will not be considered discrimination.

Section 104.12(b) lists some of the actions that constitute reasonable accommodation. The list is neither all-inclusive nor meant to suggest that employers must follow all of the actions listed.

Reasonable accommodation includes modification of work schedules, including part-time employment, and job restructuring. Job restructuring may entail shifting nonessential duties to other employees. In other cases, reasonable accommodation may include physical modifications or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by handicapped persons. If such accommodations would cause undue

hardship to the employer, they need not be made.

Paragraph (c) of this section sets forth the factors that the Office for Civil Rights will consider in determining whether an accommodation necessary to enable an applicant or employee to perform the duties of a job would impose an undue hardship. The weight given to each of these factors in making the determination as to whether an accommodation constitutes undue hardship will vary depending on the facts of a particular situation. Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. The reasonable accommodation standard in §104.12 is similar to the obligation imposed upon Federal contractors in the regulation implementing section 503 of the Rehabilitation Act of 1973, administered by the Department of Labor. Although the wording of the reasonable accommodation provisions of the two regulations is not identical, the obligation that the two regulations impose is the same, and the Federal Government's policy in implementing the two sections will be uniform. The Department adopted the factors listed in paragraph (c) instead of the ''business necessity'' standard of the Labor regulation because that term seemed inappropriate to the nature of the programs operated by the majority of institutions subject to this regulation, e.g., public school systems, colleges and universities. The factors listed in paragraph (c) are intended to make the rationale underlying the business necessity standard applicable to an understandable by recipients of ED funds.

17. *Tests and selection criteria.* Revised §104.13(a) prohibits employers from using test or other selection criteria that screen out or tend to screen out handicapped persons unless the test or criterion is shown to be job-related and alternative tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Assistant Secretary to be available. This paragraph is an application of the principle established under title VII of the Civil Rights Act of 1964 in *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971).

Under the proposed section, a statistical showing of adverse impact on handicapped persons was required to trigger an employer's obligation to show that employment criteria and qualifications relating to handicap were necessary. This requirement was changed because the small number of handicapped persons taking tests would make statistical showings of ''disproportionate, adverse effect'' difficult and burdensome. Under the altered, more workable provision, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. A recipient is no longer limited to using predictive validity studies as the method for demonstrating that a test or other selection criterion is in fact job-related. Nor, in all cases, are predictive validity studies sufficient to demonstrate that a test or criterion is job-related. In addition, §104.13(a) has been revised to place the burden on the Assistant Secretary, rather than the recipient, to identify alternate tests.

Section 104.13(b) requires that a recipient take into account that some tests and criteria depend upon sensory, manual, or speaking skills that may not themselves be necessary to the job in question but that may make the handicapped person unable to pass the test. The recipient must select and administer tests so as best to ensure that the test will measure the handicapped person's ability to perform on the job rather than the person's ability to see, hear, speak, or perform manual tasks, except, of course, where such skills are the factors that the test purports to measure. For example, a person with a speech impediment may be perfectly qualified for jobs that do not or need not, with reasonable accommodation, require ability to speak clearly. Yet, if given an oral test, the person will be unable to perform in a satisfactory manner. The test results will not, therefore, predict job performance but instead will reflect impaired speech.

18. *Preemployment inquiries.* Section 104.14, concerning preemployment inquiries, generated a large number of comments. Commenters representing handicapped persons strongly favored a ban on preemployment inquiries on the ground that such inquiries are often used to discriminate against handicapped persons and are not necessary to serve any legitimate interests of employers. Some recipients, on the other hand, argued that preemployment inquiries are necessary to determine qualifications of the applicant, safety hazards caused by a particular handicapping condition, and accommodations that might be required.

The Secretary has concluded that a general prohibition of preemployment inquiries is appropriate. However, a sentence has been added to paragraph (a) to make clear that an employer may inquire into an applicant's ability to perform job-related tasks but may not ask if the person has a handicap. For example, an employer may not ask on an employment form if an applicant is visually impaired but may ask if the person has a current driver's license (if that is a necessary qualification for the position in question). Similarly, employers may make inquiries about an applicant's ability to perform a job safely. Thus, an employer may not ask if an

applicant is an epileptic but may ask whether the person can perform a particular job without endangering other employees.

Section 104.14(b) allows preemployment inquiries only if they are made in conjunction with required remedial action to correct past discrimination, with voluntary action to overcome past conditions that have limited the participation of handicapped persons, or with obligations under section 503 of the Rehabilitation Act of 1973. In these instances, paragraph (b) specifies certain safeguards that must be followed by the employer.

Finally, the revised provision allows an employer to condition offers of employment to handicapped persons on the results of medical examinations, so long as the examinations are administered to all employees in a nondiscriminatory manner and the results are treated on a confidential basis.

19. *Specific acts of Discrimination.* Sections 104.15 (recruitment), 104.16 (compensation), 104.17 (job classification and structure) and 104.18 (fringe benefits) have been deleted from the regulation as unnecessarily duplicative of §104.11 (discrimination prohibited). The deletion of these sections in no way changes the substantive obligations of employers subject to this regulation from those set forth in the July 16 proposed regulation. These deletions bring the regulation closer in form to the Department of Labor's section 503 regulation.

A proposed section, concerning fringe benefits, had allowed for differences in benefits or contributions between handicapped and nonhandicapped persons in situations only where such differences could be justified on an actuarial basis. Section 104.11 simply bars discrimination in providing fringe benefits and does not address the issue of actuarial differences. The Department believes that currently available data and experience do not demonstrate a basis for promulgating a regulation specifically allowing for differences in benefits or contributions.

SUBPART C—PROGRAM ACCESSIBILITY

In general, Subpart C prohibits the exclusion of qualified handicapped persons from federally assisted programs or activities because a recipient's facilities are inaccessible or unusable.

20. *Existing facilities.* Section 104.22 maintains the same standard for nondiscrimination in regard to existing facilities as was included in the proposed regulation. The section states that a recipients program or activity, when viewed in its entirety, must be readily accessible to and usable by handicapped persons. Paragraphs (a) and (b) make clear that a recipient is not required to make each of its existing facilities accessible to handicapped persons if its program as a whole is accessible. Accessibility to the recipient's program or activity may be achieved by a number of means, including redesign of equipment, reassignment of classes or other services to accessible buildings, and making aides available to beneficiaries. In choosing among methods of compliance, recipients are required to give priority consideration to methods that will be consistent with provision of services in the most appropriate integrated setting. Structural changes in existing facilities are required only where there is no other feasible way to make the recipient's program accessible.

Under §104.22, a university does not have to make all of its existing classroom buildings accessible to handicapped students if some of its buildings are already accessible and if it is possible to reschedule or relocate enough classes so as to offer all required courses and a reasonable selection of elective courses in accessible facilities. If sufficient relocation of classes is not possible using existing facilities, enough alterations to ensure program accessibility are required. A university may not exclude a handicapped student from a specifically requested course offering because it is not offered in an accessible location, but it need not make every section of that course accessible.

Commenters representing several institutions of higher education have suggested that it would be appropriate for one postsecondary institution in a geographical area to be made accessible to handicapped persons and for other colleges and universities in that area to participate in that school's program, thereby developing an educational consortium for the postsecondary education of handicapped students. The Department believes that such a consortium, when developed and applied only to handicapped persons, would not constitute compliance with §104.22, but would discriminate against qualified handicapped persons by restricting their choice in selecting institutions of higher education and would, therefore, be inconsistent with the basic objectives of the statute.

Nothing in this regulation, however, should be read as prohibiting institutions from forming consortia for the benefit of all students. Thus, if three colleges decide that it would be cost-efficient for one college to offer biology, the second physics, and the third chemistry to all students at the three colleges, the arrangement would not violate section 504. On the other hand, it would violate the regulation if the same institutions set up a consortium under which one college undertook to make its biology lab accessible, another its physics lab, and a third its chemistry lab, and under which mobility-impaired handicapped students (but not other students) were required to attend the particular college that is accessible for the desired courses.

Similarly, while a public school district need not make each of its buildings completely accessible, it may not make only one

facility or part of a facility accessible if the result is to segregate handicapped students in a single setting.

All recipients that provide health, welfare, or other social services may also comply with §104.22 by delivering services at alternate accessible sites or making home visits. Thus, for example, a pharmacist might arrange to make home deliveries of drugs. Under revised §104.22(c), small providers of health, welfare, and social services (those with fewer than fifteen employees) may refer a beneficiary to an accessible provider of the desired service, but only if no means of meeting the program accessibility requirement other than a significant alteration in existing facilities is available. The referring recipient has the responsibility of determining that the other provider is in fact accessible and willing to provide the service.

A recent change in the tax law may assist some recipients in meeting their obligations under this section. Under section 2122 of the Tax Reform Act of 1976, recipients that pay federal income tax are eligible to claim a tax deduction of up to $25,000 for architectural and transportation modifications made to improve accessibility for handicapped persons. See 42 FR 17870 (April 4, 1977), adopting 26 CFR 7.190.

Several commenters expressed concern about the feasibility of compliance with the program accessibility standard. The Secretary believes that the standard is flexible enough to permit recipients to devise ways to make their programs accessible short of extremely expensive or impractical physical changes in facilities. Accordingly, the section does not allow for waivers. The Department is ready at all times to provide technical assistance to recipients in meeting their program accessibility responsibilities. For this purpose, the Department is establishing a special technical assistance unit. Recipients are encouraged to call upon the unit staff for advice and guidance both on structural modifications and on other ways of meeting the program accessibility requirement.

Paragraph (d) has been amended to require recipients to make all nonstructural adjustments necessary for meeting the program accessibility standard within sixty days. Only where structural changes in facilities are necessary will a recipient be permitted up to three years to accomplish program accessibility. It should be emphasized that the three-year time period is not a waiting period and that all changes must be accomplished as expeditiously as possible. Further, it is the Department's belief, after consultation with experts in the field, that outside ramps to buildings can be constructed quickly and at relatively low cost. Therefore, it will be expected that such structural additions will be made promptly to comply with §104.22(d).

The regulation continues to provide, as did the proposed version, that a recipient planning to achieve program accessibility by making structural changes must develop a transition plan for such changes within six months of the effective date of the regulation. A number of commenters suggested extending that period to one year. The secretary believes that such an extension is unnecessary and unwise. Planning for any necessary structural changes should be undertaken promptly to ensure that they can be completed within the three-year period. The elements of the transition plan as required by the regulation remain virtually unchanged from the proposal but §104.22(d) now includes a requirement that the recipient make the plan available for public inspection.

Several commenters expressed concern that the program accessibility standard would result in the segregation of handicapped persons in educational institutions. The regulation will not be applied to permit such a result. See §104.4(c)(2)(iv), prohibiting unnecessarily separate treatment; §104.35, requiring that students in elementary and secondary schools be educated in the most integrated setting appropriate to their needs; and new §104.43(d), applying the same standard to postsecondary education.

We have received some comments from organizations of handicapped persons on the subject of requiring, over an extended period of time, a barrier-free environment—that is, requiring the removal of all architectural barriers in existing facilities. The Department has considered these comments but has decided to take no further action at this time concerning these suggestions, believing that such action should only be considered in light of experience in implementing the program accessibility standard.

21. *New construction.* Section 104.23 requires that all new facilities, as well as alterations that could affect access to and use of existing facilities, be designed and constructed in a manner so as to make the facility accessible to and usable by handicapped persons. Section 104.23(a) has been amended so that it applies to each newly constructed facility if the construction was commenced after the effective date of the regulation. The words ''if construction has commenced'' will be considered to mean ''if groundbreaking has taken place.'' Thus, a recipient will not be required to alter the design of a facility that has progressed beyond groundbreaking prior to the effective date of the regulation.

Paragraph (b) requires certain alterations to conform to the requirement of physical accessibility in paragraph (a). If an alteration is undertaken to a portion of a building the accessibility of which could be improved by the manner in which the alteration is carried out, the alteration must be made in that manner. Thus, if a doorway or

wall is being altered, the door or other wall opening must be made wide enough to accommodate wheelchairs. On the other hand, if the alteration consists of altering ceilings, the provisions of this section are not applicable because this alteration cannot be done in a way that affects the accessibility of that portion of the building. The phrase ''to the maximum extent feasible'' has been added to allow for the occasional case in which the nature of an existing facility is such as to make it impractical or prohibitively expensive to renovate the building in a manner that results in its being entirely barrier-free. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

Section 104.23(d) of the proposed regulation, providing for a limited deferral of action concerning facilities that are subject to section 502 as well as section 504 of the Act, has been deleted. The Secretary believes that the provision is unnecessary and inappropriate to this regulation. The Department will, however, seek to coordinate enforcement activities under this regulation with those of the Architectural and Transportation Barriers Compliance Board.

SUBPART D—PRESCHOOL, ELEMENTARY, AND SECONDARY EDUCATION

Subpart D sets forth requirements for nondiscrimination in preschool, elementary, secondary, and adult education programs and activities, including secondary vocational education programs. In this context, the term ''adult education'' refers only to those educational programs and activities for adults that are operated by elementary and secondary schools.

The provisions of Subpart D apply to state and local educational agencies. Although the subpart applies, in general, to both public and private education programs and activities that are federally assisted, §§104.32 and 104.33 apply only to public programs and §104.39 applies only to private programs; §§104.35 and 104.36 apply both to public programs and to those private programs that include special services for handicapped students.

Subpart B generally conforms to the standards established for the education of handicapped persons in *Mills* v. *Board of Education of the District of Columbia,* 348 F. Supp. 866 (D.D.C. 1972), *Pennsylvania Association for Retarded Children* v. *Commonwealth of Pennsylvania,* 344 F. Supp. 1257 (E.D. 1971), 343 F. Supp. 279 (E.D. Pa. 1972), and *Lebanks* v. *Spears,* 60, F.R.D. 135 (E.D. La. 1973), as well as in the Education of the Handicapped Act, as amended by Pub. L. 94–142 (the EHA).

The basic requirements common to those cases, to the EHA, and to this regulation are (1) that handicapped persons, regardless of the nature or severity of their handicap, be provided a free appropriate public education, (2) that handicapped students be educated with nonhandicapped students to the maximum extent appropriate to their needs, (3) that educational agencies undertake to identify and locate all unserved handicapped children, (4) that evaluation procedures be improved in order to avoid the inappropriate education that results from the misclassification of students, and (5) that procedural safeguard be established to enable parents and guardians to influence decisions regarding the evaluation and placement of their children. These requirements are designed to ensure that no handicapped child is excluded from school on the basis of handicap and, if a recipient demonstrates that placement in a regular educational setting cannot be achieved satisfactorily, that the student is provided with adequate alternative services suited to the student's needs without additional cost to the student's parents or guardian. Thus, a recipient that operates a public school system must either educate handicapped children in its regular program or provide such children with an appropriate alternative education at public expense.

It is not the intention of the Department, except in extraordinary circumstances, to review the result of individual placement and other educational decisions, so long as the school district complies with the ''process'' requirements of this subpart (concerning identification and location, evaluation, and due process procedures). However, the Department will place a high priority on investigating cases which may involve exclusion of a child from the education system or a pattern or practice of discriminatory placements or education.

22. *Location and notification.* Section 104.32 requires public schools to take steps annually to identify and locate handicapped children who are not receiving an education and to publicize to handicapped children and their parents the rights and duties established by section 504 and this regulation. This section has been shortened without substantive change.

23. *Free appropriate public education.* Under §104.33(a), a recipient is responsible for providing a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction. The word ''in'' encompasses the concepts of both domicile and actual residence. If a recipient places a child in a program other than its own, it remains financially responsible for the child, whether or not the other program is operated by another recipient or educational agency. Moreover, a recipient may not place a child in a program that is inappropriate or that otherwise violates the requirements of Subpart D. And in no case may a recipient refuse to provide services to a handicapped child in its jurisdiction because of another

person's or entity's failure to assume financial responsibility.

Section 104.33(b) concerns the provision of appropriate educational services to handicapped children. To be appropriate, such services must be designed to meet handicapped children's individual educational needs to the same extent that those of nonhandicapped children are met. An appropriate education could consist of education in regular classes, education in regular classes with the use of supplementary services, or special education and related services. Special education may include specially designed instruction in classrooms, at home, or in private or public institutions and may be accompanied by such related services as developmental, corrective, and other supportive services (including psychological, counseling, and medical diagnostic services). The placement of the child must however, be consistent with the requirements of §104.34 and be suited to his or her educational needs.

The quality of the educational services provided to handicapped students must equal that of the services provided to nonhandicapped students; thus, handicapped student's teachers must be trained in the instruction of persons with the handicap in question and appropriate materials and equipment must be available. The Department is aware that the supply of adequately trained teachers may, at least at the outset of the imposition of this requirement, be insufficient to meet the demand of all recipients. This factor will be considered in determining the appropriateness of the remedy for noncompliance with this section. A new §104.33(b)(2) has been added, which allows this requirement to be met through the full implementation of an individualized education program developed in accordance with the standards of the EHA.

Paragraph (c) of §104.33 sets forth the specific financial obligations of a recipient. If a recipient does not itself provide handicapped persons with the requisite services, it must assume the cost of any alternate placement. If, however, a recipient offers adequate services and if alternate placement is chosen by a student's parent or guardian, the recipient need not assume the cost of the outside services. (If the parent or guardian believes that his or her child cannot be suitably educated in the recipient's program, he or she may make use of the procedures established in §104.36.) Under this paragraph, a recipient's obligation extends beyond the provision of tuition payments in the case of placement outside the regular program. Adequate transportation must also be provided. Recipients must also pay for psychological services and those medical services necessary for diagnostic and evaluative purposes.

If the recipient places a student, because of his or her handicap, in a program that necessitates his or her being away from home, the payments must also cover room and board and nonmedical care (including custodial and supervisory care). When residential care is necessitated not by the student's handicap but by factors such as the student's home conditions, the recipient is not required to pay the cost of room and board.

Two new sentences have been added to paragraph (c)(1) to make clear that a recipient's financial obligations need not be met solely through its own funds. Recipients may rely on funds from any public or private source including insurers and similar third parties.

The EHA requires a free appropriate education to be provided to handicapped children ''no later than September 1, 1978,'' but section 504 contains no authority for delaying enforcement. To resolve this problem, a new paragraph (d) has been added to §104.33. Section 104.33(d) requires recipients to achieve full compliance with the free appropriate public education requirements of §104.33 as expeditiously as possible, but in no event later than September 1, 1978. The provision also makes clear that, as of the effective date of this regulation, no recipient may exclude a qualified handicapped child from its educational program. This provision against exclusion is consistent with the order of providing services set forth in section 612(3) of the EHA, which places the highest priority on providing services to handicapped children who are not receiving an education.

24. *Educational setting.* Section 104.34 prescribes standards for educating handicapped persons with nonhandicapped persons to the maximum extent appropriate to the needs of the handicapped person in question. A handicapped student may be removed from the regular educational setting only where the recipient can show that the needs of the student would, on balance, be served by placement in another setting.

Although under §104.34, the needs of the handicapped person are determinative as to proper placement, it should be stressed that, where a handicapped student is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by §104.34.

Among the factors to be considered in placing a child is the need to place the child as close to home as possible. A new sentence has been added to paragraph (a) requiring recipients to take this factor into account. As pointed out in several comments, the parents' right under §104.36 to challenge the placement of their child extends not only to placement in special classes or separate schools but also to placement in a distant

school and, in particular, to residential placement. An equally appropriate educational program may exist closer to home; this issue may be raised by the parent or guardian under §§104.34 and 104.36.

New paragraph (b) specified that handicapped children must also be provided nonacademic services in as integrated a setting as possible. This requirement is especially important for children whose educational needs necessitate their being solely with other handicapped children during most of each day. To the maximum extent appropriate, children in residential settings are also to be provided opportunities for participation with other children.

Section 104.34(c) requires that any facilities that are identifiable as being for handicapped students be comparable in quality to other facilities of the recipient. A number of comments objected to this section on the basis that it encourages the creation and maintenance of such facilities. This is not the intent of the provision. A separate facility violates section 504 unless it is indeed necessary to the provision of an appropriate education to certain handicapped students. In those instances in which such facilities are necessary (as might be the case, for example, for severely retarded persons), this provision requires that the educational services provided be comparable to those provided in the facilities of the recipient that are not identifiable as being for handicapped persons.

25. *Evaluation and placement.* Because the failure to provide handicapped persons with an appropriate education is so frequently the result of misclassification or misplacement, §104.33(b)(1) makes compliance with its provisions contingent upon adherence to certain procedures designed to ensure appropriate classification and placement. These procedures, delineated in §§104.35 and 104.36, are concerned with testing and other evaluation methods and with procedural due process rights.

Section 104.35(a) requires that an individual evaluation be conducted before any action is taken with respect either to the initial placement of a handicapped child in a regular or special education program or to any subsequent significant change in that placement. Thus, a full reevaluation is not required every time an adjustment in placement is made. ''Any action'' includes denials of placement.

Paragraphs (b) and (c) of §104.35 establishes procedures designed to ensure that children are not misclassified, unnecessarily labeled as being handicapped, or incorrectly placed because of inappropriate selection, administration, or interpretation of evaluation materials. This problem has been extensively documented in ''Issues in the Classification of Children,'' a report by the Project on Classification of Exceptional Children, in which the HEW Interagency Task Force participated. The provisions of these paragraphs are aimed primarily at abuses in the placement process that result from misuse of, or undue or misplaced reliance on, standardized scholastic aptitude tests.

Paragraph (b) has been shortened but not substantively changed. The requirement in former subparagraph (1) that recipients provide and administer evaluation materials in the native language of the student has been deleted as unnecessary, since the same requirement already exists under title VI and is more appropriately covered under that statute. Paragraphs (1) and (2) are, in general, intended to prevent misinterpretation and similar misuse of test scores and, in particular, to avoid undue reliance on general intelligence tests. Subparagraph (3) requires a recipient to administer tests to a student with impaired sensory, manual, or speaking skills in whatever manner is necessary to avoid distortion of the test results by the impairment. Former subparagraph (4) has been deleted as unnecessarily repetitive of the other provisions of this paragraph.

Paragraph (c) requires a recipient to draw upon a variety of sources in the evaluation process so that the possibility of error in classification is minimized. In particular, it requires that all significant factors relating to the learning process, including adaptive behavior, be considered. (Adaptive behavior is the effectiveness with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group.) Information from all sources must be documented and considered by a group of persons, and the procedure must ensure that the child is placed in the most integrated setting appropriate.

The proposed regulation would have required a complete individual reevaluation of the student each year. The Department has concluded that it is inappropriate in the section 504 regulation to require full reevaluations on such a rigid schedule. Accordingly, §104.35(c) requires periodic reevaluations and specifies that reevaluations in accordance with the EHA will constitute compliance. The proposed regulation implementing the EHA allows reevaluation at three-year intervals except under certain specified circumstances.

Under §104.36, a recipient must establish a system of due process procedures to be afforded to parents or guardians before the recipient takes any action regarding the identification, evaluation, or educational placement of a person who, because of handicap, needs or is believed to need special education or related services. This section has been revised. Because the due process procedures of the EHA, incorporated by reference in the proposed section 504 regulation, are inappropriate for some recipients not subject to that

Act, the section now specifies minimum necessary procedures: notice, a right to inspect records, an impartial hearing with a right to representation by counsel, and a review procedure. The EHA procedures remain one means of meeting the regulation's due process requirements, however, and are recommended to recipients as a model.

26. *Nonacademic services.* Section 104.37 requires a recipient to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation. Because these services and activities are part of a recipient's education program, they must, in accordance with the provisions of §104.34, be provided in the most integrated setting appropriate.

Revised paragraph (c)(2) does permit separation or differentiation with respect to the provision of physical education and athletics activities, but only if qualified handicapped students are also allowed the opportunity to compete for regular teams or participate in regular activities. Most handicapped students are able to participate in one or more regular physical education and athletics activities. For example, a student in a wheelchair can participate in regular archery course, as can a deaf student in a wrestling course.

Finally, the one-year transition period provided in a proposed section was deleted in response to the almost unanimous objection of commenters to that provision.

27. *Preschool and adult education.* Section 104.38 prohibits discrimination on the basis of handicap in preschool and adult education programs. Former paragraph (b), which emphasized that compensatory programs for disadvantaged children are subject to section 504, has been deleted as unnecessary, since it is comprehended by paragraph (a).

28. *Private education.* Section 104.39 sets forth the requirements applicable to recipients that operate private education programs and activities. The obligations of these recipients have been changed in two significant respects: first, private schools are subject to the evaluation and due process provisions of the subpart only if they operate special education programs; second, under §104.39(b), they may charge more for providing services to handicapped students than to nonhandicapped students to the extent that additional charges can be justified by increased costs.

Paragraph (a) of §104.39 is intended to make clear that recipients that operate private education programs and activities are not required to provide an appropriate education to handicapped students with special educational needs if the recipient does not offer programs designed to meet those needs. Thus, a private school that has no program for mentally retarded persons is neither required to admit such a person into its program nor to arrange or pay for the provision of the person's education in another program. A private recipient without a special program for blind students, however, would not be permitted to exclude, on the basis of blindness, a blind applicant who is able to participate in the regular program with minor adjustments in the manner in which the program is normally offered.

SUBPART E—POSTSECONDARY EDUCATION

Subpart E prescribes requirements for nondiscrimination in recruitment, admission, and treatment of students in postsecondary education programs and activities, including vocational education.

29. *Admission and recruitment.* In addition to a general prohibition of discrimination on the basis of handicap in §104.42(a), the regulation delineates, in §104.42(b), specific prohibitions concerning the establishment of limitations on admission of handicapped students, the use of tests or selection criteria, and preadmission inquiry. Several changes have been made in this provision.

Section 104.42(b) provides that postsecondary educational institutions may not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons unless it has been validated as a predictor of academic success and alternate tests or criteria with a less disproportionate, adverse effect are shown by the Department to be available. There are two significant changes in this approach from the July 16 proposed regulation.

First, many commenters expressed concern that §104.42(b)(2)(ii) could be interpreted to require a ''global search'' for alternate tests that do not have a disproportionate, adverse impact on handicapped persons. This was not the intent of the provision and, therefore, it has been amended to place the burden on the Assistant Secretary for Civil Rights, rather than on the recipient, to identify alternate tests.

Second, a new paragraph (d), concerning validity studies, has been added. Under the proposed regulation, overall success in an education program, not just first-year grades, was the criterion against which admissions tests were to be validated. This approach has been changed to reflect the comment of professional testing services that use of first year grades would be less disruptive of present practice and that periodic validity studies against overall success in the education program would be sufficient check on the reliability of first-year grades.

Section 104.42(b)(3) also requires a recipient to assure itself that admissions tests are selected and administered to applicants with impaired sensory, manual, or speaking skills in such manner as is necessary to avoid unfair distortion of test results. Methods have been developed for testing the aptitude and achievement of persons who are not able to

take written tests or even to make the marks required for mechanically scored objective tests; in addition, methods for testing persons with visual or hearing impairments are available. A recipient, under this paragraph, must assure itself that such methods are used with respect to the selection and administration of any admissions tests that it uses.

Section 104.42(b)(3)(iii) has been amended to require that admissions tests be administered in facilities that, on the whole, are accessible. In this context, ''on the whole'' means that not all of the facilities need be accessible so long as a sufficient number of facilities are available to handicapped persons.

Revised §104.42(b)(4) generally prohibits preadmission inquiries as to whether an applicant has a handicap. The considerations that led to this revision are similar to those underlying the comparable revision of §104.14 on preemployment inquiries. The regulation does, however, allow inquiries to be made, after admission but before enrollment, as to handicaps that may require accommodation.

New paragraph (c) parallels the section on preemployment inquiries and allows postsecondary institutions to inquire about applicants' handicaps before admission, subject to certain safeguards, if the purpose of the inquiry is to take remedial action to correct past discrimination or to take voluntary action to overcome the limited participation of handicapped persons in postsecondary educational institutions.

Proposed §104.42(c), which would have allowed different admissions criteria in certain cases for handicapped persons, was widely misinterpreted in comments from both handicapped persons and recipients. We have concluded that the section is unnecessary, and it has been deleted.

30. *Treatment of students.* Section 104.43 contains general provisions prohibiting the discriminatory treatment of qualified handicapped applicants. Paragraph (b) requires recipients to ensure that equal opportunities are provided to its handicapped students in education programs and activities that are not operated by the recipient. The recipient must be satisfied that the outside education program or activity as a whole is nondiscriminatory. For example, a college must ensure that discrimination on the basis of handicap does not occur in connection with teaching assignments of student teachers in elementary or secondary schools not operated by the college. Under the ''as a whole'' wording, the college could continue to use elementary or secondary school systems that discriminate if, and only if, the college's student teaching program, when viewed in its entirety, offered handicapped student teachers the same range and quality of choice in student teaching assignments afforded nonhandicapped students.

Paragraph (c) of this section prohibits a recipient from excluding qualified handicapped students from any course, course of study, or other part of its education program or activity. This paragraph is designed to eliminate the practice of excluding handicapped persons from specific courses and from areas of concentration because of factors such as ambulatory difficulties of the student or assumptions by the recipient that no job would be available in the area in question for a person with that handicap.

New paragraph (d) requires postsecondary institutions to operate their programs and activities so that handicapped students are provided services in the most integrated setting appropriate. Thus, if a college had several elementary physics classes and had moved one such class to the first floor of the science building to accommodate students in wheelchairs, it would be a violation of this paragraph for the college to concentrate handicapped students with no mobility impairments in the same class.

31. *Academic adjustments.* Paragraph (a) of §104.44 requires that a recipient make certain adjustments to academic requirements and practices that discriminate or have the effect of discriminating on the basis of handicap. This requirement, like its predecessor in the proposed regulation, does not obligate an institution to waive course or other academic requirements. But such institutions must accommodate those requirements to the needs of individual handicapped students. For example, an institution might permit an otherwise qualified handicapped student who is deaf to substitute an art appreciation or music history course for a required course in music appreciation or could modify the manner in which the music appreciation course is conducted for the deaf student. It shoud be stressed that academic requirements that can be demonstrated by the recipient to be essential to its program of instruction or to particular degrees need not be changed.

Paragraph (b) provides that postsecondary institutions may not impose rules that have the effect of limiting the participation of handicapped students in the education program. Such rules include prohibition of tape recorders or braillers in classrooms and dog guides in campus buildings. Several recipients expressed concern about allowing students to tape record lectures because the professor may later want to copyright the lectures. This problem may be solved by requiring students to sign agreements that they will not release the tape recording or transcription or otherwise hinder the professor's ability to obtain a copyright.

Paragraph (c) of this section, concerning the administration of course examinations to students with impaired sensory, manual, or speaking skills, parallels the regulation's

provisions on admissions testing (§104.42(b)) and will be similarly interpreted.

Under §104.44(d), a recipient must ensure that no handicapped student is subject to discrimination in the recipient's program because of the absence of necessary auxiliary educational aids. Colleges and universities expressed concern about the costs of compliance with this provision.

The Department emphasizes that recipients can usually meet this obligation by assisting students in using existing resources for auxiliary aids such as state vocational rehabilitation agencies and private charitable organizations. Indeed, the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges or universities. In those circumstances where the recipient institution must provide the educational auxiliary aid, the institution has flexibility in choosing the methods by which the aids will be supplied. For example, some universities have used students to work with the institution's handicapped students. Other institutions have used existing private agencies that tape texts for handicapped students free of charge in order to reduce the number of readers needed for visually impaired students.

As long as no handicapped person is excluded from a program because of the lack of an appropriate aid, the recipient need not have all such aids on hand at all times. Thus, readers need not be available in the recipient's library at all times so long as the schedule of times when a reader is available is established, is adhered to, and is sufficient. Of course, recipients are not required to maintain a complete braille library.

32. *Housing.* Section 104.45(a) requires postsecondary institutions to provide housing to handicapped students at the same cost as they provide it to other students and in a convenient, accessible, and comparable manner. Commenters, particularly blind persons pointed out that some handicapped persons can live in any college housing and need not wait to the end of the transition period in subpart C to be offered the same variety and scope of housing accommodations given to nonhandicapped persons. The Department concurs with this position and will interpret this section accordingly.

A number of colleges and universities reacted negatively to paragraph (b) of this section. It provides that, if a recipient assists in making off-campus housing available to its students, it should develop and implement procedures to assure itself that off-campus housing, as a whole, is available to handicapped students. Since postsecondary institutions are presently required to assure themselves that off-campus housing is provided in a manner that does not discriminate on the basis of sex (§106.32 of the title IX regulation), they may use the procedures developed under title IX in order to comply with §104.45(b). It should be emphasized that not every off-campus living accommodation need be made accessible to handicapped persons.

33. *Health and insurance.* A proposed section, providing that recipients may not discriminate on the basis of handicap in the provision of health related services, has been deleted as duplicative of the general provisions of §104.43. This deletion represents no change in the obligation of recipients to provide nondiscriminatory health and insurance plans. The Department will continue to require that nondiscriminatory health services be provided to handicapped students. Recipients are not required, however, to provide specialized services and aids to handicapped persons in health programs. If, for example, a college infirmary treats only simple disorders such as cuts, bruises, and colds, its obligation to handicapped persons is to treat such disorders for them.

34. *Financial assistance.* Section 104.46(a), prohibiting discrimination in providing financial assistance, remains substantively the same. It provides that recipients may not provide less assistance to or limit the eligibility of qualified handicapped persons for such assistance, whether the assistance is provided directly by the recipient or by another entity through the recipient's sponsorship. Awards that are made under wills, trusts, or similar legal instruments in a discriminatory manner are permissible, but only if the overall effect of the recipient's provision of financial assistance is not discriminatory on the basis of handicap.

It will not be considered discriminatory to deny, on the basis of handicap, an athletic scholarship to a handicapped person if the handicap renders the person unable to qualify for the award. For example, a student who has a neurological disorder might be denied a varsity football scholarship on the basis of his inability to play football, but a deaf person could not, on the basis of handicap, be denied a scholarship for the school's diving team. The deaf person could, however, be denied a scholarship on the basis of comparative diving ability.

Commenters on §104.46(b), which applies to assistance in obtaining outside employment for students, expressed similar concerns to those raised under §104.43(b), concerning cooperative programs. This paragraph has been changed in the same manner as §104.43(b) to include the ''as a whole'' concept and will be interpreted in the same manner as §104.43(b).

35. *Nonacademic services.* Section 104.47 establishes nondiscrimination standards for physical education and athletics counseling and placement services, and social organizations. This section sets the same standards as does §104.38 of subpart D, discussed above, and will be interpreted in a similar fashion.

SUBPART F—HEALTH, WELFARE, AND SOCIAL SERVICES

Subpart F applies to recipients that operate health, welfare, and social service programs. The Department received fewer comments on this subpart than on others.

Although many commented that subpart F lacked specificity, these commenters provided neither concrete suggestions nor additions. Nevertheless, some changes have been made, pursuant to comment, to clarify the obligations of recipients in specific areas. In addition, in an effort to reduce duplication in the regulation, the section governing recipients providing health services has been consolidated with the section regulating providers of welfare and social services. Since the separate provisions that appeared in the proposed regulation were almost identical, no substantive change should be inferred from their consolidation.

Several commenters asked whether subpart F applies to vocational rehabilitation agencies whose purpose is to assist in the rehabilitation of handicapped persons. To the extent that such agencies receive financial assistance from the Department, they are covered by subpart F and all other relevant subparts of the regulation. Nothing in this regulation, however, precludes such agencies from servicing only handicapped persons. Indeed, §104.4(c) permits recipients to offer services or benefits that are limited by federal law to handicapped persons or classes of handicapped persons.

Many comments suggested requiring state social service agencies to take an active role in the enforcement of section 504 with regard to local social service providers. The Department believes that the possibility for federal-state cooperation in the administration and enforcement of section 504 warrants further consideration.

A number of comments also discussed whether section 504 should be read to require payment of compensation to institutionalized handicapped patients who perform services for the institution in which they reside. The Department of Labor has recently issued a proposed regulation under the Fair Labor Standards Act (FLSA) that covers the question of compensation for institutionalized persons. 42 FR 15224 (March 18, 1977). This Department will seek information and comment from the Department of Labor concerning that agency's experience administering the FLSA regulation.

36. *Health, welfare, and other social service providers.* Section 104.52(a) has been expanded in several respects. The addition of new paragraph (a)(2) is intended to make clear the basic requirement of equal opportunity to receive benefits or services in the health, welfare, and social service areas. The paragraph parallels §§104.4(b)(ii) and 104.43(b). New paragaph (a)(3) requires the provision of effective benefits or services, as defined in §104.4(b)(2) (i.e., benefits or services which ''afford handicapped persons equal opportunity to obtain the same result (or) to gain the same benefit * * *'').

Section 104.52(a) also includes provisions concerning the limitation of benefits or services to handicapped persons and the subjection of handicapped persons to different eligibility standards. One common misconception about the regulation is that it would require specialized hospitals and other health care providers to treat all handicapped persons. The regulation makes no such requirement. Thus, a burn treatment center need not provide other types of medical treatment to handicapped persons unless it provides such medical services to nonhandicapped persons. It could not, however, refuse to treat the burns of a deaf person because of his or her deafness.

Commenters had raised the question of whether the prohibition against different standards of eligibility might preclude recipients from providing special services to handicapped persons or classes of handicapped persons. The regulation will not be so interpreted, and the specific section in question has been eliminated. Section 104.4(c) makes clear that special programs for handicapped persons are permitted.

A new paragraph (a)(5) concerning the provision of different or separate services or benefits has been added. This provision prohibits such treatment unless necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

Section 104.52(b) has been amended to cover written material concerning waivers of rights or consent to treatment as well as general notices concerning health benefits or services. The section requires the recipient to ensure that qualified handicapped persons are not denied effective notice because of their handicap. For example, recipients could use several different types of notice in order to reach persons with impaired vision or hearing, such as brailled messages, radio spots, and tacticle devices on cards or envelopes to inform blind persons of the need to call the recipient for further information.

Section 104.52(c) is a new section requiring recipient hospitals to establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care. Although it would be appropriate for a hospital to fulfill its responsibilities under this section by having a full-time interpreter for the deaf on staff, there may be other means of accomplishing the desired result of assuring that some means of communication is immediately available for deaf persons needing emergency treatment.

Section 104.52(c), also a new provision, requires recipients with fifteen or more employees to provide appropriate auxiliary aids for persons with impaired sensory, manual, or speaking skills. Further, the Assistant Secretary may require a small provider to furnish auxiliary aids where the provision of aids would not adversely affect the ability of the recipient to provide its health benefits or service.

37. *Treatment of Drug Addicts and Alcoholics.* Section 104.53 is a new section that prohibits discrimination in the treatment and admission of drug and alcohol addicts to hospitals and outpatient facilities. Section 104.53 prohibits discrimination against drug abusers by operators of outpatient facilities, despite the fact that section 407 pertains only to hospitals, because of the broader application of section 504. This provision does not mean that all hospitals and outpatient facilities must treat drug addiction and alcoholism. It simply means, for example, that a cancer clinic may not refuse to treat cancer patients simply because they are also alcoholics.

38. *Education of institutionalized persons.* The regulation retains §104.54 of the proposed regulation that requires that an appropriate education be provided to qualified handicapped persons who are confined to residential institutions or day care centers.

SUBPART G—PROCEDURES

In §104.61, the Secretary has adopted the title VI complaint and enforcement procedures for use in implementing section 504 until such time as they are superseded by the issuance of a consolidated procedureal regulation applicable to all of the civil rights statutes and executive orders administered by the Department.

[45 FR 30936, May 9, 1980, as amended at 55 FR 52141, Dec. 19, 1990]

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

EDITORIAL NOTE: For the text of these guidelines, see 34 CFR part 100, appendix B.

PART 105—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF EDUCATION

Sec.
105.1 Purpose.
105.2 Application.
105.3 Definitions.
105.4–105.9 [Reserved]
105.10 Self-evaluation.
105.11 Notice.
105.12–105.19 [Reserved]
105.20 General prohibitions against discrimination.
105.21–105.29 [Reserved]
105.30 Employment.
105.31 Program accessibility: Discrimination prohibited.
105.32 Program accessibility: Existing facilities.
105.33 Program accessibility: New construction and alterations.
105.34–105.39 [Reserved]
105.40 Communications.
105.41 Compliance procedures.
105.42 Effective date.

AUTHORITY: 29 U.S.C. 794, unless otherwise noted.

SOURCE: 55 FR 37168, Sept. 7, 1990, unless otherwise noted.

§105.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§105.2 Application.

This part applies to all programs or activities conducted by the Department, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§105.3 Definitions.

For purposes of this part, the following definitions apply:

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking

ADA AMENDMENTS ACT OF 2008

PL 110-325 (S 3406)
September 25, 2008

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,

SEC. 1. SHORT TITLE

[42 USCA § 12101 note]

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

SEC. 2. FINDINGS AND PURPOSES

[42 USCA § 12101 note]

(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

(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, 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.
>
> “(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 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 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).".

SEC. 8. EFFECTIVE DATE

[29 USCA § 705 note]

This Act and the amendments made by this Act shall become effective on January 1, 2009.

Approved September 25, 2008.

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Appendix I
History of Dyslexia Law

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Appendix I: History of Dyslexia Law

The following History of Dyslexia Law is included in memory of Dr. Luke Waites, founding Medical Director of the Center for Dyslexia and Learning Disorders at the Texas Scottish Rite Hospital for Children.

THE STORY OF THE TEXAS DYSLEXIA LAWS

Tincy Miller

MY STORY BEGINS…

In 1958, my eldest son was born (the eldest of four).
Thirteen years later, in 1971, he rebelled…thus began my journey, a journey that Robert Frost referred to in his famous poem, *The Road Not Taken* (last paragraph).

"I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I,
I took the one less traveled by,
And that has made all the difference."

Or, as the famous baseball player Yogi Berra said,
"When you arrive at a fork in the road, take it."

In seeking answers to my son's problems, I found myself going back to academia.
By age 19, we discovered my son had an IQ of 145 with a form of dyslexia called dysgraphia. By then, my journey had taken me to Texas Scottish Rite Hospital for Children where I became an Academic Language Therapist, earning my Masters in Reading from Texas A&M Commerce. During the eight years I taught in the Reading Laboratory at TSRHC, at Highland Park Presbyterian Meditative School, as well as one-on-one teaching with children with dyslexia and related disorders, I became passionate about these precious children who traditionally fall through the cracks…just like my son.

In 1983, Texas passed a comprehensive reform in public education, requiring higher expectations of students and teachers. It became known as the famous "No Pass, No Play" law. The 1200 school districts were mandated to have students study and pass before they had the privilege of playing a sport such as football. Needless to say, the schools were pretty upset. There was a glaring omission…no safety net for the children I knew and taught…the very

ones who were traditionally forgotten in the public school system. Therefore, I made up my mind to try to find a way to help them.

As Joyce Pickering, Chairman Emeritus of the Shelton School in Dallas states, "These children are very gifted…they are the students who think out of the box, our future entrepreneurs."

In 1984, the Governor of Texas appointed me to serve for four years on the newly appointed State Board of Education (SBOE), which would become an elected board in 1989. **In January of 1985,** three bills on dyslexia came to my desk. I sent them over to Dr. Lucius Waites at TSRHC for his advice. He sent them back and said, "Go for it!"

The Texas Legislature meets every odd year from January to May… I only had 5 months to work on these bills. Thanks to my husband, Vance, who loaned me his lobbyist to teach me how to work the legislature, **we were able to facilitate the passage of two of the three bills. The original bill (HB 157 69th Legislature) defined dyslexia and related disorders mandating the screening and treatment by the local school districts.**
The second bill, later repealed, mandated continuing education for teachers on dyslexia and related disorders. The third bill that failed related to required college courses on dyslexia. The bills were authored by Senator Ted Lyon and Representative Bill Hammond.

An unhappy teacher called to tell me that when I left the SBOE the law would be repealed. Whereupon I told him I wasn't leaving…26 years later I still served as an elected member of the SBOE and made sure that the dyslexia law was implemented**. The following is the chronological order of its implementation.**

December 1986: The Texas Education Agency sent a letter to all school districts explaining that the law needed to be implemented at all grade levels (K-12).

January 1987: The State Board of Education approved the first procedures and guidelines.

1987: The 70th Legislature repealed the professional development law because it was connected to the career ladder and teachers did not want to be evaluated on this aspect.

March 1990: Special education teachers, who did not want the law, called for a public hearing on the law. Over 800 people, (parents, students, teachers and administrators), attended from 8:30 a.m. to 9:30 p.m., testifying two to one that, yes, the dyslexia law was needed, and rules were needed to implement the law because school districts were not implementing it. By the way, this was when there were no cell phones, computers, or faxes to get the word out…we did it the old fashioned way, writing letters and making phone calls to our friends. This was truly democracy in action; the grassroots can make a difference.

In 1991: The 72nd Legislature passed HB 1314; accommodations for the students with dyslexia were allowed.

In 1992: The First Dyslexia Handbook was approved by SBOE and published by TEA, containing an overview of state and federal requirements including a question and answer section.

1993-1994: The First State Coordinator position was created in Region Service Center 10 with the approval of then Commissioner Skip Meno. The first state coordinator was Jo Polk, followed by Cindy Hipes, Helen Macik and then Brenda Taylor. SB 7 was passed requiring accommodations for testing dyslexic students.

1995-1997: Important years for Texas. George W. Bush was elected as Governor of Texas and took on reading by funding his reading initiative with $80 million. This law became known as "No Child Left Behind," stating that all children would read by 3rd grade. During this time, because it had been ten years since the education code was written, the legislature mandated the entire education code be rewritten for public schools. Realizing our dyslexia law could be lost, I made a very important call to the author, former Senator Ted Lyon, asking for his help in getting the dyslexia law rolled over into the new education law. Thanks to his friendship and support, former Senator Ted Lyon was able to get this done.
During these two years (1995-1997), our SBOE was in charge of updating all state curriculums (K-12). Thanks to my good reading-teacher friends, who helped me find the best qualified teachers to serve on the committee to rewrite and update the reading curriculum (K-12), the result was, historically, the passage of the first phonics-based reading curriculum for Texas. Ten years later, in 2009, we were again able to update the 1997 reading curriculum with a stronger, explicit, scientifically researched phonics-based curriculum. The reading textbooks produced in 2010-2011 are now adopted. Part of the $80 million covered Summer Reading Academies and Dyslexia Academies for teachers K-3rd grade (until the money ran out).

Proving phonics works, in 2003, 98% of all third graders passed the State TAKS Reading Test. Since our dyslexia students need phonics, the newly updated research-based phonics curriculum in Texas reinforced their learning to read, write and spell.

1997: The legislature passed the Students Success Initiative (Funding) and reading diagnosis for early identification of reading difficulties, such as dyslexia and related disorders (TEC 28.006). Informal screening was developed for the early identification**.**
Also, Commissioner Mike Moses approved $300,000 for dyslexia coordinators in all 20 Region Service Centers.

1998: The Dyslexia Handbook was updated.

2001: Another update to the Dyslexia Procedures and Handbook was effected.

2003: TEC 7.028 (b) Limitation on Compliance Monitoring was passed.

2004: As a result of a longitudinal study by TEA**, bundling accommodations for assessments were implemented**.
The purpose was to be able to test our students with dyslexia using three bundled accommodations without invalidating the state test. The accommodations were as follows:

(1) oral reading proper nouns,
(2) oral reading of questions and answers on multiple choice,
(3) extended time over two days.

Results went from 9% to 41% success for elementary through middle school students. (Longitudinal study continues with high school students.)

2007 and 2010: Our Dyslexia Handbook was revised to include the current research of the experts in the field of dyslexia, with pages to support early intervention and quality training of teachers, equipping them with the skills to prevent reading failure by 95%. The new licensure law passed, (on the third try after attempts in '05 and '07), in the **2009 81st Legislature (effective September 1, 2010).**

In closing, I am reminded of the words of Emerson:
"Do not go where the path may lead. Go where there is no path and leave a trail." This has been an incredible journey of how one very important law to keep our students with dyslexia from falling through the cracks of public education was implemented…and I am so glad I took that path or fork in the road…for it truly has made all the difference.

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.

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There are several ways to obtain a copy of *The Dyslexia Handbook*:

1) Download from TEA at http://www.tea.state.tx.us/index2.aspx?id=25769814312.
2) Download or order at http://www.region10.org/dyslexia/index/.
3) Use the order form below.

REGION 10
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To place an order, fill out the information below and make a purchase order or check payable to Education Service Center Region 10.

Quantity	Dyslexia Handbook	Cost	TOTAL
	Dyslexia Handbook—Revised 2014 English Version (with tabs)	$15.00	
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	Dyslexia Handbook—Revised 2014 Spanish Version (with tabs)	$15.00	
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Cost includes postage, shipping, and state sales tax, if applicable. For additional information about print orders, contact Matt Burkhart, Print Shop Supervisor, at 972.348.1132 or matt.burkhart@region10.org.

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