



WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

TO: MEMBERS OF THE STUDY COMMITTEE ON THE IDENTIFICATION AND
MANAGEMENT OF DYSLEXIA

FROM: Jessica Ozalp, Senior Staff Attorney, and Julia Norsetter, Staff Attorney

RE: Wisconsin Law and Other States' Laws Relating to Dyslexia

DATE: July 2, 2018

The Study Committee on the Identification and Management of Dyslexia is directed, in part, to review current protocols for screening and identification of dyslexia in Wisconsin schools. This Memo describes current state legal requirements relating to these protocols, in the general context of state and federal special education law.

The committee is also directed to study best practices for early identification and interventions for dyslexia in schools, and develop legislation to disseminate best practices. To provide committee members with legislative background, this Memo gives a broad overview of other states' laws concerning dyslexia, addressing both identification and interventions.

WISCONSIN LAW

State statutes address screening for and treatment of reading difficulties in a number of ways, including literacy screening, reading interventions, and special education laws.

2011 Education Reform Laws

2011 Wisconsin Act 166 ("Act 166") enacted several changes to Wisconsin elementary education laws based on recommendations of the Wisconsin Read to Lead Task Force. Attached to this Memo is Legislative Council Information Memorandum IM-2012-07, "Education Reform Legislation: 2011 Wisconsin Act 166," summarizing Act 166. This Information Memorandum includes a description of requirements under Act 166 for universal literacy screening in kindergarten, and for educators to pass the FORT (Foundations of Reading Test) as a condition of licensure to teach elementary grades or special education. It is attached to this Memo to

facilitate discussion by the Study Committee as it reviews strategies and best practices for identification and management of dyslexia.

Current State Law on Literacy Screening

Since 2011, the Legislature has modified the literacy screening requirement twice. In the 2013-15 Biennial Budget (2013 Wisconsin Act 20), the requirement to screen kindergartners under Act 166 was gradually expanded to apply to children in 4-year-old kindergarten through first grade (2013-14 school year) and then to include second grade (2014-15 school year). The statute still required the Department of Public Instruction (DPI) to select the assessment for screening. Under this law, DPI selected Phonological Awareness Literacy Screening (“PALS”) as the required screener statewide from 2012 to 2016.

Starting in the 2016-17 school year, the school board or operator of a charter school selects the assessment to use to satisfy this literacy screening requirement. This change was made in the 2015-17 Biennial Budget (2015 Wisconsin Act 55). Accordingly, under current law, each school district or charter school must administer the literacy screener of its choice to students from 4-year-old kindergarten through second grade. The assessment must evaluate phonemic awareness and letter sound knowledge. [s. 118.016, Stats.]

Current State Law on Reading Interventions

State law requires schools to report the results of a student’s literacy screening assessment to the student’s parent or guardian. [s. 118.016 (1r), Stats.] When a student’s performance on the literacy screening assessment, described above, indicates that the student is at risk of reading difficulty, the school must provide interventions or remedial reading services. The interventions or services provided must be scientifically based, and must address all areas in which the student is deficient in a manner consistent with the state standards in reading and language arts. [s. 121.02 (1) (c), Stats.] State law also requires schools to provide the same interventions or services to any student in grades in kindergarten through fourth grade who: (1) fails to meet the reading objectives specified in the district’s reading curriculum plan; or (2) fails to score above the state minimum performance standard on the third grade statewide reading test.¹

Special Education Laws

Chapter 115, Stats., entitles children ages 3 to 21 with disabilities to special education and related services in public schools. Under the law, students with a disability are entitled to an Individualized Education Program (“IEP”) that, as the name suggests, identifies appropriate individualized services to be provided. Upon determination of a need for special educational services, a team of the child’s educators and parent(s) or guardian and develops an IEP for the

¹ If performance on the statewide reading test is the triggering condition, interventions and services are only required if: (1) a teacher in the school district determines based on other objective evidence that the test performance accurately reflects the student’s reading ability; or (2) a teacher in the school district and the student’s parent or guardian agree that the test performance accurately reflects the student’s reading ability. [s. 121.02 (1) (c), Stats.]

child. The IEP specifies the special education and related services necessary for the child to receive a free and appropriate public education (“FAPE”). The IEP is reviewed and revised at least once a year by the IEP team.

Children identified as having a specific learning disability are among those who receive an IEP. The Wisconsin Administrative Code defines “a specific learning disability” as a disorder in one or more of the basic psychological processes involved in understanding or using spoken or written language. The code cites dyslexia as an example of a qualifying condition under this category. [PI 11.36, Wis. Adm. Code.]

FEDERAL LAW

Individuals with Disabilities Education Act

Federal law also entitles children with disabilities who are enrolled in public schools to special education and related services designed to meet their disability related needs. The Individuals with Disabilities Education Act (“IDEA”), enacted in 1975 and last updated in 2004, is a federal statute that funds special education programs through grants. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA attaches many specific conditions to the receipt of its funds. It ensures that students with a disability are provided a FAPE tailored to their individual needs.

IDEA includes 14 categories to define students with a disability who are guaranteed a FAPE. One of those categories is a “specific learning disability,” which regulations define to include dyslexia. [See, 20 U.S.C. s. 1401 (30) and 34 C.F.R. s. 300.8 (c) (10).] The U.S. Department of Education released a guidance letter addressing dyslexia and the category of “specific learning disability” on October 23, 2015. It is attached to this Memo to facilitate discussion by the Study Committee.

Section 504

Qualified students with disabilities² who attend schools receiving federal financial assistance are also covered by Section 504 of the Rehabilitation Act of 1973, as amended. [29 U.S.C. s. 794 (“Section 504”).] Section 504 prohibits discrimination on the basis of disability in programs or activities that receive federal funds from the U.S. Department of Education. Recipients include public school districts, institutions of higher education, and other state and local education agencies.

Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet a student’s individual educational needs as adequately as the needs of nondisabled students are met. A school district must evaluate a

² To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment. A specific learning disability is included in the definition of a qualifying impairment. [34 C.F.R. s. 104.3 (j) (2) (i).] Section 504 requires that school districts provide a FAPE to qualified students in their jurisdictions.

student prior to providing services under Section 504. School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. In some cases students may not have an IEP, yet Section 504 may still require accommodations.

OTHER STATES

To date, approximately 40 states have laws that address dyslexia and education.³ State legislation relating to dyslexia has varied in terms of its prescriptiveness. Less prescriptive legislation has included pilot programs that vary in terms of scope and duration. In 2014, for example, Pennsylvania enacted legislation that requires the state Department of Education to establish a three-year dyslexia screening and early literacy intervention pilot program that is being executed from 2015-2018. The legislation requires participating school districts to develop a program that establishes screening for early reading deficiencies (including dyslexia) and a multitier support system that includes certain intervention measures and a plan for parent notification.⁴ In 2015, Utah enacted legislation that created a pilot program to improve early identification and provide literacy interventions to students who are at risk for or experiencing reading difficulties, including dyslexia. The Utah pilot program also provides for third-party evaluation of the program to assess whether it improves reading outcomes for participating students and whether the creation of the program may reduce future special education costs.⁵

Less prescriptive legislation has also authorized advisory groups and the adoption of defined terms.⁶ For example, in 2014, Illinois enacted legislation that requires the establishment of an advisory group to provide training to education professionals. The Illinois legislation also requires the state Board of Education to adopt rules that incorporate a definition of dyslexia into the state's administrative code.⁷ The Pennsylvania legislation relating to the pilot program, discussed above, also contains a definition of the term "dyslexia."

Moderately prescriptive legislation has required schools to provide reading assessments and interventions without mandating the use of certain tools. In 2018, Minnesota enacted legislation that requires school districts to report to the Minnesota Department of Education (MDE) a summary of the district's efforts to screen and identify students with dyslexia, using screening tools such as those recommended by the MDE dyslexia specialist.⁸ For students demonstrating reading difficulty, the Minnesota statutes also require school districts to provide reading intervention, but allow school districts flexibility with respect to intervention tools by

³ National Center on Improving Literacy, <https://improvingliteracy.org/state-of-dyslexia#>.

⁴ Pennsylvania Public School Code of 1949, ss. 1701-C to 1705-C.

⁵ Section 53A-15-106, Utah Code Annotated.

⁶ In addition, several states have developed guidebooks and other resources which can be accessed at: <https://www.dyslexia.com/resource-links/state-resources/>.

⁷ Chapter 105, s. 5/2-3.161, Illinois compiled statutes.

⁸ In 2017, Minnesota enacted legislation that required the MDE to employ a dyslexia specialist to provide technical assistance for dyslexia and related disorders, and to serve as the primary source of information and support for schools in addressing the needs of students with dyslexia and related disorders. [s. 120B.122, Minnesota statutes.]

providing that “interventions may include, but are not limited to” requiring attendance at summer school, intensified reading instruction, and extended-day programs. The Minnesota statutes also require staff development to ensure that teachers have comprehensive, scientifically based reading and oral language instruction.⁹

The most prescriptive legislation has required the use of screening, intervention, and teacher training tools with specific characteristics. For example, in 2015, Nevada enacted legislation that requires school districts to prescribe screening assessments that must include phonological and phonetic awareness, sound-symbol recognition, alphabet knowledge, decoding skills, rapid naming skills, and encoding skills. The Nevada legislation also requires school districts to designate, at each school, an employee to receive professional development relating to dyslexia. This professional development must include training in methods to recognize indicators for dyslexia and the science related to teaching a pupil with dyslexia.¹⁰ In 2017, Texas enacted legislation that requires the Texas Department of Health and Human Services to develop training opportunities for educators that meet certain requirements. Specifically, training opportunities must “comply with the knowledge and practice standards of an international organization on dyslexia” and enable an educator to implement instruction that is systemic, explicit, and evidence-based to meet the educational needs of a student with dyslexia, among other factors.¹¹

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

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Attachments

⁹ Section 120B.12, Minnesota statutes.

¹⁰ Sections 388.439 and 388.445, Nevada revised statutes.

¹¹ Section 38.0032, Texas statutes.