February 20, 2019

Donna Bahorich
Chair, Texas State Board of Education
William B. Travis State Building
1701 North Congress Ave
Austin, TX 78701

RE: Texas Dyslexia Handbook

Dear Board Member Bahorich:

I am writing on behalf of the National Center for Learning Disabilities (NCLD), an advocacy organization focused on improving outcomes for the 1 in 5 children with learning and attention issues, to express my concern over the new Dyslexia Handbook (Handbook) which the Texas State Board of Education (SBOE) adopted in November 2018.

I understand that the Texas Education Code § 38.003 grants the SBOE the authority to adopt rules and standards for screening, testing, and serving children with dyslexia, and the SBOE updated those policies in 2018 within the new Handbook. We appreciate Texas’s commitment to universal screening for children in kindergarten and, if necessary, first-grade, and to increase teacher professional development so educators can better identify and serve children with dyslexia or other related disorders; however, we are deeply concerned by the referral and evaluation process for dyslexia which violates the procedures and intent of the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act (Section 504). The policy also undercuts the federal rights afforded to parents and children under IDEA and Section 504.

I urge you to revise the handbook to ensure that Texas adheres to the central provisions of the IDEA, including Child Find and evaluation procedures for all children suspected to have a disability. I believe that without such changes, TEA and local educational agencies (LEAs) within the state are in violation of federal law and cannot identify and meaningfully serve children with learning disabilities.

Our primary concerns with the Handbook are as follows:

1. The referral and evaluation process for dyslexia and related disorders violates Child Find and predetermines educational need and services/accommodations prior to a comprehensive evaluation under IDEA.

The Handbook creates a process for the referral and evaluation that is separate from the provisions and rights under IDEA. Under the new policy, public schools must collect screening data, including data from current and previous screening instruments, formal and informal classroom reading assignments, teacher observation, etc. (Page 15). A Data-Driven Meeting of Knowledgeable Persons (Data-Driven team) reviews the information to determine if the data does or not lead to a suspicion of dyslexia or a related disorder and if there is a need for special education services under IDEA. If the Data-Driven team determines that a child is suspected to have dyslexia but is not in need for special education services,
the school moves forward to create a 504 plan. If the Data-Driven team determines that a child is suspected to have dyslexia and is in need for special education services, the school moves forward with a dyslexia evaluation for special education. At this time, the LEA begins the referral and evaluation guidelines required by IDEA.

This policy contradicts Child Find which requires an LEA to conduct an evaluation governed by the provisions and rights under IDEA for any child suspected to have a disability, regardless of the severity. It preempts the evaluation procedures under IDEA by requiring the Data-Driven team to predetermine educational need and label a child as needing special education services prior to completing a comprehensive evaluation. Specifically, IDEA states that following a “full and individual initial evaluation,” (20 U.S.C. § 614(a)(1)(A)) “the determination of whether the child is a child with a disability as defined in section 602 (3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child...” (20 U.S.C. § 614(a)(4)(A)).

Moreover, IDEA charges the team that is evaluating the child to assess the child’s need and assign a disability category only once the school has collected all necessary data and has discussed the results with relevant education professionals and the parent. The Handbook, however, describes a process by which the Data-Driven team pre-determines the disability label prior to the full evaluation by recommending a “dyslexia evaluation” for special education services as opposed to a special education evaluation.

2. The referral and evaluation process limits parent involvement and due process rights.

As indicated above, the Data-Driven team examines important data to make determinations of educational need that will significantly influence the child’s education experience. However, the Handbook does not require that that team include a parent in that decision making process nor does it require that an LEA inform parents of their legal rights under IDEA until after the Data-Driven team determines that the child would benefit from special education. Figure 3.8 on page 35 illustrates the procedure, including a box with “Obtain parental consent” after the Data-Driven team determines if a child should receive an evaluation for a 504 plan or for special education services. This contradictory to IDEA, which requires that an LEA inform a parent as soon as it suspects a child may have a disability and obtain their consent to review data and make determinations about education placements. According to the referral and evaluation process in the Handbook, a parent may not have the opportunity to participate in the process until an LEA has already made significant decisions about their child’s education.

To be clear, NCLD does not believe that changing the Handbook to require a parent at the Data-Driven team is sufficient to align this policy to the federal requirements. The significant issue described above in section 1 must also be addressed.

3. Children who are suspected to have dyslexia will first be provided with a 504 plan and will receive “standard instructional protocol for dyslexia,” which is a violation of Section 504 and its implementing regulations.

When children are suspected of having dyslexia but are not deemed to be in need of special education services, the Handbook permits the Data-Driven team to place children on a track to receive a 504 plan. The school is directed to administer “the Standard Protocol Dyslexia Instruction” and to measure whether a child’s academic performance improves. While the Handbook notes that the school should
differentiate this instruction and and consider including other accommodations in the 504 plan if the child would benefit, the policy directs LEAs to administer the same services to all students with dyslexia on a 504 plan (Page 39-40). This is in violation of the U.S. Department of Education regulations that implement Section 504 of the Rehabilitation Act. Much like IDEA, Section 504 requires schools to provide a free, appropriate public education. Per § 34 CFR 104.33, an appropriate education includes “the provision of regular or special education and related aids and services that are designed to meet individual educational needs of handicapped persons....” By nature, standard dyslexia protocol is not tailored to meet the individual needs of every child with dyslexia, as every child with dyslexia is unique. If a 504 plan is determined to be appropriate for a child, the team should then determine which type of instruction or additional supports are required to meet the needs of that individual child. Simply administering “standard protocol” to every child with dyslexia is in violation of Section 504.

NCLD recommends that SBOE rewrite the Handbook to ensure that if an LEA suspects a child to have dyslexia or a related disability based on screening data, the LEA will conduct a comprehensive evaluation that considers the full spectrum of a child’s need and actively engages a parent before making determinations about educational need and services/accommodations under IDEA and Section 504.

I would welcome the opportunity to work with you and the SBOE to revise the Handbook to ensure that the policies adhere to IDEA and Section 504 and improve outcomes for struggling learners in Texas.

Sincerely,

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