

CONTACT

POLICY DEPARTMENT

MARIA CILENTI

212.382.6655 | mcilenti@nycbar.org

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

**REPORT ON LEGISLATION BY
THE EDUCATION & THE LAW COMMITTEE**

**A.1480
S.2534**

**M. of A. Simon
Sen. Golden**

AN ACT to amend the education law, in relation to the certification or training of teachers, administrators and instructors in the area of dyslexia and related disorders.

THIS BILL IS APPROVED

The New York City Bar Association (“City Bar”) is a voluntary association of more than 24,000 attorney and law student members and more than 150 committees. Founded in 1870 in response to growing public concern over corruption among judges and lawyers, the City Bar’s mission includes “harnessing the expertise of the legal profession to identify and address legal and public policy issues in ways that promote law reform, ethics and the fair and effective administration of justice.” The Education and the Law Committee (“the Committee”) of the City Bar addresses the full range of legal issues surrounding education from pre-K through higher education, including education finance, governance, legislative proposals and special education.

SUMMARY OF THE PROPOSED BILL

A.1480/S.2534 (“the bill”) would authorize the New York State Department of Education to provide training and services to teachers, administrators and instructors in the areas of dyslexia and related disorders (including, but not limited to, dyscalculia and dysgraphia)¹. The bill also would provide for each student suspected of having dyslexia or a related disorder to be evaluated, and for a finding of dyslexia or a related disorder to be incorporated into the student’s individualized education plan (“IEP”). The IEP would recommend specific, targeted resources and individualized services best suited for the specific condition. Furthermore, the board of education or trustees of each school district would be required to provide suitable educational

¹ As defined by the Learning Disabilities Association of America, Dyslexia affects reading and related language-based processing skills. The severity of this specific learning disability can differ in each individual but can affect reading fluency, decoding, reading comprehension, recall, writing, spelling, and sometimes speech and can exist along with other related disorders. Dyslexia is sometimes referred to as a Language-Based Learning Disability. Dyscalculia affects a person’s ability to understand numbers and learn math facts. Individuals with [dyscalculia] may also have poor comprehension of math symbols, may struggle with memorizing and organizing numbers, have difficulty telling time, or have trouble with counting. Dysgraphia affects a person’s handwriting ability and fine motor skills. A person with [dysgraphia] may have problems including illegible handwriting, inconsistent spacing, poor spatial planning on paper, poor spelling, and difficulty composing writing as well as thinking and writing at the same time. Available at <https://ldaamerica.org/>.

opportunities for such students, including teachers or instructors trained in dyslexia and related disorders.

BACKGROUND

At present, students in New York State with suspected learning disabilities are evaluated for disabilities at the school at the request of a parent, a designee of the student’s school district, or a designee of a public agency that has responsibility for the student’s education. In some cases, the student may be tested privately at the request of the student’s parent or guardian. If a student is deemed to have a learning disability, that student should receive support services tailored to his or her needs. These services may come in the form of classroom support, additional education or testing accommodations (or a combination thereof). However, as set forth below, New York State law with respect to testing and services for students with learning disabilities is inadequate in that it fails to distinguish among different types of learning disabilities (including dyslexia, dyscalculia and dysgraphia) and the different types of support services appropriate for each disorder.

THE CURRENT NEW YORK LAW IS INCONSISTENT WITH THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Dyslexia reflects a deficiency in the processing of the distinctive linguistic units, called phonemes, that make up all spoken and written words.² Since 1975, dyslexia has been included in the list of qualifying learning disabilities under the federal special education law.³ The federal Individuals with Disabilities Education Act (IDEA) provides that children determined to have learning disabilities—including dyslexia, dyscalculia and dysgraphia—receive free and appropriate public education that meets their specific needs.⁴

Dyslexia is a commonly recognized form of learning disability, with a unique set of characteristics. Research has demonstrated that, when found early, appropriate learning interventions can go a long way in helping students overcome this disability. Additionally, the United States Department of Education’s Office of Special Education and Rehabilitative Services issued a “Dear Colleague” letter in October 2015 which reminded state boards of education that the use of specific terms such as dyslexia, dyscalculia and dysgraphia are not prohibited by the IDEA.⁵

Notably, however, the New York State Department of Education does not recognize dyslexia or related disorders as separate and distinct learning differences. As a result, such disorders are lumped together under a generic heading of “learning disability” on a student’s

² “Dyslexia,” Shaywitz, Sally, M.D. Scientific American, November 1996.

³ See Education for All Handicapped Children Act of 1975. Pub. L. 94-142 (now Individuals with Disabilities Education Act, 20 U.S.C. §1400).

⁴ Individuals with Disabilities Education Act, 20 U.S.C. §1400 (d)(1).

⁵ Letter from USDOE, “Dear Colleague Letter: Policy guidance to clarify that there is nothing in the *IDEA* that would prohibit the use of the terms dyslexia, dyscalculia, and dysgraphia in *IDEA* evaluation, eligibility determinations or IEP documents,” October 23, 2015.

IEP. Thus, students who receive a determination of having one of these specific disorders are provided with services that are not properly tailored to meet their needs, and may receive services that are incorrectly matched to their specific disorder. Developmentally appropriate services that are targeted to specific disorders have been shown to result in marked improvements in the abilities of students when provided promptly and correctly.⁶

THE CURRENT LAW IS INCONSISTENT WITH THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

At present, the Regulations of the Commissioner of Education classify all disabilities that relate to language processing as “Learning Disabilities,” which:

means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, as determined in accordance with section 200.4(j) of this Part. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing or motor disabilities, of an intellectual disability, of emotional disturbance, or of environmental, cultural or economic disadvantage.⁷

This broad definition implies a link between dyslexia and disorders associated with brain injury, which could negatively impact the services that a dyslexic student may receive. Unlike brain injury disorders, dyslexia and its related disorders can be compensated for with appropriate interventions, such as multi-sensory evidence-based reading instruction. Additionally, the definition in the Regulations does not include dyslexia’s related disorders—dyscalculia and dysgraphia.

Further, pursuant to the Commissioner’s regulations, special education programs should be “appropriate” and services should be based upon “peer-reviewed research.”⁸ By parsing dyslexia and related disorders from the general definition of “learning disabilities,” New York

⁶ “Dyslexia is highly specific; scientific progress has revealed its epidemiology, cognitive, and neurobiological bases. ‘Learning disabilities’ is nonspecific, and more of a general term to encompass a range of difficulties; in just about all cases, the specific characteristics noted above are yet to be uncovered and scientifically understood.

For example, in medicine, dyslexia can be compared to strep throat, whereby the specific symptoms, cause, and treatment have all been scientifically uncovered so that a specific diagnosis can be made, and specific, evidence-based intervention can be given. The term, ‘learning disabilities’ is more like the general term ‘infection,’ which can have many different causes, along with many different symptoms and differing treatments, depending on the specific infection.” Memo from Drs. Sally and Bennett Shaywitz re: H. Res. 456 and H. Res. 623, available at <http://dyslexia.yale.edu/HRes456vsHRes623.html>.

⁷ Regulations of the Commissioner of Education, as amended July 2015, Part 200 Students with Disabilities §200.1(zz). Available at <http://www.p12.nysed.gov/specialed/lawsregs/part-200-july-2015.pdf>.

⁸ Id. at 47.

State would be both abiding by these regulations and acting in accordance with a voluminous body of research on dyslexia and related disorders.⁹ This would also facilitate recommendation and provision of appropriate, research-based interventions that have been shown to be effective in remediating students with dyslexia and related disorders (i.e., access to multi-sensory evidence-based reading programs and/or instruction by qualified reading specialists).

CONCLUSION

New York State's Education Law should be amended to incorporate the use of the terms dyslexia and related disorders, and allow for appropriate professional training on these disabilities, so that students can receive targeted corrective and rehabilitative measures. The exclusion of these specific disabilities robs students of the opportunity to receive appropriate services tailored to their specific disability, and deprives them of equal educational opportunities.

Education and the Law Committee
Christine Raniga, Chair

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⁹ The signing of the READ Act by President Obama on February 18, 2016, which devotes \$5,000,000 in National Science Foundation grants annually between 2017 through 2021 further evidences an increased and dedicated interest in the research of dyslexia.