



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

November 15, 2021

Justin Porter  
Executive Director, Special Education Programs  
Texas Education Agency  
1701 N. Congress Ave.  
Austin, Texas 78701

Dear Dr. Porter:

This letter is in response to your October 4, 2021 electronic mail (email) correspondence asking for guidance as to whether the Standard Protocol Dyslexia Instruction as described in the 2018 version (most current) of the Texas Dyslexia Handbook could be considered to be specially designed instruction under Part B of the Individuals with Disabilities Education Act (IDEA), and whether, “[i]n determining the second prong of eligibility for special education, . . . the need for Standard Protocol Dyslexia Instruction alone, and without modification or alteration, [could] cause a student identified with dyslexia through a Full and Individual Initial Evaluation (FIIE) to be eligible for special education services?” Both questions appear to hinge on whether the type of instruction described in the Dyslexia Handbook could meet the definition of special education.

In determining initial eligibility under IDEA, the local educational agency (LEA) must conduct a full evaluation consistent with 34 C.F.R. §§ 300.301 through 300.311 to determine whether that child meets the IDEA’s criteria for a “child with a disability,” including a specific learning disability or any of the other disabilities categories listed in 34 C.F.R. § 300.8, and whether, because of that disability, the child needs special education and related services in order to access and make progress in the general curriculum. Under IDEA Section 614(b)(4)(A), a group of qualified professionals and the parent of the child determine whether the child is a child with a disability under the IDEA and the educational needs of the child. A child with Dyslexia can be eligible for special education and related services under the IDEA. See [OSEP’s Dear Colleague Letter \(October 23, 2015\)](#).

Under IDEA Section 601(29), “special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. Although not specifically defined in the statute, the IDEA’s implementing regulation, at 34 C.F.R. § 300.39(b)(3), defines “specially designed instruction” to mean:

[A]dapted, as appropriate to the needs of an eligible child under Part B of the IDEA, the content, methodology, or delivery of instruction: (1) to address the unique needs of the child that result from the child’s disability; and (2) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction that apply to all children.

OSEP has noted in previous guidance, that instruction that is considered a “best teaching practice” or “part of the district’s regular education program” is not precluded from meeting the

definition of “special education” and being included in a child’s individualized education program (IEP). See [OSEP’s Letter to Chambers \(May 9, 2012\)](#).

Once the child has been determined eligible under IDEA, the LEA is required to develop an IEP for the child, consistent with the requirements in 34 C.F.R. §§ 300.320 through 300.324. The IEP must include, among other things, a statement of the special education and related services and supplementary aids and services the child will receive, as well as the program modifications or supports for school personnel that will be provided, to enable the child to advance appropriately toward attaining their annual goals and to be involved in and make progress in the general education curriculum. 34 C.F.R. §300.320(a)(4). The LEA “must provide a child with a disability specially designed instruction that addresses the unique needs of the child that result from the child’s disability and ensures access by the child to the general curriculum, even if that type of instruction is being provided to other children, with or without disabilities, in the child’s classroom, grade, or building.” *Id.*

We note that, in the Texas Dyslexia Handbook, at page 22, the Dyslexia “standard protocol instruction” appears to be excluded from the State’s interpretation of IDEA’s definition of specially designed instruction, primarily because the State views the former as “programmatic instruction delivered to a group of students” and that to be eligible under the IDEA, a child must require a “more individualized program than what is offered through [the] standard protocol.” In the Department’s view, neither the programmatic nature of such instruction, nor the fact that it is delivered to a group, are sufficient bases for excluding the “standard protocol instruction” from being considered under the IDEA’s definition of specially designed instruction. The IDEA does not prohibit special education and related services from being delivered in a group setting, including a group that includes nondisabled peers. See IDEA Section 613(a)(4) (Allowing for the costs of special education even in instances where one or more nondisabled children also receive educational benefits). In the Department’s view, many types of programmatic group instruction can “address the unique needs of the child that result from the child’s disability” and “ensure access of the child to the general curriculum.”

In fact, some of the descriptions of “standard protocol instruction” in the Texas Dyslexia Handbook suggest that it is intended to address each child’s unique needs in reading resulting from the child’s Dyslexia. On pages 39-40, it states that, “...differentiation that does not compromise the fidelity of a program may be necessary to address different learning styles and ability levels and to promote progress among students receiving dyslexia instruction.” Likewise, on page 42, the Handbook quotes the following research-based guidance, “[t]he teacher must be adept at prescriptive or individualized teaching. The teaching plan is based on careful and [continual] assessment of the individual’s needs...”’” Absent further clarification, the Department believes that these statements could easily describe specialized instruction.

With regard to your question about the second prong of IDEA eligibility, as noted in the *Letter to Chambers*, in the context of developing the IEP, the IEP Team is authorized to determine the nature and scope of the specially designed instruction that the child needs, which could include instruction that is a best practice or part of the regular education program. Similarly, the Department believes that the group of qualified professionals and the child’s parent determining eligibility under IDEA Section 614(b)(4) are authorized to decide that the child’s special education needs include the “standard protocol instruction” described in the Dyslexia Handbook.

OSEP appreciates your State's continuing efforts to improve educational outcomes for students with disabilities and in ensuring that FAPE is made available to all children with disabilities residing in the State's mandated age ranges (ages 3 through 21), as required by IDEA Section 612(a)(1) and its implementing regulation at 34 C.F.R. § 300.101. We also look forward to your continued reporting on these efforts and progress as outlined in OSEP's October 1, 2021 Specific Conditions.

I hope you find this information helpful. If you have additional questions or wish to request technical assistance as the State moves forward with implementing the required corrective actions related to its child find responsibilities, please do not hesitate to contact Jennifer Finch at 202-245-6610 or by email at [Jennifer.Finch@ed.gov](mailto:Jennifer.Finch@ed.gov).

Sincerely,

A handwritten signature in cursive script that reads "David Cantrell".

David Cantrell, Ph.D.

Acting Director

Office of Special Education Programs