

# Dyslexia Procedures Guide



# Table of Contents

<b>1.</b>	<b>Introduction to the Fort Bend ISD Dyslexia Program</b>	
A.	Overview.....	1
B.	Philosophy and Goal.....	1
<b>2.</b>	<b>Decision Process for Dyslexia Identification, Intervention and Placement in FBISD</b>	
A.	General Information.....	2
B.	Flow Chart for Assessment, Identification and Instruction for Students with Dyslexia in Fort Bend ISD.....	6
C.	FBISD Delineation of Dyslexia Procedures	
i.	Child Study.....	7
ii.	Section 504 (§504) Dyslexia.....	9
iii.	Special Education.....	11
D.	Data Gathering.....	12
<b>3.</b>	<b>Intervention Options, Alternative Instructional Settings and Assessment</b>	
A.	Routine Intervention and Strategies to Intensify Reading Instruction.....	15
B.	Alternative Instructional Settings.....	19
C.	Identification and Placement into §504 Dyslexia Program.....	19
D.	Referral for Special Education Services.....	21
E.	Instruction in the §504 Dyslexia Program.....	21
F.	Accommodations.....	23
i.	Regular Classroom Accommodations	
ii.	Testing Accommodations for State Student Assessment (STAAR/TAKS)	
G.	Monitoring.....	24
<b>4.</b>	<b>Exit Criteria and Procedures.....</b>	<b>25</b>
	<b><u>Appendices</u></b>	
<b>1.</b>	<b>Excerpts from TEA's "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders"</b>	
A.	Flow Chart for Assessment, Identification and Instruction for Students with Dyslexia.....	27
B.	Questions and Answers (Selected).....	28
C.	Contacts for Further Information (Selected).....	39
<b>2.</b>	<b>Laws Related to Dyslexia Services</b>	
A.	The Rehabilitation Act of 1973, Section 504 & Amendments. 2008.....	40
B.	Texas Education Code Section 38.003.....	62
C.	Texas Education Code Section 28.006.....	63
D.	Texas Education Code §7.028 (b) [State Law].....	64
E.	Texas Administrative Code Section 74.28 (State Board of Education Rule)..	64
F.	Texas Occupations Code Chapter 403 : Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists.....	65

---

<b>3.</b>	<b>Listing of Publications Related to Dyslexia.....</b>	<b>72</b>
<b>4.</b>	<b>Forms (selected).....</b>	<b>74</b>

---

---

# 1. Introduction to the Fort Bend ISD Dyslexia Program

## A. Overview

This procedure guide sets forth the procedures regarding dyslexia and related disorders in Fort Bend Independent School District. The guide provides general information about dyslexia, procedures to follow when school personnel suspect a student may have dyslexia or a related disorder, and a range of intervention options for students struggling to read, write and/or spell. The guide also outlines allowable accommodations on state student assessment, gives specific information about student monitoring during participation in the Section 504 (§504) Dyslexia Program, and details criteria for exit from the program. Finally, information and resources for parents and teachers are provided (in reproducible formats for ease of distribution).

These procedures correspond to state and federal guidelines, and were developed to provide an effective means for meeting the needs of students with dyslexia in Fort Bend ISD. Fort Bend ISD's Dyslexia Procedures Guide follows the recommendations of the Texas Education Agency as stated in "The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders" (TEA, Revised 2007, Updated 2010). The FBISD procedures guide is intended to clarify the district's implementation of the state procedures; any conflict between this document and "The Dyslexia Handbook" is unintentional and should be resolved in favor of the TEA document. The Procedures Guide is available for down loading or viewing on the FBISD website; it is available for reading at the school library; or it can be issued to a parent who would like to have it in print form.

## B. Philosophy and Goal

Fort Bend ISD's philosophy is that students with dyslexia and related disorders should be educated in the regular classroom to the maximum extent appropriate. If individual student needs indicate, services outside the regular classroom may be provided if appropriate. The goal of the District is to provide students with dyslexia the support services they need to benefit from instruction in the regular classroom.

---

---

## 2. Decision Process for Dyslexia Identification, Intervention and Placement in FBISD

### A. General Information

House Bill 157, passed in 1985, requires all school districts to serve students with dyslexia and related disorders. This law, now found in Section 38.003 of the Texas Education Code, includes the following definition of “dyslexia” and “related disorders.”

\* “Dyslexia” means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence and socio-cultural opportunity.

\* “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.

The TEA "Dyslexia Handbook" also refers to the working definition of the International Dyslexia Association, which states:

*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).*

Characteristics that are associated with dyslexia are listed. A child with dyslexia may exhibit a wide range of characteristics; however, a child need not exhibit all of these traits to be considered dyslexic. Also, a child may have one or more of these difficulties without being dyslexic.

---

---

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

The **primary** reading/spelling characteristics of dyslexia:

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

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

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

The **secondary** consequences of dyslexia may include the following:

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

**Common Evidence of Dyslexia:**

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

**Pre-school:**

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

**Kindergarten through third grade:**

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

---

#### **Fourth grade through high school:**

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

Typically, students with dyslexia will demonstrate academic underachievement. Information from parents and other sources will indicate that the student's lack of academic progress is not due to chronic absenteeism, illness, physical difficulties with sight or hearing, second-language acquisition, lack of experiential background or problems in the home. Many students with dyslexia perform significantly better in math, science and/or social studies than they do in language arts (reading and written expression).

The state requires all school districts to develop procedures for identification and appropriate instructional programs for students identified with dyslexia. At any time a student continues to struggle with reading, the district will gather data from parents, teachers and others to determine the appropriate intervention. Assessment for dyslexia may be appropriate for a student who shows some or all of the characteristics of dyslexia, and who has unexpected poor performance in reading, writing and/or spelling in the classroom.

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

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

#### **Identification of Students With Dyslexia**

In keeping with the state's emphasis on early identification, FBISD uses information gathered from the Phonemic Awareness and Phonics Inventory (PAPI), a state mandated early reading instrument, Running Records, DRA 2, and other primary assessments, to aid in determining which primary students may be at risk for dyslexia. If, on the basis of the reading instrument results, students are determined to be at risk for dyslexia or other reading difficulties, the district must notify the students' parents/guardians. In particular, the district may consider dyslexia assessment for students who continue to struggle with reading even after Tiers I, II or III interventions such as:

- Differentiated Instruction
- Guided Reading
- Scientifically Research-Based Core Reading Instruction
- Reading Recovery
- Intensive small group tutorials which target: phonemic awareness, phonics, vocabulary, comprehension, and fluency.



- 
- ELL support
  - Title I reading support

Additionally, the Reading Specialist may conference with teachers about literacy instruction and learning, especially for struggling readers. Students with a known family history of dyslexia may also be monitored through the district-wide primary assessments for early signs of difficulty with reading so that intervention and possible assessment for dyslexia may take place as early as needed.

### **Education Program for Parents/Guardians of Students with Dyslexia**

FBISD will provide a parent education program which will include presentations on 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 accommodations, especially accommodations allowed on standardized testing. These presentations will be scheduled at varying intervals throughout the school year.

### **Students with Disabilities Preparing for Postsecondary Education**

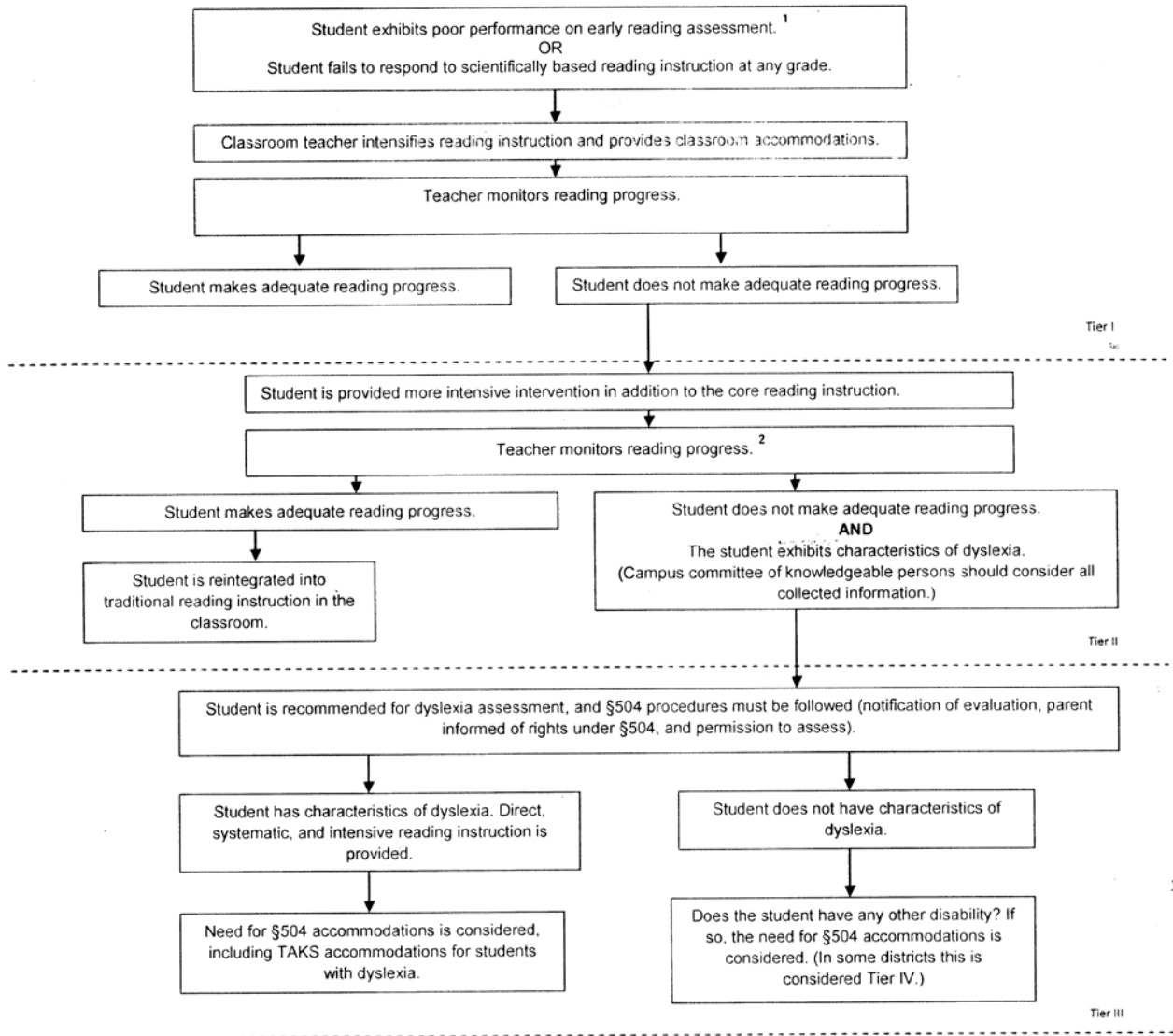
There are several publications produced by the U.S. Department of Education and the Office for Civil Rights that can assist the student who is transitioning from high school to college, junior college or vocational school. One of these is *Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities*, Washington D.C., Revised 2007. 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*, which you may obtain by contacting OCR at the addresses and phone numbers below, or at <http://www.ed.gov/ocr/docs/howto.html>.

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](mailto:ocr@ed.gov)  
Web site: [www.ed.gov/ocr](http://www.ed.gov/ocr)



## B. Pathway to the Identification and Provision of Instruction for Students with Dyslexia

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



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

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

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

---

## C. FBISD Delineation of Dyslexia Procedures

### i. Child Study

- **TEA Requirements**

The “Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders,” a set of guidelines for the implementation of state law, approved by the State Board in January 1986, third revision February 2007, Updated 2010 states that:

For students that demonstrate difficulties during early reading instruction (kindergarten, grades 1 and 2), the most common form of instructional help is available through the SSI as mandated by TEC §28.006. This education code requires districts and charter schools to administer early reading instruments to all students in kindergarten and grades 1 and 2 to assess their reading development and comprehension. If, on the basis of the reading instrument results, students are determined to be at risk for dyslexia or other reading difficulties, the district or charter school must notify the students’ parents or guardians. According to TEC §28.006(g), the district or charter school must also implement an accelerated (intensive) reading program that appropriately addresses the students’ reading difficulties and enables them to “catch up” with their typically performing peers. (p.11)

One of the actions that the district or charter school has available is to recommend that the student be assessed for dyslexia. (p.12)

- **FBISD Response to Intervention Procedures**

**Tier I.** The classroom teacher provides reading instruction and monitors student progress. For students that struggle with reading, the classroom teacher delivers differentiated instruction to those struggling students and continues to monitor and document progress. The teacher documents all scientifically based research interventions, the duration of the intervention, and the outcomes **FOR A MAXIMUM OF TEN WEEKS**. Monitoring will include student progress as compared to the student’s peers. The classroom teacher will be supported by knowledgeable school personnel, (i.e. administrators, counselors, team leaders, instructional specialists, etc.), who will review all data gathered by the teacher. FBISD is committed to data-driven instruction.

**Tier II.** If the student does not respond to the Tier II interventions and exhibits characteristics of dyslexia, the student will be referred by Data Teams or the principal/assistant principal and counselor for an informal dyslexia assessment completed by the Reading Specialist as data is being collected for an IST meeting. After the assessment has been completed, an IST meeting will be held to review the results and to determine if further dyslexia assessments need to be completed. When the student does not respond to the classroom interventions or to the differentiated instruction, a more intensive small group instruction will be delivered to the student within the regular classroom. The classroom teacher continues to document the progress of the student and the outcomes of the more intensive interventions. If the student has not made adequate academic progress to the more intensive interventions **AND** exhibits characteristics of dyslexia, the IST Committee can request formal dyslexia assessments.

---

**Tier III.** Student is recommended for dyslexia assessment and all Section §504 procedures must be followed (Notification of evaluation, parent informed of rights under §504, and permission to assess). A 504 meeting will be held to review the assessment results and to determine the eligibility under Section §504 for dyslexia services. Students that qualify will be served by the Reading Specialist. The §504 Committee will develop an Individual Accommodation Plan to meet the needs of the student.

If the student is not eligible for §504 dyslexia services, continues to have difficulty after additional Tier III interventions in reading or a related area, the student should be considered for referral to Special Education.

**Tier IV.** The IST Committee may refer a struggling student for a Full Individual Evaluation (FIE).

---

## ii. §504 Dyslexia

- **TEA Requirements**

Students enrolling in public schools in Texas shall be assessed for dyslexia and related disorders at appropriate times [TEC §38.003 (a)]. The district administers measures that are related to the student's educational needs.

- **FBISD Process**

**Tier I.**

- Universal screeners are completed at Tier I.
- No dyslexia assessments are completed at this time.

**Tier II.**

- A Data Team or a principal/assistant principal and counselor request an informal dyslexia assessment. Parent permission for assessment is obtained by the Reading Specialist. Assessment is completed and results are reported to the IST Committee.
- IST Committee reviews the informal results. If the student has not made adequate academic progress during the more intensive Tier II interventions **AND** exhibits characteristics of dyslexia, the IST committee requests formal dyslexia assessments by qualified personnel at this follow-up meeting (19 TAC§74.28).
- Reading Specialist gives the §504 Notice of Rights to the parents and obtains permission to test for dyslexia and/or related disorder. Additionally, the following information must be provided to the Reading Specialist by the IST Committee: Parent Information, Home Language Survey, Classroom Teacher Information and Classroom Documentation, Health Information, Report Card, IST Committee Documentation of Tier I and II Interventions, and the test record summary that the district compiles.
- Depending upon the student's age and stage of reading development, the following are the **domains to be assessed**:

Academic Skills

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

Cognitive processes that underlie the reading difficulties

- **Phonological/phonemic awareness** (Difficulties in phonological and phonemic awareness are typically seen in students with dyslexia and impact a student's ability to learn letters and the sounds associated with letters and letter combinations to decode words and to accurately spell.)

- 
- **Rapid naming** (Difficulties in rapid naming may or may not be weak, but if deficient, will impact a student's ability to automatically name letters and read words and to read connected text at an appropriate rate.)

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

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

### **Tier III.**

- The §504 Campus Coordinator notifies the parent in writing that a §504 Committee meeting has been scheduled to determine eligibility for services.
  - The §504 Committee, consisting of the designated campus administrator, the §504 Campus Coordinator, Reading Specialist, appropriate school staff, parents and when appropriate, the student, considers evaluation data to determine eligibility.
  - If a student is found to be eligible, the §504 Committee develops an Individual Accommodation Plan to meet the educational needs of the student.
  - *If no disability or substantial limitation is found, then the student is not eligible for dyslexia services under §504.* Further interventions may be suggested and implemented through the IST process.
  - If a student who is not eligible for §504 dyslexia services continues to have difficulty after additional Tier III interventions in reading or a related area, the student should be considered for referral to Special Education.
- **Re-evaluation.** §504 students have the right to periodic re-evaluations, at least every three (3) years. In addition, a re-evaluation must occur before any "significant change in the placement." [§504:34 CFR 104.35(a).] "Significant change of placement" applies to:
- expulsions;
  - suspensions of more than 10 days;
  - removal to an alternative educational program for more than 10 days;
  - moving from elementary to middle school or from middle school to high school.

A re-evaluation consists of a §504 Committee meeting to review existing data drawn from a variety of sources. The parent is notified **in writing** prior to that meeting. If additional data is needed, the §504 Committee may request that it be collected.

A formal re-evaluation will be conducted every three years to ascertain student progress. This formal re-evaluation will consist of a re-administration of the formal battery of tests. Additional information may also be gathered from a variety of sources. The §504 Committee

---

will meet to review the new information. The parent is notified in writing prior to that meeting. The student may also be included, if it is appropriate.

### **iii. Special Education**

- **TEA Requirements**

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

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

If a student with dyslexia is referred for special education, districts and charter schools follow the Individuals with Disabilities Education Act (IDEA). In IDEA, §1401 (30), dyslexia is considered one of a variety of etiological foundations for "specific learning disability." 34 CFR 300.8(c)(10) states that a "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 in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disability, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage.

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

Federal IDEA 2004 regulations related to assessment [34 CFR 300.304 (c)(4)] indicate that a student should be assessed in all areas related to the suspected disability. In the case of a student referred for a disability in reading, dyslexia is a related case. (Dyslexia Handbook, Revised 2007, Updated 2010, p. 65)

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

---

- **FBISD Procedures for Referral to Special Education**

Special education evaluation should be conducted whenever it appears to be appropriate. Some students will NOT proceed through all steps before being referred for a Full Individual Evaluation (FIE). A dyslexia evaluation may be incorporated into the FIE completed through Special Education.

- In general, if interventions from Tier I, II, or III are not successful, an IST can recommend special education evaluation, if appropriate. The Diagnostician or Speech Pathologist (as appropriate) must attend any IST meeting where referral to Special Education is being considered.
- The referral paperwork is given to the campus diagnostician and/or speech pathologist.
- **The Reading Specialist must be included in any meetings requesting dyslexia assessments or dyslexia intervention services.**
- Testing is completed within 60 calendar days [Texas Education Code, §29.004].
- An ARD meeting is scheduled within 30 calendar days after completion of testing.

For more information about this process, contact the Special Education Department.

#### **D. Data Gathering**

State Board of Education rules concerning dyslexia are found in 19 TAC 75 175. These rules require school districts to collect pertinent data on each enrolled student suspected of having dyslexia or a related disorder. A team of persons, knowledgeable about the student, the assessment data and the placement options, must evaluate the data and provide appropriate services if the student is dyslexic. If a student is suspected of having a more severe disability, that student may be referred to special education.

Students with dyslexia and related disorders may qualify as handicapped persons under §504 of the Rehabilitation Act of 1973. The interface of §504 with the dyslexia guidelines established by the State Board of Education of Texas is crucial. Section 504 requires each school to:

- \* conduct an unbiased evaluation of a child who has a handicap, has a record of such a handicap, or is regarded as having a handicap;
- \* make placement decisions through a team of persons knowledgeable about the student and the assessment data; and
- \* offer due process procedures for the resolution of disputes (see Appendix Form 98-08: Parent and Student Rights under §504).

At this point, districts must follow the requirements of §504 in the identification, evaluation and placement process. **“If the student has dyslexia, the committee also determines whether the student has a disability under §504 . Whether a student is eligible for §504 accommodations is a separate determination from the determination that the student has dyslexia.”** (The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders, II, p. 18). A student with dyslexia is considered handicapped under §504 **if the condition substantially limits** the student’s reading, spelling and/or writing activities.



---

Additional Data Gathering for English Language Learners (in addition to the information previously listed under “DATA GATHERING”):

- Language Proficiency Assessment Committee (LPAC) documentation (TEC §89.1220 [g, h, i]) that includes the following:
  - Home Language Survey;
  - Assessment related to identification for limited English proficiency (oral language proficiency tests and norm-referenced tests);
  - STAAR/TAKS documentation when available;
  - Texas English Language Proficiency System (TELPAS) information, DRA2/IDEL reading assessment
  - Phonemic Awareness and Phonics Inventory (PAPI- Spanish)
  - Type of language programming provided and language of instruction;
  - Linguistic environment and second-language acquisition development;
  - Previous schooling in and outside of the United States.

Additional Assessment (in addition to the information listed under “FBISD Tier II”):

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

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

Interpretation:

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

---

If a student exhibits reading difficulty, personnel at the student's campus will gather data about the student **before** the initial IST meets to discuss intervention.

The following information will be gathered:

- Vision screening
- Hearing screening
- Primary ELA assessment or other district assessment data, if available
- Standardized assessment data (STAAR/TAKS, ITBS), if available
- Report cards
- Samples of school work
- Teacher reports of classroom concerns
- Teacher reports of interventions and results
- Gifted and Talented assessment (if appropriate)
- Universal screening for all grade levels available (English and native language, if possible)
- Parent reports of concerns related to academic progress
- Any other information available if needed to make an appropriate recommendation

Additional assessment may be administered to determine the need for special programs. At this point, an IST meeting will be convened and information for accessing the FBISD Dyslexia Procedures Guide, or a copy, will be provided to the parents.

The IST committee, which consists of persons knowledgeable about the student, about the meaning of the evaluation information, and about instruction for students with dyslexia, will consider this data in determining whether to recommend a formal assessment for dyslexia. **The committee should also include the campus Reading Specialist when reading difficulty is the area of concern to be addressed.** After the committee has considered all data available, it may request additional information be gathered, recommend other interventions, refer the student for formal dyslexia testing, or refer for special education testing.

---

---

### 3. Intervention Options, Alternative Instructional Settings and Assessment

#### A. Routine Intervention and Strategies to Intensify Reading Instruction

When a student exhibits difficulty in reading, writing and spelling, the classroom teacher should first investigate the nature of the difficulty and employ early intervention options within the classroom. Several options, which may be used at the teacher's discretion prior to an IST request for assistance, or implemented as recommended by the committee, include:

##### Instruction Methodology

- Use multisensory techniques during instructional times.
- Offer opportunities to use strengths in arts, crafts, music, drama.
- Question the student briefly, and often, to be sure s/he understands.
- Give simple directions, and if the student can read them, provide written copy of directions when possible.
- Encourage the student to ask questions and treat each question seriously.
- Encourage the use of the computer, word processor, calculator and/or language assistance devices (i.e., Franklin Spell Checkers).
- Give credit for time and effort by appropriately setting time limits on homework.
- Use materials in all classes that are the appropriate level of difficulty.

##### Handwriting and/or Copying

- Make a copy of the page.
- Give student a desk copy of what is to be copied from the board or overhead projector.
- Allow the use of a word processor.
- Accept oral work as a substitute.
- Accept illustrations.
- Accept briefest form of an answer.
- Allow student to write larger than usual.
- Allow student to write on unlined paper or graph paper.
- Write on notebook paper turned sideways to allow for vertical alignment.
- Modify the amount of copying to be done in math such as, use worksheets with problems already printed.

##### Spelling

- Don't allow spelling to outweigh content knowledge.
- Limit the number of spelling words.
- No penalty for spelling in a timed situation.
- Allow the use of a spellchecker on the word processor or a separate spell-checker.
- Provide a word bank.
- Allow students to use "the underline option," for example, the students underline the word they cannot spell.
- Focus on predictable spelling patterns that have been taught.
- Create a list of high frequency spelling words.

---

---

**Reading**

- \_\_\_\_\_ Use highlighted or underlined reading materials.
- \_\_\_\_\_ Provide extended time for reading assignments.
- \_\_\_\_\_ Provide direct instruction of content area vocabulary.
- \_\_\_\_\_ Provide taped texts to accompany social studies, reading, mathematics, and/or science texts.
- \_\_\_\_\_ Provide material on the student's reading level.
- \_\_\_\_\_ Provide comprehension guides, graphic organizers, and/or skeletal outlines.
- \_\_\_\_\_ Employ shared reading (buddy, choral, parent).
- \_\_\_\_\_ Allow someone to read to the student.
- \_\_\_\_\_ Allow student to use a place marker when reading and/or testing.
- \_\_\_\_\_ Place in alternative reading program if diagnosis calls for such placement.

**Written Composition**

- \_\_\_\_\_ Accept oral work as a substitute.
- \_\_\_\_\_ Accept projects as a substitute.
- \_\_\_\_\_ Shorten the written requirements.
- \_\_\_\_\_ Let the student dictate to a scribe or tape recorder.
- \_\_\_\_\_ Teach the child how to write a sentence, a paragraph, a paper.
- \_\_\_\_\_ Break lengthy writing assignments into the process/various parts.
- \_\_\_\_\_ Allow the use of computer generated assignments during the writing process.
- \_\_\_\_\_ Be very specific about the expectations.

**The Concept of the Passage of Time**

- \_\_\_\_\_ Work out a system (teacher/parent/guardian) for modifications in homework.
- \_\_\_\_\_ Reduce the amount of homework when possible.
- \_\_\_\_\_ Divide long term assignments into stages.
- \_\_\_\_\_ Provide timelines.
- \_\_\_\_\_ Set a timer.
- \_\_\_\_\_ Maintain a calendar and/or planner to track assignments and deadlines which is monitored by the teacher and parent.

**Organizational Skills**

- \_\_\_\_\_ Encourage students to color-code textbook covers, notebooks, and folders.
- \_\_\_\_\_ Teach the student how to keep a notebook.
- \_\_\_\_\_ Monitor the notebook system, particularly homework assignment pages.
- \_\_\_\_\_ Give preferential seating.
- \_\_\_\_\_ Teach the student to break assignments into steps. Help the student to organize and get started.
- \_\_\_\_\_ Provide a weekly time for cleaning out desk/ lockers and reorganizing materials.
- \_\_\_\_\_ Encourage weekly parent email to student's teachers.
- \_\_\_\_\_ Encourage use of school's/teacher's website and the routine checking of the homework hotline.

---

---

### **Short Attention Span**

- \_\_\_\_\_ Divide the assignment into manageable parts.
- \_\_\_\_\_ Have a set routine for the class.
- \_\_\_\_\_ Maintain structure within the classroom.
- \_\_\_\_\_ Use a signal to focus or refocus attention.
- \_\_\_\_\_ Provide visual aids, including graphic organizers, skeletal outlines, etc.
- \_\_\_\_\_ Provide concrete manipulative materials.
- \_\_\_\_\_ Provide direct, systematic instruction in small increments.
- \_\_\_\_\_ Change activities frequently.
- \_\_\_\_\_ Provide and monitor the length of short breaks.
- \_\_\_\_\_ Provide frequent positive reinforcement.
- \_\_\_\_\_ Provide positive feedback.

### **Low Self-Esteem**

- \_\_\_\_\_ Maintain high expectations.
- \_\_\_\_\_ Find something positive to say each day.
- \_\_\_\_\_ Focus on one or two points when providing feedback.
- \_\_\_\_\_ Watch for signs of progress.
- \_\_\_\_\_ Point out what the child has done well.
- \_\_\_\_\_ Avoid negative comments about students, "This child is not trying."

### **High Anxiety in Testing Situations**

- \_\_\_\_\_ Provide tape recorded tests. Teacher provides these.
- \_\_\_\_\_ Allow extended time for student to process, read, or formulate a written response.
- \_\_\_\_\_ Allow the test to be taken in a more conducive environment.
- \_\_\_\_\_ Give shorter test and/or break the test into smaller parts.
- \_\_\_\_\_ Place fewer questions or problems on a page.
- \_\_\_\_\_ Reduce the number of items in matching tests.
- \_\_\_\_\_ Give multiple choice tests instead of short answer or essay tests.
- \_\_\_\_\_ Be aware of overall test readability.
- \_\_\_\_\_ Discuss the test format ahead of time.
- \_\_\_\_\_ Give additional reading assistance or structure during the test.
- \_\_\_\_\_ Summarize the most important ideas with concept cards.
- \_\_\_\_\_ Review material with concept cards.
- \_\_\_\_\_ Do not use Scantron answer sheets.

Some students may benefit from interventions offered outside the regular classroom. Qualifications for programs vary, and not all programs may be available at all campuses; a partial list of such programs includes:

---

---

## Additional Instructional Programs and Courses:

### K-12

- \_\_\_\_\_ Computer/Media Programs
- \_\_\_\_\_ Tutorials
- \_\_\_\_\_ Counseling Programs
- \_\_\_\_\_ PALS
- \_\_\_\_\_ Assistance through the Volunteers in Public Schools (VIPS)
- \_\_\_\_\_ Title I Programs
- \_\_\_\_\_ Summer School
- \_\_\_\_\_ Tutorials

### Elementary

- \_\_\_\_\_ Reading Recovery (1st grade only)

### Middle School

- \_\_\_\_\_ Reading Elective
- \_\_\_\_\_ Sheltered Reading for ESL students
- \_\_\_\_\_ Production and Information
- \_\_\_\_\_ Human Services
- \_\_\_\_\_ WEB
- \_\_\_\_\_ Interdisciplinary Studies

### High School

- \_\_\_\_\_ Pre-vocational and Vocational Courses
- \_\_\_\_\_ Educational Leadership
- \_\_\_\_\_ LINK Crew
- \_\_\_\_\_ Reading Elective I, II, & III
- \_\_\_\_\_ Sheltered Reading for ESL students

If intensified reading instruction is deemed appropriate, additional strategies may include small group instruction, or working with the Reading Specialist on an informal basis. The regular classroom teacher and the campus Reading Specialist may collaborate to provide the teacher with strategies to maximize the student's benefit from regular reading instruction (e.g., questioning techniques, reinforcement strategies, etc.). For primary students, small group instruction on specific PAPI objectives may be required. Some students may be referred to summer school assistance programs based on district or state assessment results.

An IST referral for dyslexia assessment may be made concurrently with other interventions if the struggling student:

- continues to struggle despite the use of routine interventions and more intensive reading instructional strategies;
- clearly demonstrates characteristics of dyslexia; or
- is otherwise considered to be at risk for dyslexia.

---

---

## B. Alternative Instructional Settings

Bilingual Education  
English as a Second Language

## C. Identification and Placement into Dyslexia Program

The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders states the following:

Students enrolling in public schools in Texas shall be assessed for dyslexia and related disorders at appropriate times (TEC §38.003 [a]). The appropriate time depends upon multiple factors including the student's reading performance; reading difficulties; poor response to supplemental, scientifically based reading instruction; teachers' input; and input from the parents or guardians. Additionally, the appropriate time for assessing is early in a student's school career (19 TAC §74.28), the earlier the better. While earlier is better, students should be recommended for assessment for dyslexia even if the reading difficulties appear later in a student's school career. (p.13)

The procedures to follow include:

Notify parents or guardians of proposal to assess student for dyslexia (§504);

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

Should the IST Committee refer the student for formal dyslexia assessment, the Reading Specialist will have up to 60 calendar days to complete evaluation and 30 calendar days after the completion of the assessment to report to the §504 Committee. The Specialist will use the following additional instruments and data to determine whether the student exhibits characteristics associated with dyslexia, has adequate intelligence, and otherwise meets the definition of "dyslexia" found in Texas Education Code 38.003:

- Test of Non-Verbal Intelligence, 3 or 4 (TONI-3 or TONI-4), Woodcock-Johnson III Cognitive Abilities (WJ-III Cog) if provided and/or, Wechsler Intelligence Scale for Children (WISC), or any other intelligence test provided
- The Listening Comprehension Test
- Test of Word Reading Efficiency (TOWRE)
- Comprehensive Test of Phonological Processing (CTOPP)
- Woodcock Reading Mastery Test, Revised (WRMT-NU) or Test of Early Reading Ability (TERA-3)
- Test of Written Spelling, 4<sup>th</sup> Edition (TWS 4)
- FBISD Informal Dyslexia Assessment
- Other tests as deemed appropriate: Children's Handwriting Evaluation Scale (CHES or CHES-M), Region IV Dysgraphia Assessment, Test of Written Language (TOWL), Test of Silent Word Reading Fluency (TOSWRF), etc.



---

---

Following the formal evaluation, the §504 Committee will meet. Of those three people, one must be a campus administrator/504 campus coordinator or their designee and one must be the Reading Specialist. In Fort Bend ISD, the §504 Committee for a student under consideration for the dyslexia program will usually consist of the campus §504 coordinator and/or an administrator, or their designee, parents/guardians, one or more regular education teachers, and the Reading Specialist. However, the committee must consist of at least three persons knowledgeable about the student, the interpretation of the evaluation results, and instructional components and approaches for students with dyslexia. This team will consider all the data and determine whether the student qualifies for the §504 Dyslexia Program by answering the following two questions:

**1. Does the student have dyslexia?**

- ✓ **The student has unexpected lack of appropriate academic progress;**
- ✓ **The student exhibits characteristics associated with dyslexia;**
- ✓ **The student has adequate intelligence, the ability to learn;**
- ✓ **The student has received conventional instruction; and**
- ✓ **The student's lack of progress is not due to sociocultural factors such as language difference, irregular attendance, and lack of experiential background.**

**2. Does the condition of dyslexia substantially limit the student in the major life activity of learning?**

**This is usually demonstrated by either low grades, or teacher/parent/guardian/student reports that the student is only able to achieve adequate grades when he/she spends an inordinate amount of time on schoolwork at home and/or at school in comparison to the teacher's stated expectations regarding time for completion and student's performance in relation to peers.**

The §504 Committee must answer both questions in the affirmative to qualify a student for the §504 Dyslexia Program. A student who has dyslexia, but whose learning is **not** substantially limited thereby, will not qualify for §504 dyslexia services. However, assistance will be provided either within the classroom or any other appropriate setting as determined by the team of knowledgeable persons.

---

---

## **D. Referral for Special Education Services**

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

In the Individuals with Disabilities Education Act (IDEA), dyslexia is considered one of a variety of etiological foundations for "specific learning disability." 34 CFR 300.8(C) (10) states:

"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, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Certain students with dyslexia or other specific learning disabilities qualify as handicapped under federal and state law and may receive special education and related services appropriate for treating their handicapping condition.

If the student with dyslexia is found eligible for special education in the area of reading, 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 descriptors listed in Chapter IV, "Instruction for Students with Dyslexia" in the "Dyslexia Handbook" (Revised 2007, Updated 2010). Whenever a §504 student is found eligible for special education services, the ARD committee will be the educational decision making entity and the student's classification will be solely special education.

## **E. Instruction in the §504 Dyslexia Program**

Texas Education Code Section 38.003 mandates each school district "will provide for the treatment of any student determined to have dyslexia or a related disorder." In Fort Bend ISD, the student's §504 Committee determines his or her eligibility and individual instructional needs. If the student has qualified for services under §504, parents/guardians are informed of all services and options available to the student. No one program is required, but all of the district's Reading Specialists and designated reading teachers on each campus have been trained in at least one, and sometimes a variety of programs from which they may draw to meet dyslexic students' individual needs. Additionally, teachers who provide the appropriate instruction for students with dyslexia must be trained in the professional development activities specified by each district, charter school, and/or campus planning and decision making committee which shall include the

---

---

instructional strategies indicated on pages 15–17 of this manual (19 TAC §74.28). The programs used meet the criteria set forth in the following excerpt from the TEA "Dyslexia Handbook" (Revised 2007, Updated 2010).

### Components of Instruction

The instructional program should be offered in a small class arrangement (e.g., 1:3; 1:6; no more than 1:10) and include reading, writing, and spelling as appropriate. Major instructional strategies will utilize individualized, intensive, and multisensory methods, as appropriate.

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

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

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

- Explicit, direct instruction that is systematic (structured), sequential, and cumulative. Instruction is organized and presented in a way that follows a logical sequential plan, fits the nature of language (alphabetic principle) with no assumption of prior skills or language knowledge, and maximizes student engagement. This instruction proceeds at a rate commensurate with students' needs, ability levels, and demonstration of progress;
- Individualized instruction that meets the specific learning needs of each individual student in a small group setting; a reading curriculum that matches each student's individual ability level and contains all of the *Components of Instruction* mandated in 19 TAC sec. 74.28;
- Intensive, highly concentrated instruction that maximizes student engagement, uses specialized methods and materials, produces results, and contains all the *Components of Instruction* mandated in 19 TAC sec. 74.28; ( e.g., homogeneous small-group instruction, 50 minutes per day in individual or small-group instruction in addition to 90 minutes of core instruction [time amounts are examples], weekly progress monitoring to ensure adequate progress and learning, appropriate setting outside the class designated by the school – see the Dyslexia Handbook - Appendix B: 2008-2009 Response to Intervention Guidance Document (Revised 2007, Updated 2010)

- 
- 
- |  |
|--|
| <ul style="list-style-type: none"><li>▪ Meaning-based instruction that is directed toward purposeful reading and writing, with an emphasis on comprehension and composition; and</li><li>▪ Multisensory instruction that incorporates the simultaneous use of two or more sensory pathways (auditory, visual, kinesthetic, tactile) during teacher presentations and student practice.</li></ul> |
|--|

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

## **F. Accommodations**

### **i. Regular Classroom Accommodations**

The §504 Committee may determine that the student with dyslexia requires certain accommodations to make participation in regular instruction appropriate. Accommodations vary widely from student to student, but may include such measures as preferential seating, reduced paper-pencil tasks, shortened assignments, elimination of penalty for spelling errors on compositions, or other strategies the committee determines appropriate.

### **ii. Testing Accommodations for State Student Assessment (STAAR/TAKS)**

Some accommodations provided on a regular basis in the classroom may also be provided to students during the STAAR/TAKS test. Examples of allowable STAAR/TAKS accommodations include individual administration where the examinee may read aloud; use of a computer to type composition responses without saving or using spell-check; oral administration of mathematics, science, or social studies tests; or Dyslexia Bundled Accommodations for the STAAR/TAKS reading test if the student has been identified as dyslexic and the 504 Committee determines that it is necessary or if a Special Education student is has similar characteristics to dyslexia and an ARD Committee deems the bundle necessary.

The §504 Committee will determine the level of oral reading support (if the need for this accommodation is checked on the 504 Accommodation Plan) for the test from the following:

- occasional words and phrases
- multiple sentences throughout test
- all text, questions, and answer choices

The bundled accommodations for the STAAR/TAKS reading test at grades 3 – 12 consist of

- oral reading of all test questions and answer choices to students
- extending the testing time over a two-day period

The STAAR/TAKS Coordinator's Manual and TEA are the final authorities for allowable accommodations on STAAR/TAKS.

The §504 Committee should keep in mind that the accommodations provided on STAAR/TAKS will be ones the student requires to be successful on a regular basis; the teacher will document the regular use of the accommodations in the classroom, prior to their use on STAAR/TAKS.

---

## **G. Monitoring**

Fort Bend ISD students served in the §504 Dyslexia Program are monitored regularly by campus Reading Specialists. The specialists communicate with regular classroom teachers to ensure that accommodations are provided and remain appropriate. Additionally, they monitor the student's progress in all academic areas. Elementary students are usually monitored weekly, while secondary students are monitored every three weeks through progress reports and/or e-mail monitoring. Additionally, direct communication with students and staff occurs as needed.

---

---

## 4. Exit Criteria and Procedures

The §504 Dyslexia Program offers students assistance by providing a direct service phase coupled with monitoring of student accommodations and progress, or a monitor only phase. A student may exit the direct service phase, but remain on monitor status, or a student may exit all phases of the §504 Dyslexia Program. Students with dyslexia being served under IDEA (special education law) will follow exit procedures as outlined by IDEA.

When considering a student for exit from the §504 Dyslexia Program, it should be remembered that the exit decision must be made on an individual-student basis and by a committee of knowledgeable individuals i.e. the §504 Committee.

### Evaluation Procedure and Criteria for Exiting the §504 Dyslexia Program

#### **I. Procedures and Criteria for dismissal from *direct dyslexia services***

Students will be dismissed from the direct dyslexia services phase (remediation class) based on

1.) Parent request

**OR**

2.) Reading, English and/or dyslexia teacher(s) recommendation(s)

**with documentation of two or more of the following**

– Completion of Neuhaus Basic Language Skills lessons with 75% mastery level on all mastery checks, Dyslexia Program Basics with 75% mastery level on all mastery checks or mastery of any other program which contains the nine descriptors required by Texas Education Code §38.003.

**OR**

– Passing scores on the reading and writing portions of STAAR/TAKS

**OR**

– Scores on individually administered tests, if requested, or through formal three-year reevaluation procedure. Scores must indicate that a majority of the areas of deficiency are at, or above, grade level.

**OR**

– Satisfactory grades (A's, B's or C's) in English/Language Arts

The Referral for Exit Form (DYS11) can be obtained from the Reading Specialist. This form needs to be completed by the referring party and returned to the Reading Specialist before consideration for exit by the §504 Committee or ARD Committee. Additionally, the Teacher's information and the Educational Records form, with updated information, should accompany DYS 11 (Referral for Exit).

The decision for dismissal from direct services (§504 dyslexia reading class) will be made by the §504 or ARD Committee. Parents/guardians, the student (when appropriate), and the Reading

---

Specialist will be involved in the decision for dismissal. Classroom accommodations and §504 monitoring by the Reading Specialist will automatically continue for one school year, unless deemed unnecessary by the §504 Committee. Accommodations will be reviewed by the §504 Committee at the one-year mark to determine if accommodations need to be continued in general education classes. The person responsible for the monitoring of accommodations will be the §504 Reading Specialist.

Exiting a student from direct services (remediation class) is a school-based decision that should be documented in a §504 Committee or Admission, Review, and Dismissal (ARD) Committee meeting.

## **II. Procedure for initiating dismissal from §504 Dyslexia Program**

1. A Reading Specialist, teacher, parent/guardian, counselor or school administrator may recommend exiting a student from the §504 Dyslexia Program. The recommendation should be made to the §504 Committee. This recommendation is made based on the student's performance during the monitoring phase of services.
2. The following forms will be submitted to the Reading Specialist prior to consideration for program exit: Parent Information form, Teacher Information form, Health Information form, and Educational Records form. The Reading Specialist will take the necessary actions for initiating a §504 Committee meeting after all forms have been completed and updated.
3. The §504 Committee will review the information, and make a decision about beginning the exit procedure, dependent on the information provided.
4. The §504 Committee will determine whether it is necessary for the student to
  - a.) continue on monitor status with accommodations
  - b.) be placed on monitor status without accommodations
  - c.) be dismissed from the §504 Dyslexia Program if there is no substantial limitation
5. If the §504 Committee places the student on monitor status without accommodations, the §504 Committee will reconvene after 18 weeks (2 consecutive marking periods) to determine whether the student continues to have a substantial limitation or should be exited from the §504 Dyslexia Program.

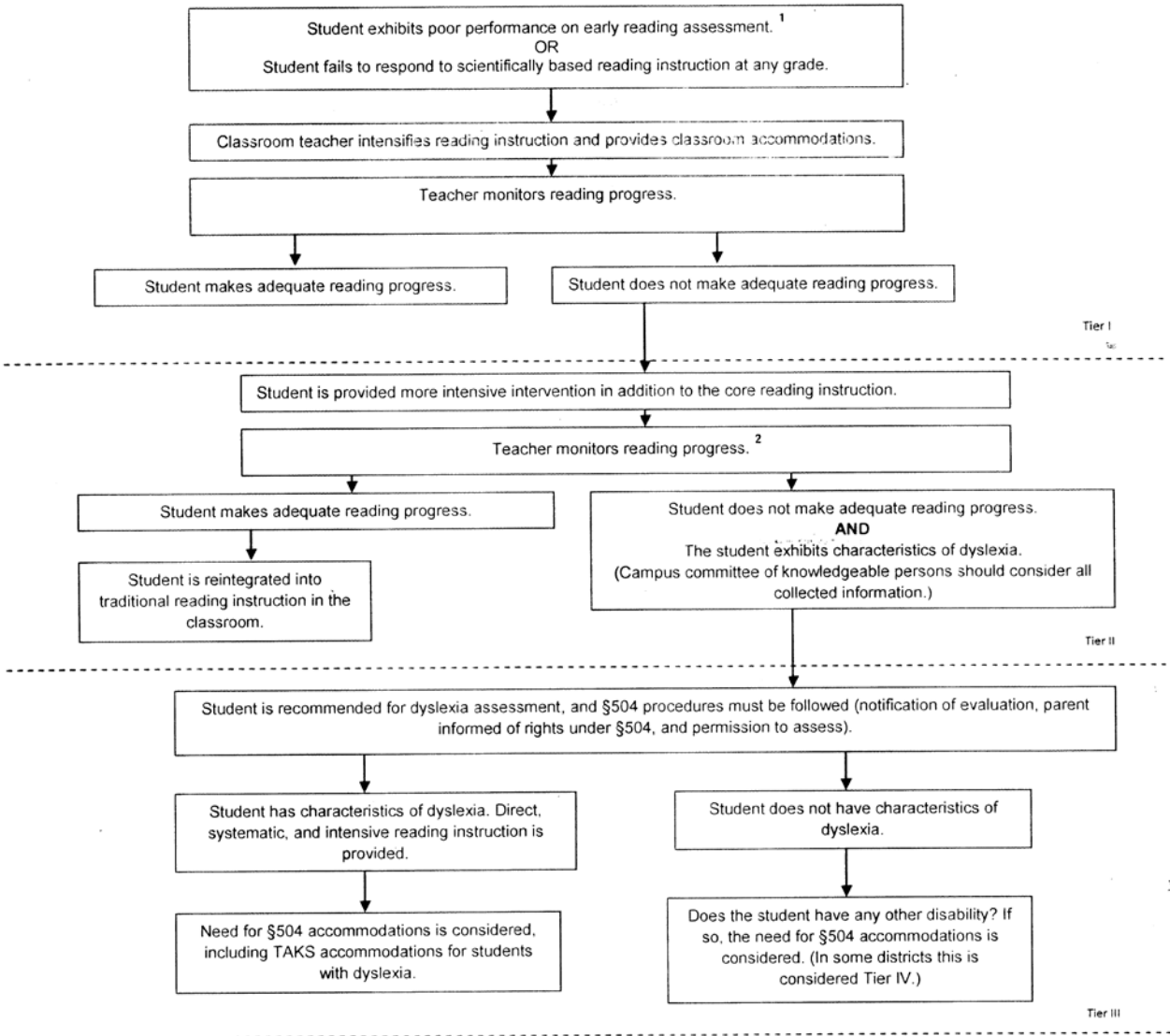
**\* IF AT ANY POINT DURING THIS PROCESS, THE STUDENT DEMONSTRATES EDUCATIONAL NEED, THE §504 COMMITTEE WILL RECONVENE, REVIEW THE STUDENT'S PROGRESS, AND DETERMINE THE BEST COURSE OF ACTION FOR THE STUDENT.**



**Appendix 1.**

**A. Excerpted from TEA's "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders" (Revised 2007, Updated 2010)—available at every FBISD campus library:**

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



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

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

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

---

---

## **B. Questions and Answers (selected questions and answers from the TEA "Dyslexia Handbook," Revised 2007, Updated 2010)**

---

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

---

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

### **2 Is every student suspected of having dyslexia "disabled" within the meaning of §504?**

---

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

---

---

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

---

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

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

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

---

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

---

Every school district and charter school must collect pertinent data for any student suspected of having dyslexia or a related disorder. (See Chapter II, Procedures for Assessing Students for Dyslexia.) A committee of persons knowledgeable about the student must review the relevant data and determine whether the student has dyslexia. If the student is identified with dyslexia, then the committee uses the data to determine instructional needs specific to the individual student. The district or charter is responsible for ensuring that dyslexia instructional services are provided directly on the student's campus. If a parent or guardian receives assessment information related to their child's reading difficulties from a private individual or entity, the district or charter school must consider the information if provided by the parent or guardian. However, the district or charter school must follow state law, rule and procedures, as well as local dyslexia policy, to make the final determination of student eligibility for dyslexia and related disorders.

---

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

---

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

---

---

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

---

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

---

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

---

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

---

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

---

See Chapter II of the State Dyslexia Handbook for information related to procedures that are required by state and federal law prior to a formal assessment of a student experiencing reading difficulties. If a student is not progressing in the general, remedial, and/or compensatory reading programs in school and other causes have been eliminated, the student should be recommended for assessment to determine whether he/she has dyslexia or a related disorder.

---

**11 Should all students be routinely reviewed for dyslexia?**

---

TEC §28.006 requires school districts or charter schools to administer, at the kindergarten, first- and second-grade levels, a reading instrument and to notify the parent or guardian of each student in kindergarten, first or second grade who is determined, on the basis of the reading instrument results, to be at risk for dyslexia or other reading difficulties. Additionally, data related to the reading achievement and progress of all students should be continuously monitored and reviewed.

---

---

---

A recommendation for assessment for dyslexia is made only for a student who has not adequately responded to scientifically based classroom reading instruction as well as intensive intervention AND who exhibits the primary characteristics of dyslexia. An additional consideration when monitoring a student's reading skills is a poor reading performance that is unexpected for the student.

---

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

---

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

---

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

---

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

---

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

---

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

---

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

---

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

---

---

---

**16 Can a student be considered for assessment of dyslexia even if he/she has passed a test required by the Texas State Assessment program?**

---

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

---

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

---

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

---

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

---

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

Academic Skills

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

Cognitive Process

- Phonological/phonemic awareness
- Rapid naming

---

## Additional Areas that MAY be Assessed

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

---

## **22 Can special education assess for dyslexia?**

---

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

---

## **24 When should further assessment through special education be considered?**

---

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

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

---

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

---

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



---

---

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

---

**29 Must each campus have a dyslexia program?**

---

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

---

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

---

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

---

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

---

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

---

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

---

There may or may not be a difference in instruction. In the State Dyslexia Handbook, Chapter IV, Instruction for Students with Dyslexia, describes the reading instruction that must be in place to serve students identified with dyslexia. Students who qualify for special education have an Individualized Education Program (IEP) developed by the admission, review, and dismissal (ARD) committee. For students with dyslexia who qualify for special education, the IEP must

---

---

include, as appropriate, the reading instruction that matches the descriptors found in Chapter IV of this handbook, Instruction for Students with Dyslexia.

School districts and charter schools must ensure that students who participate in special education services are not denied access to programs on the basis of their disability. To the extent appropriate, the student must be educated in the least restrictive setting with nondisabled peers and have instruction that enables the student to participate and progress in the general curriculum. This means that students who are eligible for special education 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 State Board of Education rules and procedures concerning dyslexia and related disorders;
- May not be denied access to the district's or charter school's programs for students with dyslexia, unless the ARD committee determines such a program would deny the student a free appropriate public education (FAPE) and educational benefit;
- Must have the ARD committee consider the range of services available for students with dyslexia in determining the least restrictive educational placement for the student.

---

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

---

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

---

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

---

Teachers must be trained to deliver instruction that is described in Chapter IV of The Dyslexia Handbook – Revised 2007, Updated 2010. As stated in 19 TAC §74.28, teachers who provide appropriate instruction for students with dyslexia must be trained and be prepared to implement instructional strategies that utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components. These teachers must also be trained in the professional development activities specific to dyslexia as specified by each district, charter school, and/or campus planning and decision-making committee.

---

---

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

---

(a) The admission, review, and dismissal (ARD) committee should document that the student has been identified with dyslexia or that the student has a reading disability that exhibits characteristics consistent with dyslexia. Since there are instructional implications as well as accommodations on the state assessment program for students who have been identified with dyslexia, the dyslexia identification should be noted in the ARD Report.

(b) For students with dyslexia who qualify for special education in the area of reading, the ARD committee must include appropriate reading instruction on the student's IEP. Appropriate reading instruction includes the descriptors found in Chapter IV of The Dyslexia Handbook – Revised 2007, Updated 2010.

---

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

---

Chapter III (Referral to Special Education) of The Dyslexia Handbook – Revised 2007, Updated 2010 states the following: “If the student with dyslexia is found eligible for special education in the area of reading, the ARD committee must include appropriate reading instruction on the student's IEP. Appropriate reading instruction includes the descriptors listed in Chapter IV, Instruction for Students with Dyslexia.”

---

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

---

A general education teacher (preferably a dyslexia teacher, therapist or Reading Specialist) may assess for dyslexia if that is consistent with the local education agency (LEA) policies and procedures and he/she meets the qualifications indicated in 19 TAC §74.28 and §504 (see Question 18); however, the identification should be made by the appropriate committee of knowledgeable persons. For a student receiving special education services this committee would be the ARD committee, including member(s) who are knowledgeable about dyslexia and the reading process as indicated in Chapter II of The Dyslexia Handbook – Revised 2007, Updated 2010.

---

---

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

---

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

---

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

---

- Dysphasia – a delay in the development of comprehension and/or expression of oral language; terminology commonly used to describe this condition includes developmental language disorder and specific language impairment
  - Specific Developmental Dyslexia – another term for dyslexia
  - Developmental Dysgraphia – a specific learning disability that impairs handwriting and sometimes spelling
  - Developmental Spelling Disability – an unexpected difficulty in the area of spelling in the absence of reading or other written language difficulties
  - Developmental Auditory Imperception
- 

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

---

There is no fixed amount of time that an English language learner must receive ESL/bilingual instruction before assessment for dyslexia is considered, because 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, however, must first have been provided with consistent and appropriate academic instruction in reading and writing, and academic instruction should have been in the language that allowed the student to have had access to the instruction.

---

---

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

---

To determine the language of instruction of dyslexia services for an English language learner, the committee of knowledgeable persons should take the following two issues into account:

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

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

---

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

---

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

---

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

---

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

---

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

---

## C. Contacts for Further Information

Region IV Education Service Center  
7145 W. Tidwell  
Houston, TX 77092-2096  
(713) 462-7708  
Fax (713) 744-6514

State Dyslexia Consultants  
Region 10 Education Service Center  
400 E. Spring Valley Road  
Richardson, TX 75083-1300  
1-800-232-3030  
[www.ednet10.net/dyslexia.pdf](http://www.ednet10.net/dyslexia.pdf)

Director or Assistant Director of Reading  
Texas Education Agency  
Division of Curriculum and Professional Development  
1701 N. Congress Avenue  
Austin, TX 78701-1494  
(512) 463-4314  
[www.tea.state.tx.us](http://www.tea.state.tx.us)

The Office for Civil Rights  
Dallas Regional Office  
1999 Bryan, Suite 2600  
Dallas, TX 75201  
(214) 880-2459  
[ocr@ed.gov](mailto:ocr@ed.gov)

(For a list of organizations to contact for additional information, please consult pp. 76-80 of the TEA "Dyslexia Handbook." A copy of this handbook is available at each FBISD campus library. It is also available on line at <http://www.tea.state.tx.us/special.ed/reading/pdf/dyslexiahdbk.pdf> )

---

## **Appendix 2. Laws Related to Dyslexia Services**

### **A. The Rehabilitation Act of 1973, Section 504 & Amendments, 2008**

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

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

TITLE 34--EDUCATION

CHAPTER I--OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION  
PART 104--NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES  
RECEIVING FEDERAL FINANCIAL ASSISTANCE

#### Subpart A--General Provisions

Sec.

104.1 Purpose.

104.2 Application.

104.3 Definitions.

104.4 Discrimination prohibited.

104.5 Assurances required.

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

104.7 Designation of responsible employee and adoption of grievance procedures.

104.8 Notice.

104.9 Administrative requirements for small recipients.

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

#### Subpart B--Employment Practices

104.11 Discrimination prohibited.

104.12 Reasonable accommodation.

104.13 Employment criteria.

104.14 Preemployment inquiries.

#### Subpart C--Program Accessibility

104.21 Discrimination prohibited.

104.22 Existing facilities.

104.23 New construction.

#### Subpart D--Preschool, Elementary, and Secondary Education

104.31 Application of this subpart.

104.32 Location and notification.

104.33 Free appropriate public education.

104.34 Educational setting.

104.35 Evaluation and placement.

104.36 Procedural safeguards.

104.37 Nonacademic services.

104.38 Preschool and adult education programs.

104.39 Private education programs.

#### Subpart E--Postsecondary Education

104.41 Application of this subpart.

104.42 Admissions and recruitment.

- 
- 104.43 Treatment of students; general.  
104.44 Academic adjustments.  
104.45 Housing.  
104.46 Financial and employment assistance to students.  
104.47 Nonacademic services.

Subpart F--Health, Welfare, and Social Services

- 104.51 Application of this subpart.  
104.52 Health, welfare, and other social services.  
104.53 Drug and alcohol addicts.  
104.54 Education of institutionalized persons.

Subpart G—Procedures

- 104.61 Procedures.

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

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

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

Subpart A--General Provisions

Sec. 104.1 Purpose.

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

Sec. 104.2 Application.

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

Sec. 104.3 Definitions.

As used in this part, the term:

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



---

or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

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

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

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

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

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

(i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or

(iii) is regarded as having such an impairment.

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

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

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

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

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

(k) Qualified handicapped person means:

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

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

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

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

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

#### Sec. 104.4 Discrimination prohibited.

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

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

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

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

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

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

- 
- (v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;
- (vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.
- (2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.
- (3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.
- (4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.
- (5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.
- (6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.
- (c) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

#### Sec. 104.5 Assurances required.

- (a) Assurances. An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Assistant Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.
- (b) Duration of obligation. (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
- (2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.
- (3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.
- (c) Covenants. (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
- (2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.
- (3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to

---

revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Assistant Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

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

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

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

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

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

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

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

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

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

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

(i) A list of the interested persons consulted,

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

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

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

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

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

Sec. 104.8 Notice.

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

---

publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

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

Sec. 104.9 Administrative requirements for small recipients.

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

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

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

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

Subpart B--Employment Practices

Sec. 104.11 Discrimination prohibited.

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

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

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

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

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

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

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

Sec. 104.12 Reasonable accommodation.

---

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

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

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

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

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

#### Sec. 104.13 Employment criteria.

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

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

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

#### Sec. 104.14 Preemployment inquiries.

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

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

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

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

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

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

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

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

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

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

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

---

## Subpart C--Program Accessibility

### Sec. 104.21 Discrimination prohibited.

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

### Sec. 104.22 Existing facilities.

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

(b) Methods. A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirements of Sec. 104.23, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

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

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

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

- (1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;
- (2) Describe in detail the methods that will be used to make the facilities accessible;
- (3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify the steps of that will be taken during each year of the transition period; and
- (4) Indicate the person responsible for implementation of the plan.

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

### Sec. 104.23 New construction.

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

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of

---

this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

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

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

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

#### Subpart D--Preschool, Elementary, and Secondary Education

##### Sec. 104.31 Application of this subpart.

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

##### Sec. 104.32 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually: (a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

##### Sec. 104.33 Free appropriate public education.

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

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

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

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

(c) Free education--(1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a

handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

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

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

(4) Placement of handicapped persons by parents. If a recipient has made available, in conformance with the requirements of this section and Sec. 104.34, a free appropriate public education to a handicapped person and the

---

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

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

#### Sec. 104.34 Educational setting.

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

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

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

#### Sec. 104.35 Evaluation and placement.

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

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

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

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

#### Sec. 104.36 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of



---

handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

Sec. 104.37 Nonacademic services.

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

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

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

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

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

Sec. 104.38 Preschool and adult education programs.

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

Sec. 104.39 Private education programs.

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

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

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

---

---

**Text of amendments passed Sept. 25, 2008:**

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

Public Law 110–325 110th Congress

An Act

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

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

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS AND PURPOSES.

FINDINGS.—Congress finds that—

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

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

(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

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

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

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

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

122 STAT. 3554 PUBLIC LAW 110–325—SEPT. 25, 2008

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

---

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

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

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

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

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

(5) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) for “substantially limits”, and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis; and

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

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

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

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

#### SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

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

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

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

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

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

---

“(2) MAJOR LIFE ACTIVITIES.—

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

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

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

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

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

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

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

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

122 STAT. 3556 PUBLIC LAW 110–325—SEPT. 25, 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 42 USC 12103.

PUBLIC LAW 110–325—SEPT. 25, 2008 122 STAT. 3557

Act of 1990 is amended by striking the item relating to section

3 and inserting the following items: “Sec. 3. Definition of disability. “Sec. 4. Additional definitions.”.

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

(a) ON THE BASIS OF DISABILITY.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(1) in subsection (a), by striking “with a disability because of the disability of such individual” and inserting “on the basis of disability”; and

(2) in subsection (b) in the matter preceding paragraph

(1), by striking “discriminate” and inserting “discriminate against a qualified individual on the basis of disability”.(b) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Section 103 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection: “(c) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Notwithstanding section 3(4)(E)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.’’. (c) CONFORMING AMENDMENTS.—

(1) Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended— (A) in the paragraph heading, by striking “WITH A DISABILITY”; and (B) by striking “with a disability” after “individual” both places it appears.

(2) Section 104(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12114(a)) is amended by striking “the term ‘qualified individual with a disability’ shall” and inserting “a qualified individual with a disability shall”.

---

SEC. 6. RULES OF CONSTRUCTION. (a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) is amended—

(1) by adding at the end of section 501 the following: “(e) BENEFITS UNDER STATE WORKER’S COMPENSATION LAWS.— Nothing in this Act alters the standards for determining eligibility for benefits under State worker’s compensation laws or under State and Federal disability benefit programs. “(f) FUNDAMENTAL ALTERATION.—Nothing in this Act alters the provision of section 302(b)

(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved. “(g) CLAIMS OF NO DISABILITY.—Nothing in this Act shall provide the basis for a claim by an individual without a disability 42 USC 12201.

122 STAT. 3558 PUBLIC LAW 110–325—SEPT. 25, 2008 that the individual was subject to discrimination because of the individual’s lack of disability. “(h) REASONABLE ACCOMMODATIONS AND MODIFICATIONS.—A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C) of such section.”; (2) by redesignating section 506 through 514 as sections 507 through 515, respectively, and adding after section 505 the following:

“SEC. 506. RULE OF CONSTRUCTION REGARDING REGULATORY

AUTHORITY.

“The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions of disability in section 3 (including rules of construction) and the definitions in section 4, consistent with the ADA Amendments Act of 2008.”; and (3) in section 511 (as redesignated by paragraph (2)) (42 U.S.C. 12211), in subsection (c), by striking “511(b)(3)” and inserting “512(b)(3)”. (b) The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by redesignating the items relating to sections 506 through 514 as the items relating to sections 507 through 515, respectively, and by inserting after the item relating to section 505 the following new item: “Sec. 506. Rule of construction regarding regulatory authority.”.

SEC. 7. CONFORMING AMENDMENTS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in paragraph (9)(B), by striking “a physical” and all that follows through “major life activities”, and inserting “the meaning given it in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)”; and

(2) in paragraph (20)(B), by striking “any person who” and all that follows through the period at the end, and inserting “any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).” 42 USC 12210. 42 USC 12205a. 42 USC 12206– 12211; 29 USC 706; 42 USC 12212, 12213.

PUBLIC LAW 110–325—SEPT. 25, 2008 122 STAT. 3559 LEGISLATIVE HISTORY—S. 3406: CONGRESSIONAL RECORD, Vol. 154 (2008): Sept. 11, considered and passed Senate. Sept. 17, considered and passed House.

Retrieved from [http://learningdisabilities.about.com/library/regulations/ADA/section\\_504.pdf](http://learningdisabilities.about.com/library/regulations/ADA/section_504.pdf)

COMPLIANCE STATEMENT

TITLE VI, CIVIL RIGHTS ACT OF 1964; THE MODIFIED COURT ORDER, CIVIL ACTION 5281, FEDERAL DISTRICT COURT, EASTERN DISTRICT OF TEXAS, TYLER DIVISION

Reviews of local education agencies pertaining to compliance with Title VI Civil Rights Act of 1964 and with specific requirements of the Modified Court order, Civil Action No. 5281, Federal District Court, Eastern District of

---

Texas, Tyler Division are conducted periodically by staff representatives of the Texas Education Agency. These reviews cover at least the following policies and practices:

- 1) Acceptance policies on student transfers from other school districts
- 2) Operation of school bus routes or runs on a non-segregated basis
- 3) Nondiscrimination in extracurricular activities and the use of school facilities
- 4) Nondiscriminatory practices in the hiring, assigning, promoting, paying, demoting, reassigning, or dismissing of faculty and staff members who work with children
- 5) Enrollment and assignment of students without discrimination on the basis of race, color, or national origin
- 6) Nondiscriminatory practices relating to the use of a student's first language
- 7) Evidence of published procedures for hearing complaints and grievances

In addition to conducting reviews, the Texas Education Agency staff representatives check complaints of discrimination made by a citizen or citizens residing in a school district where it is alleged discriminatory practices have occurred or are occurring.

Where a violation of Title VI of the Civil Rights Act is found, the findings are reported to the Office for Civil Rights, U.S. Department of Education.

If there is a direct violation of the Court Order in Civil Action No. 5281 that cannot be cleared through negotiation, the sanctions required by the Court Order are applied.

TITLE VII, CIVIL RIGHTS ACT OF 1964; EXECUTIVE ORDERS 11246 AND 11375; TITLE IX, 1973 EDUCATION AMENDMENTS; REHABILITATION ACT OF 1973 AS AMENDED; 1974 AMENDMENTS TO THE WAGE-HOUR LAW EXPANDING.

THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; AND VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1972 AS AMENDED IN 1974.

**It is the policy of the Texas Education Agency to comply fully with the nondiscrimination provisions of all federal and state laws and regulations by assuring that no person shall be excluded from consideration for recruitment, selection, appointment, training, promotion, retention, or any other personnel action, or be denied any benefits or participation in any programs or activities, which it operates on the grounds of race, religion, color, national origin, sex, handicap, age, or veteran status (except where age, sex, or handicap constitute a bona fide occupational qualification necessary to proper and efficient administration). The Texas Education Agency makes positive efforts to employ and advance in employment all protected groups.**

## **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.

§ 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.

#### § 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.

§ 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.

---

## 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.

§ 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 brailed 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.

## 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.

23. *Free appropriate public education.* Under 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.

#### § 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 believed 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.

§ 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.

§ 104.37 Nonacademic services.

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

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

---

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

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar 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.

§ 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.

§ 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.

## **B. Texas Education Code Section 38.003**

### § 38.003. Screening and Treatment for Dyslexia and Related Disorders

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

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

(c) The State Board of Education shall adopt any rules and standards necessary to administer this section.

(d) In this section:

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

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

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

---

## C. Texas Education Code Section 28.006

### § 28.006. Reading Diagnosis

(a) The commissioner shall develop recommendations for school districts for:

- (1) administering reading instruments to diagnose student reading development and comprehension;
- (2) training educators in administering the reading instruments; and
- (3) applying the results of the reading instruments to the instructional program.

(b) The commissioner shall adopt a list of reading instruments that a school district may use to diagnose student reading development and comprehension. A district-level committee established under Subchapter F, Chapter 11, may adopt a list of reading instruments for use in the district in addition to the reading instruments on the commissioner's list. Each reading instrument adopted by the commissioner or a district-level committee must be based on scientific research concerning reading skills development and reading comprehension. A list of reading instruments adopted under this subsection must provide for diagnosing the reading development and comprehension of students participating in a program under Subchapter B, Chapter 29.

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

(d) The superintendent of each school district shall:

- (1) report to the commissioner and the board of trustees of the district the results of the reading instruments; and
- (2) report, in writing, to a student's parent or guardian the student's results on the reading instrument.

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

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

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

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

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

(j) No more than 15 percent of the funds certified by the commissioner under Subsection (i) may be spent on indirect costs. The commissioner shall evaluate the programs that fail to meet the standard of performance under Section 39.051(b)(7) and may implement sanctions under Subchapter G, Chapter 39. The commissioner may audit the

---

expenditures of funds appropriated for purposes of this section. The use of the funds appropriated for purposes of this section shall be verified as part of the district audit under Section 44.008.

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

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

(l) Each district shall provide the accelerated reading instruction under Subsection (g) to students in:

- (1) kindergarten during the 1999-2000 school year;
- (2) kindergarten and first grade during the 2000-2001 school year; and
- (3) kindergarten and first and second grades beginning with the 2001-2002 school year.

Text of subsection (m) effective until January 1, 2002

(m) Subsection (l) and this subsection expire January 1, 2002.

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

#### **D. 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.*

#### **E. Texas Administrative Code Section 74.28 (State Board of Education Rule)**

§74.28. 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 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 "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 only be done by individuals/professionals who are trained to assess students for dyslexia and related disorders.

(c) A school district may purchase a reading program or develop its own reading program for students with dyslexia and related disorders, as long as the program is characterized by the descriptors found in "Procedures Concerning Dyslexia and Related Disorders." Teachers who screen and treat these students must be trained in instructional strategies which utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in the "Procedures Concerning Dyslexia and Related Disorders" and in the

---

professional development activities specified by each district and/or campus planning and decision making committee.

(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 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 program for early identification, intervention, and support for students with dyslexia and related disorders must be available in each district as outlined in the "Procedures Concerning Dyslexia and Related Disorders."

(h) Each school district may 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.*

## **F. Texas Occupations Code Chapter 403. LICENSED DYSLEXIA PRACTITIONERS AND LICENSED DYSLEXIA THERAPISTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 403.001. DEFINITIONS.**

In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Department" means the Department of State Health Services.
- (3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (4) "License holder" means a person who holds a license issued under this chapter.
- (5) "Multisensory structured language education" means a program described by the International Multisensory Structured Language Education Council for the treatment of individuals with dyslexia and related disorders that provides instruction in the skills of reading, writing, and spelling:
  - (A) through program content that includes:
    - (i) phonology and phonological awareness;
    - (ii) sound and symbol association;
    - (iii) syllables;
    - (iv) morphology;
    - (v) syntax; and
    - (vi) semantics; and
  - (B) following principles of instruction that include:
    - (i) simultaneous multisensory instruction, including visual-auditory-kinesthetic-tactile instruction;
    - (ii) systematic and cumulative instruction;
    - (iii) explicit instruction;
    - (iv) diagnostic teaching to automaticity; and
    - (v) synthetic and analytic instruction.
- (6) "Qualified instructor" means a person described by Section 403.110.



---

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

Sec. 403.002. ADMINISTRATION BY DEPARTMENT OF STATE HEALTH SERVICES.

The department shall administer this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

Sec. 403.003. APPLICABILITY.

This chapter does not:

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

**SUBCHAPTER B. POWERS AND DUTIES**

Sec. 403.051. ADVISORY COMMITTEE.

The department shall appoint an advisory committee to advise the department in administering this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

Sec. 403.052. RULES.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

**SUBCHAPTER C. LICENSE REQUIREMENTS**

Sec. 403.101. LICENSE REQUIRED.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

Sec. 403.102. ISSUANCE OF LICENSE.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

Sec. 403.103. LICENSE APPLICATION.

- (a) A license applicant must apply to the department on a form and in the manner the department prescribes.
- (b) The application must be accompanied by a nonrefundable application fee.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

Sec. 403.104. ELIGIBILITY FOR LICENSED DYSLEXIA PRACTITIONER LICENSE.

(a) To be eligible for a licensed dyslexia practitioner license, an applicant must have:

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

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

#### Sec. 403.105. ELIGIBILITY FOR LICENSED DYSLEXIA THERAPIST LICENSE.

(a) To be eligible for a licensed dyslexia therapist license, an applicant must have:

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

#### Sec. 403.106. REQUIREMENTS FOR TRAINING PROGRAMS.

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

- (1) be accredited by a nationally recognized accrediting organization;
- (2) have in writing defined goals and objectives, areas of authority, and policies and procedures;
- (3) have the appropriate financial and management resources to operate the training program, including a knowledgeable administrator and standard accounting and reporting procedures;
- (4) have a physical site, equipment, materials, supplies, and environment suitable for the training program;
- (5) have a sufficient number of instructional personnel who have completed the requirements for certification in multisensory structured language education;
- (6) have been reviewed by multisensory structured language education professionals who are not affiliated with the training program;
- (7) have developed and followed procedures to maintain and improve the quality of training provided by the program;
- (8) have provided direct instruction in the principles and in each element of multisensory structured language education for a minimum of:
  - (A) 200 contact hours of course work for training program participants who seek a licensed dyslexia therapist license; and
  - (B) 45 contact hours of course work for training program participants who seek a licensed dyslexia practitioner license;
- (9) have required training program participants to complete a program of supervised clinical experience in which the participants provided multisensory structured language education to students or adults, either individually or in small groups for a minimum of:
  - (A) 700 hours for training program participants who seek a licensed dyslexia therapist license; and
  - (B) 60 hours for training program participants who seek a licensed dyslexia practitioner license;
- (10) have required training program participants to demonstrate the application of multisensory structured language education principles of instruction by completing demonstration lessons observed by an instructor and followed by a conference with and a written report by the instructor; and

---

(11) have provided instruction based on the Texas Education Agency publication "The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (2007)," or a revised version of that publication approved by the department.

(b) A training program must require a training program participant who seeks a licensed dyslexia practitioner license to have completed at least five demonstration lessons described by Subsection (a)(10) and a participant who seeks a licensed dyslexia therapist license to have completed at least 10 demonstration lessons.

(c) The department, in consultation with the advisory committee, shall determine whether a training program meets the requirements of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

#### Sec. 403.107. EXAMINATION; RULES.

(a) To obtain a license, an applicant must:

(1) pass a written examination approved by the department under Subsection (b); and

(2) pay fees set by the executive commissioner.

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

(1) identify and designate a competency examination that is related to multisensory structured language education and that will be administered at least twice each year by a professional organization that issues national certifications; and

(2) maintain a record of all examinations for at least two years after the date of examination.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

#### Sec. 403.108. WAIVER OF EXAMINATION REQUIREMENT.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

#### Sec. 403.109. INACTIVE STATUS; RULES.

(a) The executive commissioner by rule may provide for a license holder to be placed on inactive status.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

#### Sec. 403.110. QUALIFIED INSTRUCTOR.

To be considered a qualified instructor under this chapter, a person must:

(1) be a licensed dyslexia therapist;

(2) have at least 1,400 hours of clinical teaching experience in addition to the hours required to obtain a licensed dyslexia therapist license; and

(3) have completed a two-year course of study dedicated to the administration and supervision of multisensory structured language education programs taught by a nationally accredited training program that meets the requirements of Section 403.106.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

### **SUBCHAPTER D. PRACTICE BY LICENSE HOLDER**

#### Sec. 403.151. PRACTICE SETTING.

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

#### Sec. 403.152. CONTINUING EDUCATION.

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

---

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

(c) The department shall:

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2009.

## **SUBCHAPTER E. LICENSE DENIAL; COMPLAINT AND DISCIPLINARY PROCEDURES**

### **Sec. 403.201. COMPLAINTS.**

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

### **Sec. 403.202. PROHIBITED ACTIONS.**

A license holder may not:

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

### **Sec. 403.203. GROUNDS FOR DISCIPLINARY ACTION.**

If a license holder violates this chapter or a rule or code of ethics adopted by the executive commissioner, the department shall:

(1) revoke or suspend the license;

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

(3) reprimand the license holder; or

(4) refuse to renew the license.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

### **Sec. 403.204. LICENSE DENIAL, REVOCATION, OR SUSPENSION FOR CRIMINAL CONVICTION.**

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

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

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

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

(A) allows withdrawal of a plea of guilty;

(B) sets aside a verdict of guilty; or

(C) dismisses an information or indictment.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

### **Sec. 403.205. HEARING.**

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

---

(b) The executive commissioner shall prescribe procedures for appealing to the commissioner a decision to revoke, suspend, or refuse to renew a license.  
Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

Sec. 403.206. ADMINISTRATIVE PROCEDURE.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

Sec. 403.207. SANCTIONS.

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

Sec. 403.208. PROBATION.

The department may require a license holder whose license suspension is probated to:

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

Sec. 403.209. MONITORING OF LICENSE HOLDER.

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

Sec. 403.210. INFORMAL PROCEDURES.

(a) The executive commissioner by rule shall adopt procedures governing:

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

Sec. 403.211. REINSTATEMENT.

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

(b) The department may:

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

Sec. 403.212. REPRIMAND; CONTINUING EDUCATION.

- 
- (a) In addition to other disciplinary action authorized by this subchapter, the department may:
- (1) issue a written reprimand to a license holder who violates this chapter; or
  - (2) require that a license holder who violates this chapter attend continuing education programs.
- (b) The department, in consultation with the advisory committee, may specify the number of hours of continuing education that must be completed by a license holder to fulfill the requirement of Subsection (a)(2).  
Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

#### **SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROCEDURES**

##### **Sec. 403.251. CIVIL PENALTY.**

- (a) A person who violates this chapter, a rule adopted by the executive commissioner, or an order adopted by the commissioner under this chapter is liable for a civil penalty not to exceed \$500 for each occurrence.
- (b) At the request of the department, the attorney general shall bring an action to recover a civil penalty authorized under this section.  
Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

##### **Sec. 403.252. CEASE AND DESIST ORDER.**

- (a) If it appears to the commissioner that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, the commissioner after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.
- (b) A violation of an order under this section constitutes grounds for imposing a civil penalty under this chapter.  
Added by Acts 2009, 81st Leg., R.S., Ch. 1255, Sec. 1, eff. September 1, 2010.

---

### **Appendix 3. Listing of Publications Related to Dyslexia**

- Aaron, P. G. & Joshi, R. M. (1992). *Reading problems*. New York: Guilford Press.
- Adams, M. (1990). *Beginning to read: Thinking and learning about print*. Cambridge: MIT Press.
- Adams, M., Foorman, B., Lundberg, I., & Beeler, T. (1998). The elusive phoneme. *American Educator*, 22 (1 & 2), 18-29.
- Armstrong, T. (1994). *Multiple intelligences in the classroom*. Alexandria, VA: ASCD Publications.
- Beck, I., McKeown, M., Hamilton, R., & Kucan, L. (1998). Getting at the meaning. *American Educator*, 22, 66-71, 85.
- Blachman, B. (1991). Early intervention for children's reading problems: Clinical applications of the research in phonological awareness. *Topics in Language Disorders*, 12 (1), 51-65.
- Birsh, J. R. (1999). *Multisensory teaching of basic language skills*. Baltimore, MD: Brookes.
- Cain, R. N., & Caine, G. (1991, 1994). *Making connections: Teaching and the human brain*. Menlo Park, CA: Innovative Learning Publications.
- Clark, D., & Uhry, J. (Eds.). (1995). *Dyslexia: Theory and practice of remedial instruction*. (2nd ed.). Baltimore: York Press.
- Cunningham, A., & Stanovich, K. (1998). What reading does for the mind. *American Educator*, 22 (1 & 2), 8-15.
- Cunningham, P., & Allington, R. (1994). *Classrooms that work: They can all read and write*. New York: Harper Collins College Publishers.
- Fox, B. (1996). *Strategies for word identification: Phonics from a new perspective*. Englewood Cliffs, NJ: Prentice-Hall.
- Goldsworthy, C. L. (1996). *Developmental reading disabilities: A language based approach*. San Diego, CA: Singular.
- Guszk, F. (1992). *Reading for students with special needs*. Dubuque, IA: Kendall/Hunt.
- Healy, J. (1990). *Endangered minds: Why children don't think and what we can do about it*. New York: Touchstone.
- Hume, C., & Snowling, M. (Eds.). (1994). *Reading development and dyslexia*. San Diego, CA: Singular.
- Levine, M. (1994). *Educational care: A system for understanding and helping children with learning problems at home and in school*. Cambridge, MA: Educators Publishing Service.
- Lyon, G. R. (1995). Toward a definition of dyslexia. *Annals of Dyslexia*, 45, 3-27.
- Meyer, M. S., & Felton, R. H. (1999). Repeated reading to enhance fluency: Old approaches and new directions. *Annals of Dyslexia*, 49, 283-306
- Moats, L. (1998). Teaching decoding. *American Educator*, 22 (1&2), 42-49, 95.
- Moats, L. (2000). *Language essentials for teachers*. Baltimore, MD: Brookes.
- Putnam, L. R. (1996). *How to become a better reading teacher: Strategies for assessment and intervention*. Englewood Cliffs, NJ: Prentice-Hall, Inc.

- 
- Shaywitz, S. (1998). Dyslexia. *New England Journal of Medicine*, 338, 307-311.
- Shaywitz, S. (1996). Dyslexia. *Scientific American*, 275, 98-104.
- Snow, C. E., Burns, M. S., and Griffin, P. (1998): *Prevention of Reading Difficulties in Young Children*. Washington, DC: National Academy Press.
- Stanovich, K. (1986). Matthew effects in reading: Some consequences of individual differences in the acquisition of literacy. *Reading Research Quarterly*, 21, 38-44.
- Stanovich, K. (1988). *Children's reading and the development of phonological awareness*. Detroit, MI: Wayne State University.
- Torgesen, J. (1998). Catch them before they fall. *American Educator*, 22 (1 & 2), 32-39.
- Torgesen, J., & Mathes P. G., ( 2000). *A basic guide to understanding, assessing, and teaching phonological awareness*. Austin, TX: Pro-Ed.
- Vail, P. (1990). *About dyslexia: Unraveling the myth*. Rosemont, NJ: Modern Learning Press.
- Vail, P. (1987). *Smart kids with school problems: Things to know and ways to help*. New York: New American Library.
- Valentine, F. (1987). Dyslexia. *Scientific American*, 256, 34-41.



---

---

**Appendix 4. Parent and Student Rights (English and Spanish Versions)—98-08**

**PARENT AND STUDENT RIGHTS  
UNDER §504, THE REHABILITATION ACT OF 1973**

Student's Name: \_\_\_\_\_

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

The Rehabilitation Act of 1973, commonly referred to as "Section 504 (§504)," is a nondiscrimination statute enacted by the United States congress. The purpose of the Act is to prohibit discrimination and to assure that disable students have educational opportunities and benefits equal to those provided to nondisabled students.

An eligible student under §504 is a student who (a) has, (b) has a record of having, or (c) is regarded as having, a physical or mental impairment which substantially limits a major life activity such as learning, self-care, walking, seeing, hearing, speaking, breathing, working, and performing manual tasks.

DUAL ELIGIBILITY: Some students will be eligible for educational services under both §504 and the Individuals with Disabilities Education Act (IDEA). Students who are eligible under IDEA have many specific rights that are not available to students who are eligible solely under §504. *A Parents Rights Handbook* prepared by the Texas Education Agency is available through the school district's Special Education Department and sets out the rights assured by the IDEA. It is the purpose of this Notice form to set out the rights assured by §504 to those disabled student who do not qualify under the IDEA.

the enabling regulations for §504 as set out in 34 CFR Part 104 provide parents and/or students with the following rights:

1. You have a right to be informed by the school district of your rights under §504. (The purpose of this Notice form is to advise you of those rights.) *34 CFR 104.32.*
2. Your child has the rights to an appropriate education designed to meet his/her individual educational needs as adequately as the needs of nondisabled students are met. *34 CFR 104.33.*
3. Your child has the right to free educational services except for those fees that are imposed on nondisabled students or their parents. Insures and similar third parties are not relieved from an otherwise valid obligation to provide or pay for services proved to a disabled student. *34 CFR 104.33.*
4. Your child has a right to placement in the least restrictive environment. *34 CFR 104.34.*
5. Your child has a right to facilities, services, and activities that are comparable to those provided for nondisabled students. *34 CFR 104.34.*
6. Your child has a right to an evaluation prior to an initial §504 placement and any subsequent *significant* change in placement. *34 CFR 104.35*

**98-08**

---

Testing and other evaluation procedures must conform with the requirements of 34 CFR 104.35 as to validation, administration, areas of evaluation, etc. The District shall consider information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background and adaptive behavior. *34 CFR 104.35.*

7. Placement decisions must be made by a group of persons including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. *34 CFR 104.35.*
8. If eligible under §504, your child has a right to periodic reevaluations, generally every three years. *34 CFR 104.35.*
9. You have the right to notice prior to any action by the District in regard to the identification, evaluation, or placements of your child. *34 CFR 104.36.*
10. You have the right to examine relevant records. *34 CFR 104.36.*
11. You have the right to an impartial hearing with respect to the District's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by any attorney. *34 CFR 104.36.*
12. If you wish to challenge the actions of the school's §504 Committee in regard to your child's identification, evaluation, or educational placement, you should file a written Notice of Appeal with the District's §504 Coordinator:

Dr. Bob Conlon, Director  
Student Support Services  
Box 1004  
Sugar Land, TX 77487-1004  
(281) 634.1131

A hearing will be scheduled before an impartial hearing officer and you will be notified in writing of the date, time, and place for the hearing.

13. On §504 matters other than your child's identification, evaluation, and placement, you have a right to file a complaint with the District's §504 Coordinator, who will investigate the allegations to the extent warranted by the nature of the complaint in an effort to reach a prompt and equitable resolution.
14. You also have a right to file a complaint with the Office of Civil Rights. The address of the Regional Office which covers Texas is:

Regional Office V  
Office for Civil Rights, Dallas Office  
S. Department of Education  
Bryant St., Suite 2600  
Dallas, TX 75201 (214) 880-2459  
Fax # (214) 880-3082 TDD (214) 880-2456

## **AVISO A PADRES DE ESTUDIANTES INCAPACITADOS DE SUS DERECHOS LEGALES BAJO LA SECCION 504 DEL DECRETO DE REHABILITACION DE 1973**

Student's Name: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

El Decreto de Rehabilitación de 1973, conocido generalmente como la "Sección 504," es una ley federal legislada por el Congreso de los Estados Unidos. El propósito de esta ley es de prohibir discriminación contra estudiantes incapacitados y asegurar que tengan oportunidades y beneficios educativos tan adecuados como los de estudiantes sin incapacidades.

Bajo la Sección 504, un estudiante es considerado incapacitado si padece de un impedimento o condición física o mental que limita substancialmente una de sus actividades vitales, como la de aprender, caminar, ver, oír, hablar, respirar, trabajar y desempeñar tareas manuales. La ley también protege a estudiantes que han tenido un impedimento o condición física o mental substancial en el pasado, o que son considerados incapacitados aunque realmente no lo son. Estudiantes pueden ser considerados incapacitados bajo la Sección 504 y pueden recibir asistencia educativa bajo esa ley aunque no reciban educación especial.

El propósito de este Aviso es de explicarle los derechos legales garantizados bajo la Sección 504 a estudiantes incapacitados y a sus padres.

Los reglamentos federales que dan efecto a la Sección 504 (los cuales se encuentran en el Título 34, Parte 104 del Código Federal de Reglamentos, o CFR) otorgan a los padres de familia y a estudiantes incapacitados los siguientes derechos:

1. Usted tiene derecho a ser informado de sus derechos bajo la Sección 504. [34 CFR 104.32]. El distrito escolar debe darle información escrita sobre sus derechos (este Aviso precisamente sirve para informarle de sus derechos). Si necesita que le expliquen o clarifiquen cualquier de los siguientes derechos, los dirigentes apropiados del distrito escolar le ayudarán a resolver sus preguntas.
2. Bajo la Sección 504, su hijo / a tiene derecho a una educación apropiada diseñada para satisfacer sus necesidades educativas individuales tan adecuadamente como las de estudiantes sin incapacidades. [34 CFR 104.33].
3. Su hijo / a tiene derecho a servicios educativos gratuitos, con la excepción de costos que normalmente se les cobran también a estudiantes sin incapacidades (o a sus padres). Compañías de seguros, y otras terceras personas similares, no son libres de sus obligaciones normales para proporcionar o pagar por servicios para un estudiante considerado incapacitado bajo la Sección 504. [34 CFR 104.33]. El recibir asistencia educativa bajo la Sección 504 no disminuye su derecho a recibir otra asistencia pública o privada de cualquier tipo.
4. Su hijo / a tiene derecho a ser colocado en el ambiente educativo que permita máximo contacto y relaciones con estudiantes sin incapacidades. [34 CFR 104.34]. A menos que sus necesidades educativas no puedan ser satisfechas ahí, su hijo / a será colocado en clases regulares.
5. Su hijo / a tiene derecho a equipo, clases, edificios, servicios y actividades comparables a las que son proporcionadas a estudiantes sin incapacidades. [34 CFR 104.34].
6. Su hijo / a tiene derecho a una evaluación antes de determinar una colocación educativa o programa de asistencia bajo la Sección 504, y también antes de cualquier cambio importante en colocación subsecuente. [34 CFR 104.35].
7. Procedimientos utilizados para administrar pruebas y otras evaluaciones educativas deben cumplir con los requisitos de la Sección 504 en cuanto a la validez de las pruebas, su forma de administración, y las áreas necesarias de evaluación. [34 CFR 104.35]. El distrito considerará información de diversas fuentes y orígenes, incluyendo, por ejemplo: pruebas de aptitudes y aprovechamiento, recomendaciones de maestros, reportes de

---

condición física, antecedentes sociales y culturales, análisis de comportamiento adaptado, reportes médicos, calificaciones, reportes de progreso, observaciones de los padres, anécdotas de maestros, y calificaciones en los exámenes TEAMS/TAAS, entre otras. [34 CFR 104.35].

8. Las decisiones de colocación educativa deben realizarse por un grupo de personas (llamado el comité 504) que conocen la situación de su hijo / a, el significado de los resultados de las evaluaciones, las opciones de colocación, y la obligación legal de asegurar el ambiente educativo que permita el máximo contacto con estudiantes no incapacitados. [34 CFR 104.35].

9. Si es considerado incapacitado bajo la Sección 504, su hijo / a tendrá derecho a que se le den nuevas pruebas y evaluaciones a ciertos tiempos, para determinar si sus necesidades educativas han cambiado. Generalmente evaluaciones educativas se pondrán al corriente para cada niño incapacitado por lo menos cada tres años. [34 CFR 104.35.]

10. Usted tiene derecho a que el distrito escolar le avise antes de tomar cualquier acción en relación a la identificación, evaluación o colocación educativa de su hijo / a. [34 CFR 104.36].

11. Usted tiene derecho a examinar archivos y documentos relacionados a la educación de su hijo / a (normalmente archivos y documentos con relación a la identificación, evaluación o colocación educativa de su hijo / a). [34 CFR 104.36].

12. Usted tiene derecho a una audiencia imparcial si no esta de acuerdo con las acciones del distrito en relación a la identificación, evaluación, o colocación educativa de su hijo / a. Usted tiene la oportunidad de participar personalmente en tal audiencia y de ser representada por un abogado, si desea contratarlo. [34 CFR 104.36].

13. Si desea protestar o disputar las acciones del Comité 504 del distrito a través de una audiencia imparcial, debe presentar un Aviso de Apelación escrito ante el Coordinador 504 del distrito, en la siguiente dirección:

Dr. Bob Conlon, Director  
Student Support Services  
P.O. Box 1004  
Sugar Land, TX 77487-1004  
(281) 634-1131

Se fijará una fecha para una audiencia ante un oficial imparcial, y serán notificados por escrito de la fecha, hora, y lugar de la audiencia.

14. En cuanto a otros aspectos de la Sección 504 que no tengan que ver con la identificación, evaluación y colocación educativa de su hijo / a, usted tiene el derecho a presentar una queja local ante el Coordinador 504 del distrito (o su representante), quien investigará la situación, teniendo en consideración la situación, en un esfuerzo de llegar a una resolución rápida y justa.

15. Usted también tiene el derecho a presentar una queja ante la Oficina de Derechos Civiles de el Departamento de Educación de los Estados Unidos. La dirección de la Oficina Regional a la cual pertenece Texas es:

Regional Office VI  
Office for Civil Rights, Dallas Office  
U.S. Department of Education  
1999 Bryan Street, Suite 1620  
Dallas, TX 75201-6810  
(214) 661-9600  
FAX (214) 661-9587

# Fort Bend Independent School District

## FORT BEND ISD 2011-2012 BOARD OF TRUSTEES

**Susan Hohnbaum** .....*President*  
**Marilyn Glover** .....*Vice President*  
**Jim Rice** .....*Secretary*  
**Bruce Albright** .....*Member*  
**Sonal Bhuchar** .....*Member*  
**Cynthia L. Gary** .....*Member*  
**Patsy Taylor, Ph.D.** .....*Member*

**Timothy R. Jenney, Ph.D.** • *Superintendent*

**Michael McKie**  
Assistant Superintendent  
Department of School Administration

**Benjamin Copeland**  
Chief Auxiliary  
Services Officer

**Kathryn LeRoy, Ph.D.**  
Chief Quality &  
Improvement Officer

**Rhonda McWilliams**  
Assistant Superintendent  
Department of School Administration

**John Frossard, Ed.D.**  
Chief Human  
Resources Officer

**Mary Ann Simpson**  
Chief Communications  
Officer

**Marc Smith, Ed.D.**  
Assistant Superintendent  
Department of School Administration

**Olwen Herron, Ed.D.**  
Chief Academic Officer

**Lindsay Shephard**  
Executive Administrator  
for the Superintendent

**Robert Calvert**  
Chief Information Officer

**Tracy Hoke**  
Chief Financial Officer

**Leila Feldman**  
General Counsel



FORT BEND INDEPENDENT SCHOOL DISTRICT

16431 Lexington Blvd. • Sugar Land, Texas 77479 • 281-634-1000 • [www.fortbendisd.com](http://www.fortbendisd.com)