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MEMORANDUM

From Margaret A. Kohn
To: Members of the D.C. City Council
RE: Dyslexia legislation and the source of the terms Severe Discrepancy and Two Years Behind

At the public hearing about proposed Dyslexia legislation conducted on October 21, 2019, the terms “ Severe Discrepancy” and “ Two years behind” were mentioned on numerous occasions when eligibility for special education under the category of Specific Learning Disability for a child diagnosed with Dyslexia was addressed. The Council Chair, Mr. Mendelson, asked for the origin of these terms. This memo is written to answer that question.

Specific Learning Disability (“SLD”) is the category that would most likely be used for eligibility for special education and related services for a child with Dyslexia, unless the child has other co-existing disabilities.. If the student has multiple areas of need, such as Dyslexia combined with Attention problems, or depression and anxiety, the team is supposed to determine which disability is primary and make the eligibility determination based upon the criteria for that category. The child will be eligible for what ever goals, accommodations, and related services necessary to address the secondary conditions, e.g. ADHD, Depression, Anxiety, as well as the issues in the IDEA category used to find the child eligible under the IDEA.

The federal definition of SLD is found in 20 USCA 1401 (30):

“(A) In general

The term specific learning disability means a disorder in 1 or more of the basic psychological processes involved in understand 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.”

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. 34 CFR 300.307 (a)(1). Each state must permit the use of a process based on the child’s response to scientific research-based intervention and “may permit the use of other alternative research-based procedures (not further specified) for determining eligibility as a child with SLD. See 34 CFR 300.309.

The definition of SLD in the regulations of the District of Columbia is:

“Specific Learning Disability (SLD)–a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. SLD does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, emotional disturbance, or environmental, cultural or economic disadvantage.”

5-E DCMR 30, Definitions Section 3001

The definition of SLD is only the starting point for consideration of the SLD category for IDEA eligibility. Additional conditions are superimposed for this category, both in the federal regulations and in DC regulations. For eligibility determinations, the DC regulations are:

3006.4 The IEP team shall determine that a child has an SLD if:

“(a) a disorder is manifested in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

(b) Disorder includes such conditions as:

(1) perceptual disabilities;

(2) brain injury;

(3) minimal brain dysfunction;

(4)dyslexia¹ and;

(5)developmental aphasia.

(c)Disorder does not include a learning problem that is primarily the result of:

1)a visual, hearing or motor disability;

(2)mental retardation;

(3)emotional disturbance; or

(4)environmental, cultural or economic disadvantage.

(d)In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.”²

In addition to standard requirements of a written report, for eligibility under SLD the following additional requirements found in **5E DCMR 3006.5 (g) apply:**

“(g)if the child was suspected of having SLD, in addition to (a)-(f):

(1)a statement of whether the child has SLD;

(2)the basis for making the determination;

(3)the relevant behaviors noted during the observation of the child;

(4)the relationship of the behaviors to the child's educational performance;

(5)educationally relevant medical findings, if any;

(6)a statement whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; (emphasis supplied)

(7)the determination of the IEP team concerning the effects of environmental, economic, or

¹ You will note that Dyslexia is one of the conditions that could qualify a child as eligible for services in DC as a child with SLD. However, from the earliest versions of the IDEA to the present, the term Dyslexia has not been prominent. There is no definition for Dyslexia in the regulations. Neither the federal nor the DC regulations for implementation of the IDEA contain a definition of Dyslexia.

² This refers to what schools call RTI, Response to Intervention, which is typically implemented for an hour or two a week to children in small groups, using a program purchased from an educational program publisher that has been proven by scientific research to be effective for ameliorating the impact of the disability.

cultural disadvantage; and

(8)the written certification of each IEP team member as to whether the written report reflects the member's conclusions. If the written report does not reflect a member's conclusion, the team member shall submit a separate statement presenting the team member's conclusion. This separate statement will be included as part of the evaluation report."

The Psychology Handbook for psychologists working in DCPS provides extensive guidance to individuals serving as school and clinical psychologists. References to a significant discrepancy and a severe discrepancy, and a 30 point or two standard deviations difference between IQ and achievement, are sprinkled around in the Handbook section about evaluations of children who might have a Specific Learning Disability. Such references also appear in the section regarding the periodic re-evaluation of children who were previously determined to qualify for special education as a child with a Specific Learning Disability. I have attached excerpts from the official DCPS Psychology Handbook Version 4, 2011 (which is a combination of Version 3 and some Version 4 updates). I do not have the current version but I am confident members of the City Council can obtain the current version from the DCPS Division of Special Education. See Handbook Excerpts pp. 65-66, 68-69, 73-76, and 78. Whether or not DCPS is adhering to this standard now, its own documents reveal the source of the widespread belief that the child must be far more than just somewhat behind their peers in order to qualify for services under the SLD category.

I have attended hundreds of IEP meetings over the last 30 year and many DCPS IEP teams persist in refusing to find a child eligible for special education if there is not a severe discrepancy between the cognitive scores and the achievement scores in the area of deficit (e.g. reading, math, writing). This frequently presents a barrier for the eligibility for special education prior to second or third grade, because unless the child has other problems, e.g. attention deficits, behavior or emotional issues) it is exceedingly difficult to establish a severe discrepancy. If the child has an average cognitive capacity at the second month of Second Grade, she would have to have the equivalent to Kindergarten second month reading skills to have a two year discrepancy in Grade Equivalent ("GE") terms. If the child had an IQ Standard Score of 100, her reading achievement standard score would have to be two standard deviations lower, or a Standard Score no higher than 70. Moreover, the behaviors and emotional issues that develop as a result of the frustrations and dismay the child with dyslexia experiences without specialized curriculum and instruction with a strong emphasis on hands- on, experiential learning environment, often do not surface until 3rd or 4th grade. Early identification is sacrificed, often with major negative consequences for the student.

Thus, some children with dyslexia are found eligible under the Other Health Impaired category because they have been diagnosed with ADHD and their attention challenges interfere with their learning. Because the school does not look for dyslexia and/or the child might not qualify for services under SLD, but does qualify under Other Health Impaired.. Or, if the social emotional issues have grown larger and are more frequent in school, the child might be classified

as eligible under the ED category.

If the factors warranting eligibility are so intertwined that it is impossible to determine which area is primary, the child could be eligible as Multi-Disabled. In the District of Columbia there is yet another, in my view illegal, requirement for MD eligibility. That requirement is supposed to be removed from the regulations we have been awaiting from OSSE for well over a year, according to senior OSSE staff developing those revisions. Right now the child cannot be coded SLD and ED but could be classified as MD if the two eligibility categories are SLD and ADHD. (Yes, the DC system is irrational.)

Respectfully,

/s/Margaret A. Kohn

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