



# Advocates for Justice and Education, Inc.

The Parent Training and Information Center for the District of Columbia

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This written testimony is provided in addition to oral remarks made to the Committee of the Whole and the Committee on Education of the D.C. Council at the Joint Hearing held on October 21, 2019 regarding:

**B23-0392 - The Students' Rights to Home or Hospital Instruction Act of 2019 and**

**B23-0150 - Dyslexia and Other Reading Disabilities Screening and Prevention Pilot Program Act of 2019.**

Thank you for providing this opportunity to comment on two important pieces of legislation, the Home or Hospital Instruction Act of 2019, (HHI bill or HHI legislation) and the Dyslexia and Other Reading Disabilities Screening and Prevention Pilot Program Act of 2019 (Dyslexia bill or Dyslexia legislation). My name is Maria Blaeuer, and I am the Director of Programs and Outreach at Advocates for Justice and Education (AJE). AJE is the federally designated Parent Training and Information Center (PTI) for the District of Columbia, it is our responsibility to provide free training, resources, individual assistance and support to parents and youth in navigating the special education process, negotiating school selection and placement, and addressing matters of school discipline, especially for students with disabilities. This means we work with charter school families and families who children are in DCPS. We have worked with families who are struggling to access appropriate reading instruction and interventions, parents who are worried about their child's growth as a reader and parents who are frustrated and feel that DC schools are waiting for their child to fail before they help them. We also work with and support families whose children need instruction at home or in the hospital because of pregnancy, illness, injury or due to the nature of their disability.

AJE believes that education is a human right of all children and that a model of parent education and empowerment will lead to better outcomes for children at school and in life. The work we do at AJE informs our testimony and leads us to support both pieces of legislation, and offer ways to improve them so they can be more beneficial to DC students and families.

## **Home and Hospital Instruction Act of 2019**

We strongly support the passage of the Home and Hospital Instruction (HHI) legislation. This bill introduces much needed timelines, accountability and due process into a system that many parents and students experience as arbitrary and capricious. This also brings the District into alignment with best practices and ensures that students experience less disruption in their services.

DCPS' HHI program, on its best day, is unresponsive to parents, opaque in its decision making, and glacial in its pace. Students with psychiatric needs have particularly struggled with DCPS, and I have seen no improvement in DCPS' willingness to provide HHI over the 13 years I have represented students in the District of Columbia. My colleague Stacey Eunnae worked with a family last school year whose facts mirrored that of one of my very first education clients. We have reviewed the testimony of Margaret Kohn which was submitted to Council and want to assure the Council that the delays and disregard experienced by the family she worked with are not some sort of outlier. HHI in DCPS in particular is deeply dysfunctional. Both Ms. Kohn and the Children's Law Center (CLC) describe the frustration parents experience when nonmedical staff at their child's school<sup>1</sup> disregard the opinions and recommendations of the child's treating medical professionals. This places parents in an untenable position, especially when their school is threatening the family with truancy or educational neglect referrals to Child and Family Services Administration (CDSA) when they are following the recommendations of their treating medical professionals.

We have no doubt that this bill will directly lead to students in DCPS receiving instruction when they otherwise would not. Reforming and standardizing HHI is especially important for students with disabilities, who are more likely to need to access HHI at some point in their academic lives. In our experience, failure to timely provide HHI leads to disengagement with school, loss of academic and social-emotional process, and can be deeply damaging to the home/school relationship, destroying trust and making future collaborations much harder.

We are glad that, like other education legislation passed by the Council, this HHI bill applies to both the traditional public school and public charter school sectors. AJE knows that it is important to ensure equity and parity in the resources available and rights afforded to students across sectors. While some charter schools have been excellent in providing HHI to students, others were completely unaware of their obligation to do so, and at times referred families to DCPS if they request HHI.

This is what happened to a young man with Crohn's disease I worked work at AJE. His charter school suggested he enroll into DCPS so he could access HHI. Thankfully his mother called

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<sup>1</sup> In DCPS, the nonmedical staff making many of these decisions is located in Central Office, meaning that they are unfamiliar with the student and the school environment.

us before she completed the charter school withdrawal forms and we were able to quickly work with the charter school's attorney to help the school understand their obligation to provide HHI. Once they understand their obligations, they created a plan with the family for the student that was excellent and allowed him to maintain educational continuity while in treatment. Another charter school was able to provide HHI to support a student with sickle cell who needed intermittent HHI based on the nature of her sickle cell and its treatment.

This bill does nothing to limit the flexibility and creativity those charters displayed, while introducing timelines, accountability and due process into the system. This also brings DC into alignment with best practices and ensures that students experience less disruption in their education. The bill also clarifies and strengthens OSSE's role as a State Educational Agency (SEA) charged with monitoring Local Educational Agencies' (LEA) implementation of various local and federal education laws. It is entirely appropriate for OSSE, as the SEA, to set standards for HHI that must be complied with by the LEAs it monitors and provides oversight to.

This bill represents a huge improvement in how HHI is administered in DC and we are thankful for the leadership of the Children's Law Center and the Council on this issue. AJE concurs with the suggestions to strengthen the bill made by CLC, and support the additional protections for students and families in navigating the process. In particular, we support the use of Administrative Law Judges at the Office of Administrative Hearings to resolve disputes around HHI eligibility and increasing the minimum number of hours of instruction students receive under HHI.

### **Dyslexia and Other Reading Disabilities Screening and Prevention Pilot Program Act of 2019**

We are also thankful for Councilmember Todd's efforts to bring energy and attention to Dyslexia, and work of Decoding Dyslexia in bringing this legislation to the attention of the community.

AJE knows that many children in the District of Columbia are not receiving quality research based instruction and interventions in reading. We support this legislation with changes and applaud the intent of the legislation to better serve students with dyslexia<sup>2</sup>. The testimony of Decoding

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<sup>2</sup> AJE's testimony will not describe and define dyslexia for the Council, as others have done so in great detail. However, we do want to share a resource about Dyslexia that might be helpful to the Council as they consider this legislation and how best to ensure that students with dyslexia are well served at school, [Dyslexia and the Brain: What Does Current Research Tell Us?](#) Roxanne F. Hudson, Leslie High, and Stephanie Al Otaiba *available at <http://www.ldonline.org/article/14907/>*. AJE's testimony references research presented at LD Online at several points, LD Online is a project of WETA and is intended to help classroom teachers translate and apply research about

Dyslexia, CLC and others provide excellent information about the prevalence of dyslexia in the population, and the long term impact of not providing appropriate instruction to students with dyslexia early in their academic experience. We agree that dyslexia is unconnected to intelligence and should not be a barrier to academic achievement and a full and successful adulthood. AJE will not reiterate that testimony in our written comments, and instead will focus on the nexus of this legislation with the Individuals with Disabilities Education Improvement Act, better known as IDEA. IDEA is the federal civil rights law that creates and partially funds the right to a Free Appropriately Ambitious Public Education<sup>3</sup> (FAAPE) for students with disabilities residing in the District of Columbia. We are focusing on this because of the questions we heard from the dais at the hearing and the concerns expressed by the executive branch agencies, specifically OSSE and DCPS. This bill is not as duplicative of IDEA, or of existing research-based interventions. It is also in no way limiting the rights of children and families under IDEA<sup>4</sup>, and perhaps more importantly, does not in any way limit the District of Columbia's affirmative obligations under IDEA to identify, locate and evaluate all children in the jurisdiction who have a disability or who are suspected of having a disability – the so-called Child Find obligation.<sup>5</sup>

We support the intent behind this legislation and ask for an opportunity to work with the Council and other stakeholders to strengthen it. Specifically, the Dyslexia and Other Reading Disabilities Screening and Prevention Pilot Program Act of 2019 should be revised to:

- Cover all public schools in the District. As mentioned above regarding the proposed HHI legislation, it is important to ensure equity and parity in the resources available and the rights afforded to students across sectors. This bill should work to improve outcomes for students in all public schools in the

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learning disabilities to their classroom practice, as such it is a helpful tool for practical policy conversation.

<sup>3</sup> The right to a FAPE is found in IDEA at "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs *and* prepare them for further education, employment, and independent living" 20 U.S.C. 1400(d). In 2017 in *Endrew F.* The Supreme Court clarified in a unanimous decision that students were entitled to an appropriately ambitious education in light of their individual circumstances, hence AJE's use of FFAPE, instead of FAPE to reflect the opinion of the Court. *Endrew F. v. Douglas School District* 137 S. Ct. 988; 197 L. Ed. 2d 335 (2017)

<sup>4</sup> As referenced at the hearing, this is a link compiling data about other jurisdictions. <https://improvingliteracy.org/state-of-dyslexia>. 44 states have enacted some sort of dyslexia legislation and of those 44, 30 require universal screening.

<sup>5</sup> AJE's has a blog post that explains the District's obligations under IDEA's Child Find mandate and its relationship to recent class action litigation, *available here* <http://www.aje-dc.org/2019/10/10/d-l-v-district-of-columbia-how-does-this-ruling-impact-me-and-my-child/>

District of Columbia, not just in a select pilot school in DCPS. If this legislation passes as a pilot program, then we encourage the Council to make sure it is available as pilot to both charter LEAs and DCPS.

- Explicitly state that this is a mandate outside and apart from IDEA and is in no way a barrier to parents and professionals referring a child for evaluations under IDEA. At the hearing, Chairman Mendelson shared that OSSE felt that this legislation would negatively impact the rights families have under IDEA. This is flatly incorrect. The bill proposes improvements to general education instruction and interventions.<sup>6</sup> As the federal Office of Special Education Programs (OSEP) has made clear, inventions such as those proposed by this legislation cannot be a barrier to the identification, evaluation and determination of eligibility of students suspected of having a disability.<sup>7</sup>
- Ensure that students receive research-based high quality instruction in reading from the very beginning of their school experience and support the professional development teachers need to provide that high quality research based instruction.
- Add language to ensure that students with characteristics of dyslexia, regardless if they are otherwise achieving on grade level, receive research based and demonstrated to be effective interventions and instruction for students with dyslexia and related disorders.

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<sup>6</sup> Understanding Respond to Invention by Amanda Morin *available at* <https://www.understood.org/en/school-learning/special-services/rti/understanding-response-to-intervention> (this is a layman's introduction to RTI as a concept, and explains the role of differentiated instruction and universal screening within RTI.)

<sup>7</sup> Former OSEP Director Melody Musgrove, Ed.D. made this very clear in a memorandum to all SEAs, including OSSE, titled A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA) in January of 2011 *available at* <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf> (“*The use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 CFR §§300.304-300.311, to a child suspected of having a disability under 34 CFR §300.8.*” and “*It would be inconsistent with the evaluation provisions at 34 CFR §§300.301 through 300.111 for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a child has not participated in an RTI framework.*”)

- Remove the parental opt-out provision for both screening and intervention. This is not required for other general education screenings and interventions and places an unnecessary administrative burden on schools.

Ideally, a revised and strengthened form of this legislation will be passed as a fully funded, District-wide mandate, not an unfunded pilot program, and with the full support of the agencies who will be tasked with implementing it, specifically the District's LEAs and SEA, OSSE. A strengthened version of this legislation would fit within OSSE's recently renewed focus on special education as part of their revised strategic plan. AJE welcomes the chance to work the Council, DCPS and charter LEAs, OSSE, local experts like the Lab school and LindaMoodBell, parents and teachers on this legislation to make that happen.

This bill can be impactful for students with disabilities.<sup>8</sup> Early intervention and appropriate instruction in general education, global screening for dyslexia with research based interventions, coupled with appropriate referrals to IDEA under Child Find, can reduce referrals of older students to Special Education for reading and behavior problems, both of which are areas where the District is a national outlier and that the federal government has identified as an area of needed improvement for the District.

Legislation like this is not duplicative of IDEA, but complements it by ensuring that appropriate general education interventions are used to serve as many children as possible while not delaying eligibility under IDEA or access to specialized instruction under IDEA. Eligibility for special education under IDEA requires both the presence of a disability and the need for specialized instruction. In other words, there are many children who might have a disability (including dyslexia) who might never be eligible for special education as students with disabilities under IDEA because they do not need specialized instruction. Other witnesses discussed this at length, including State Board of Education President Ruth Wattenburg, so we will not reiterate their testimony, only highlight the importance of strong research based instruction and inventions in the general education classroom for all students, including students with disabilities. Research tells us that

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<sup>8</sup> [Recognition and Response: An Early Intervening System for Young Children At-Risk for Learning Disabilities](http://www.ldonline.org/article/Recognition_and_Response%3A_An_Early_Intervening_System_for_Young_Children_At-Risk_for_Learning_Disabilities) By: Mary Ruth Coleman, Virginia Bysse, and Jennifer Neitzel available at [http://www.ldonline.org/article/Recognition\\_and\\_Response%3A\\_An\\_Early\\_Intervening\\_System\\_for\\_Young\\_Children\\_At-Risk\\_for\\_Learning\\_Disabilities](http://www.ldonline.org/article/Recognition_and_Response%3A_An_Early_Intervening_System_for_Young_Children_At-Risk_for_Learning_Disabilities) ('This document describes what is known about an early intervening system being developed for young children (i.e., 3 to 5 year-olds), called Recognition and Response. The Recognition and Response system is an emerging early childhood practice designed to help parents and teachers respond to learning difficulties in young children who may be at risk for learning disabilities as early as possible, beginning at age 3 or 4, before they experience school failure and before they are referred for formal evaluation and possible placement in special education. Support for the concept of early intervening can be found in the reauthorization of the Individuals with Disabilities Education Act (IDEA) and in the Response to Intervention for school-age children.')

strong, research based instruction at the outset can mean that students with dyslexia and other learning or processing disabilities can be well served in the general education classroom, and can reduce the need for students to be referred to special education.<sup>9</sup> If properly implemented and funded, this bill can ensure that by the time students are considered for eligibility under IDEA, the school and family know that there is not an appropriate general education intervention and that the students truly does need specialized instruction.

AJE also wants to address something that emerged as a theme in the testimony at the hearing. Many parents said that their school required that their students be two years behind before special education services can be provided. This is an unfortunately common incorrect reading of the law in the District of Columbia and something we have also heard from parents. A plain reading of the law does not support an interpretation that requires children be two years behind, and neither does the guidance provided by OSEP, the federal agency tasked with interpreting the law. The federal definition of Specific Learning Disability or SLD (which is inclusive of dyslexia and related disorders) is found at 20 USC 1401 (30) and reads:

- (A) In general. The term specific learning disability means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations.
- (B) Disorders included. Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.
- (C) Disorders not included. Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of [cognitive disability], of emotional disturbance or of environmental, cultural or economic disadvantage.

Moreover, the Federal Regulations expressly forbid the use of a “Severe discrepancy between intellectual ability and achievement” as the sole criteria for establishing eligibility for special education as defined in the IDEA at 34 CFR 300.307 (a)(1). If the law and the regulations are not enough, OSEP has made it clear, on numerous occasions, that there is no requirement for a severe discrepancy between achievement and capacity to achieve for students to be found eligible under IDEA. For example -

With regard to your first question, under 34 CFR §300.307, a State must adopt, consistent with 34 CFR §300.309, criteria for determining whether a child has an

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<sup>9</sup> *Ibid.*

SLD as defined in 34 CFR §300.8(c)(10). In addition, the criteria adopted by the State: (1) must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has an SLD; (2) must permit the use of a process based on the child's response to scientific, research-based intervention; and (3) may permit the use of other alternative research-based procedures for determining whether a child has an SLD. Therefore, a State's criteria under 34 CFR §300.307 may permit, but must not require, the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has an SLD.<sup>10</sup>

As you can read, OSEP specifically prohibits such a “two year gap” at (1) and specifically allows student performance following RTI such as that contemplated by the proposed dyslexia legislation to be a basis for eligibility under IDEA, not a barrier, at (2) and (3). In the same letter, OSEP goes on to state:

In the Analysis of Comments and Changes in the 2006 final regulations implementing Part B of the IDEA, the Department, in responding to public comments, recognized that there will be some students who are gifted but also need special education and related services. See 71 Fed. Reg. 46540, 46647 (Aug. 14, 2006) (“Discrepancy models are not essential for identifying children with SLD who are gifted. However, the regulations clearly allow discrepancies in achievement domains, typical of children with SLD who are gifted, to be used to identify children with SLD.”). In responding to a public comment specifically addressing students who are gifted and who have difficulty with reading fluency, the Department stated as follows: “No assessment, in isolation, is sufficient to indicate that a child has an SLD.

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<sup>10</sup> From OSEP guidance Letter to Delisle, December 2013, available at <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/13-008520r-sc-delisle-twiceexceptional.pdf>.

See also *Yes, Virginia, there is a Severe Discrepancy Clause, but is it Too Much Ado About Something?* by Ron Dumont, Fairleigh Dickinson University; John Willis, Rivier College, and Guy McBride, The School Psychologist, Division of School Psychology, Volume 55, Number 1 [https://www.researchgate.net/profile/John\\_Willis3/publication/242103067\\_Yes\\_Virginia\\_there\\_is\\_a\\_Severe\\_Discrepancy\\_Clause\\_but\\_is\\_it\\_Too\\_Much\\_Ado\\_About\\_Something/links/00b7d53bc0346aecb1000000/Yes-Virginia-there-is-a-Severe-Discrepancy-Clause-but-is-it-Too-Much-Ado-About-Something.pdf](https://www.researchgate.net/profile/John_Willis3/publication/242103067_Yes_Virginia_there_is_a_Severe_Discrepancy_Clause_but_is_it_Too_Much_Ado_About_Something/links/00b7d53bc0346aecb1000000/Yes-Virginia-there-is-a-Severe-Discrepancy-Clause-but-is-it-Too-Much-Ado-About-Something.pdf) (“Contrary to popular opinion, Virginia, there is no federal requirement for any sort of mathematical measurement of “severe discrepancy,” there is no federal requirement to base any such comparison on test scores at all, and a severe discrepancy may, in fact, be completely irrelevant to the determination of a specific learning disability (SLD).”)

Including reading fluency in the list of areas to be considered when determining whether a child has an SLD makes it more likely that a child who is gifted and has an SLD would be identified.” 71 Fed. Reg. at 46652.

Clearly, OSEP did not intend for children to be “too smart” to receive specialized instruction, or “not far enough behind” to receive special education services. AJE encourages the Counsel to ask the agencies during oversight what authority they have for the “two years behind rule” so many parents testified about. In addition, attorney Margaret Kohn is submitting an extensive memorandum on this topic with supporting documentation which AJE encourages the Council to consider.

Lastly, legislation like the proposed Dyslexia bill is a cost efficient investment in the education of the District’s children – it will help us get reading instruction right the first time around, so our schools do not need to pour resources into remediation and intensive special education later, when research<sup>11</sup> tells us the probability of success is lower, and the cost much higher for the student, their family and their school.

AJE is happy to answer any questions you have about our written testimony or our remarks at hearing, and we appreciate the opportunity to testify and hope to work with the Council to improve the educational outcomes of all students in the District of Columbia.

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<sup>11</sup> Double Jeopardy How Third Grade Reading Skills and Poverty Influence High School Graduation available at <https://www.aecf.org/resources/double-jeopardy/> and Early Warning! Why Reading by the End of Their Grade Matters available at <https://www.ccf.ny.gov/files/9013/8262/2751/AECFReporReadingGrade3.pdf> both by the Annie E. Casey Foundation