Case No. 19-51046

IN THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

WILLIAM V., As Parent/Guardian/ Next Friend of W.V., A minor individual with a disability; JENNY V., As Parent/Guardian/ Next Friend of W.V., A minor individual with a disability,
Plaintiffs – Appellants

v.

COPPERAS COVE INDEPENDENT SCHOOL DISTRICT,
Defendant – Appellee

Appeal from the United States District Court,
Western District of Texas, Waco Division, No. 6:17-cv-00201-ADA-JCM

BRIEF OF AMICI CURIAE TEXAS ASSOCIATION OF SCHOOL BOARDS LEGAL ASSISTANCE FUND, NATIONAL SCHOOL BOARDS ASSOCIATION, LOUISIANA SCHOOL BOARDS ASSOCIATION, and MISSISSIPPI SCHOOL BOARDS ASSOCIATION IN SUPPORT OF APPELLEE COPPERAS COVE INDEPENDENT SCHOOL DISTRICT

Respectfully submitted,

/s/*Holly B. Wardell*

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SUPPLEMENTAL CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Texas Association of School Boards Legal Assistance Fund (including the Texas Association of School Boards, Texas Association of School Administrators, and the Texas Council of School Attorneys)

2. National School Boards Association, 1680 Duke Street, Alexandria, VA 22314

3. Louisiana School Boards Association, 620 Florida Street, Suite 100, Baton Rouge, LA 70801

4. Mississippi School Boards Association, 380 Zurich Drive, Ridgeland, MS 39157

5. Holly B. Wardell, Eichelbaum, Wardell, Hansen, Powell, and Muñoz, 4201 W. Parmer Lane, Suite A-100, Austin, Texas 78727 – Attorney for Amici Curiae

/s/ *Holly B. Wardell*
Holly B. Wardell
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TO THE HONORABLE JUDGES OF THE FIFTH CIRCUIT COURT OF APPEALS:

STATEMENT OF INTEREST OF AMICI CURIAE

Nearly 800 public school districts in Texas, including Copperas Cove ISD (CCISD), are members of the Texas Association of School Boards Legal Assistance

Fund (TASB LAF), which advocates the positions of local school districts in litigation with potential state-wide impact. The TASB LAF is governed by members from the Texas Association of School Boards, Inc. (TASB), the Texas Association of School Administrators (TASA), and the Texas Council of School Attorneys (CSA). TASB is a Texas non-profit corporation whose members are approximately 1,030 public school boards who are responsible for the governance of Texas public schools. TASA represents school superintendents and other administrators responsible for implementing the education policies adopted by their local boards of trustees, the Texas Education Agency, the State Board of Education, and for following state and federal law. CSA is composed of attorneys who represent more than 90 percent of school districts of Texas.

The Louisiana School Boards Association (LSBA) is a non-profit entity created in 1938 with the purpose of providing leadership, service, and support for the 69 elected school boards across the state. All Louisiana public school boards serve children with disabilities under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et. seq. (2019); 34 C.F.R. Part 300.

The Mississippi School Boards Association is a voluntary, nonprofit organization that represents members of the school boards of all 142 public school districts in Mississippi, all of which serve children with disabilities under the IDEA. The mission of MSBA is to support, promote, and strengthen the work of school

boards and school districts throughout Mississippi.

The National School Boards Association (NSBA) is a non-profit organization representing state associations of school boards and the Board of Education of the U.S. Virgin Islands. Through its member state associations, NSBA represents over 90,000 school board members who govern approximately 13,600 school districts serving nearly 50 million public school students, including an estimated 6.9 million students with disabilities. NSBA's mission is to promote equity and excellence in public education for all students through school board leadership. NSBA regularly represents its members' interests before Congress and federal courts and has participated as amicus curiae in a number of cases involving issues concerning the interpretation and implementation of the IDEA.

These organizations are concerned about the implications of the district court's decision to equate the Texas Education Code's definition of "dyslexia" with the federal definition of a "Specific Learning Disability" (SLD) under the IDEA. *Amici* offer this Court the unique perspective of educators in Texas and the Fifth Circuit who must implement both a comprehensive dyslexia program in accordance with state requirements and special education services under the IDEA. The district court conflated standards from these two systems, resulting in a decision that will significantly disrupt the well-established system of general education dyslexia interventions in Texas, which benefits almost 200,000 students. School districts

throughout the Fifth Circuit will be forced to funnel thousands of students who struggle with reading and who display characteristics of dyslexia into the special education system when they do not need to be in special education. Not only is this likely to result in a delay of early intervention services, it will place a heavy burden on school districts that Congress did not intend when it enacted the IDEA.

Additionally, *amici* have an interest in opposing the argument asserted by the Council of Parent Attorneys and Advocates, Inc. (COPAA) in its amicus brief that the Fifth Circuit should adopt a standard that is broader than that required by the Supreme Court in *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017) for determining whether a student with a disability has been provided a free appropriate public education (FAPE) under the IDEA.

TASB LAF is the source of any fee paid for preparing this brief. No attorney for any party has authored this brief in whole or in part. No person other than *amici* and their counsel have made any monetary contribution to its preparation or submission. Both parties consent to this filing.

FACTUAL BACKGROUND

Amici adopt fully by reference the Statement of the Facts in the Brief for Appellee at pp. 3-21.

SUMMARY OF ARGUMENT

The district court misapplied the procedural requirements of the Individuals with Disabilities Education Act (IDEA) by deciding that a school district should have found a student eligible for special education services due to a diagnosis of "dyslexia" and receipt of interventions provided pursuant to Texas state law. While dyslexia is an example of the types of conditions that can lead to eligibility under the IDEA's "Specific Learning Disability" category, a "dyslexia" label should not automatically lead to eligibility for special education and related services under the IDEA's complex and collaborative framework. Decisions about student eligibility under IDEA are educational in nature and should be made by educators in close cooperation with the student's family. This decision re-writes the IDEA eligibility criteria and, if upheld, could require school districts in the Fifth Circuit to find many more students eligible under IDEA.

Like many other states, Texas has a separate law providing dyslexia intervention to students regardless of their eligibility for special education under the IDEA. The district court confused Texas' definition of "dyslexia" with the federal IDEA definition of a "Specific Learning Disability" (SLD). The state definition is broader and allows students who do not qualify for special education as SLD to access the state's general education dyslexia program, which is not considered specially designed instruction (i.e., special education).

Students with dyslexia have varying educational needs. Some may need special education and related services under IDEA; some may not; and some may need them only for a period of time. The district court's decision will force school districts in the Fifth Circuit to take a one-size-fits-all approach to students with dyslexia, funneling thousands into the special education system when they do not need to be in special education.

Additionally, the Fifth Circuit's existing standard for determining the appropriateness of an IEP, as articulated in *Cypress-Fairbanks Independent School District v. Michael F*., 118 F.3d, 245, 253 (5th Cir. 1997), meets and works in tandem with *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017). This Court has reaffirmed the validity of the *Michael F*. factors on more than one occasion since the Supreme Court's decision in *Endrew F*. This case presents no unique set of facts warranting an expansion of the *Michael F*. factors.

ARGUMENT

I. The District Court erred when it determined that a diagnosis of "dyslexia" equates to a "Specific Learning Disability" under the IDEA.

The district court erred when it determined that a diagnosis of "dyslexia" equates to a "Specific Learning Disability" (SLD) under the IDEA. *Amici* and the thousands of Fifth Circuit educators they represent have a special interest in this additional basis for affirmance and in correcting the district court's error. A student is not *ipso facto* a student with SLD under the IDEA simply because of a diagnosis of "dyslexia."

Contrary to the district court's decision here, the mere existence of a particular disability does not and should not result in an automatic determination that the student is a "child with a disability" under IDEA. Such eligibility determinations are complex educational decisions that the IDEA gives to IEP/Multi-disciplinary teams through a collaborative process involving educators, evaluators, and the family. Students with dyslexia who are not found eligible under IDEA are almost always served under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, 34 C.F.R. Part 104 and the state guidelines for dyslexia. If this court affirms the district court's misapplication of the IDEA eligibility criteria, the ruling could require school districts in the Fifth Circuit to find many more students eligible under IDEA.

A. A "dyslexia" label is deceivingly simple and not interchangeable with "Specific Learning Disability" under IDEA.

The district court ruled that CCISD violated the procedural protections of the IDEA when it concluded that W.V. did not have an SLD despite having a diagnosis of "dyslexia," finding that such a diagnosis is tantamount to a determination that the student has a "Specific Learning Disability" under the IDEA without the need for any further assessment. ROA 5071. That is not accurate and reflects a lack of understanding by the district court of how educators use the term "dyslexia" in public schools in Texas and across the country. While some educational researchers use the term "dyslexia" interchangeably with "Specific Learning Disability," Texas and a growing number of other states treat "dyslexia" separately from SLD. Jo Worthy, et

al., *A Critical Analysis of Dyslexia Legislation in Three States*, 66 LITERACY RESEARCH: THEORY, METHOD, AND PRACTICE 406, 411 (2017) (Attached as Exhibit A).

Courts are not expected to be experts on educational matters, which is why this Court has long noted "that Congress left the choice of educational policies and methods where it properly belongs—in the hands of state and local school officials." *Daniel R.R. v. State Bd. of Educ*., 874 F.2d 1036, 1048 (5th Cir. 1989). Likewise, it is well established that the IDEA does not provide an invitation to courts to substitute their own notions of sound educational policy for those of the school authorities they review. *Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 206, 102 S. Ct. 3034, 3051 (1982). The district court's unfamiliarity with the subtleties of the use of the term "dyslexia" in the field of education resulted in a conclusion that it is synonymous with "Specific Learning Disability."

The district court presumed that "dyslexia" must always be considered a "Specific Learning Disability," because "dyslexia" is explicitly listed as one the examples of types of "Specific Learning Disability." *See* 20 U.S.C. § 1401(30)(B). However, "dyslexia" is not a defined term in the IDEA. What the court did not understand is that the term "dyslexia" means different things to different people, even within professional educational circles. What constitutes dyslexia, how to characterize it, and how to diagnose it are all topics that have been hotly debated among educators and educational researchers for decades. In fact, some educational researchers have

concluded that the term "dyslexia" has become "so vague that it 'has lost any real value for educators.'" Jo Worthy, et al., *A Critical Analysis of Dyslexia Legislation in Three States*, 66 LITERACY RESEARCH: THEORY, METHOD, AND PRACTICE 406, P. 407 (2017)(citing Elliott, J. & Grigorenko, E., *The Dyslexia Debate*, CAMBRIDGE UNIV. PRESS (2014)).

There are "many contradictions, inconsistencies, and questions, and few areas of consensus about dyslexia." *Id*. at 408. *See also* GINGER STOKER, et al., DYSLEXIA AND RELATED DISORDERS REPORTING STUDY, p. 6 (2019), https://tea.texas.gov/sites/default/files/DyslexiaIDReportStudyReport-508Compliant.pdf ("Likely tied to the historical debate over its definition, there has been uncertainty as to how to diagnose and subsequently serve children who have symptoms consistent with dyslexia."). There are "no universally employed measures or procedures for identifying dyslexia." Worthy at 408.

> Dyslexia is not a disease like measles, which a person can be clearly diagnosed as either having or not having. There is a gradient from good through average to very poor reading, and it is largely arbitrary where one draws the line and says that children below this line are candidates for the label "dyslexic."

Id.

The American Psychiatric Association (APA) no longer lists "dyslexia" in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) as a separate category of disorder, because its Neurodevelopmental Work Group concluded that the many

definitions of dyslexia meant those terms would not be useful as disorder names or in the diagnostic criteria. Worthy at 407.

Students with learning disorders like dyslexia function in school very differently from one another. Some may need individualized services like those available under IDEA; some may not; and some may need them only for a period of time. It is possible for a student's educational needs to change over time, especially when a school has successfully intervened early to provide research-based support for that student to enable him to progress.

B. Several states have adopted special "dyslexia" laws outside of or in addition to IDEA requirements.

Despite differences of opinion among professionals about what constitutes "dyslexia," and the wide array of educational needs of students with it, there is unity on the fact that many children in the United States struggle to learn to read and that early intervention usually is quite successful. Currently, thirty-eight states have passed specific laws to address dyslexia instruction in their respective states. Stoker at 9; Worthy at 407. All of these laws were passed after the enactment of the Education for All Handicapped Children Act in 1975, the predecessor to the IDEA, which has always included "dyslexia" as an example of an SLD. Most of the state laws were passed after 2010 and several years after Congress last comprehensively reviewed the IDEA in 2004. Worthy at 407. As a matter of educational policy, many states have perceived a need to address the struggles of students with "dyslexia" outside of or in addition to

the IDEA special education framework and require or strongly encourage schools to address it through statewide guidelines or regulations. Most require or contemplate universal screening, staff training, specific research-based interventions, and state educational agency-produced guidelines for school districts. *See* Education Commission of the States, *Response to Information Request* (Sept. 7, 2018), https://www.ecs.org/wp-content/uploads/State_Inf_Request_State-Dyslexia_Policy.pdf.

In Mississippi, school districts must screen students for dyslexia and must make an initial eligibility determination under IDEA. If the student is ineligible for special education services, then the school district "may decide if a 504 Plan is warranted." Mississippi Department of Education, *Dyslexia Frequently Asked Questions*, https://www.mdek12.org/sites/default/files/Offices/MDE/OAE/OEER/Dyslexia/dyslexiafaq_general2017.pdf.

In Louisiana, students who may have dyslexia are referred to a screening committee first, and then to a Section 504 evaluation team or a special education evaluation team as appropriate. Department of Education: Louisiana Believes, *A Guide to Dyslexia in Louisiana*, https://www.louisianabelieves.com/docs/default-source/academics/a-guide-to-dyslexia-in-louisiana.pdf?sfvrsn=4. Not all students identified as dyslexic are served under IDEA in any state in the Fifth Circuit.

C. Texas passed the nation's first "dyslexia" law thirty-five years ago and created a general education system for the treatment of dyslexia that exists independently from the special education process of the IDEA.

Texas passed the nation's first "dyslexia" law in 1985.[1] Worthy at 407. Although IDEA already listed "dyslexia" as an example of SLD, Texas passed a separate law to address dyslexia because citizens of the state recognized a need for focused instruction for struggling readers who did not meet the IDEA's elaborate definition of SLD and, therefore, did not qualify for special education as explained *infra*. *See* HOUSE STUDY GROUP, H.B. 157 BILL ANALYSIS H.85-157 (Tex. 1985) https://lrl.texas.gov/scanned/hrobillanalyses/69-0/HB157.pdf. They also recognized that many dyslexic students did not need special education services as defined in the IDEA in order to improve their reading skills. The Texas House Study Group's bill analysis specifically cautioned against students with dyslexia being "shunted into special-education classes where they do not belong." *Id*. at 2.

For Texas public schools, the requirements for dyslexia services are codified in Chapter 38 Health and Safety of the Texas Education Code, separate and apart from special education requirements, which are found in Chapter 29 Subchapter A. Special Education Program of the Texas Education Code. This separation was deliberate and

[1] Since 1985, Texas has passed other dyslexia-related legislation on a range of issues (e.g., 1991 law requiring testing accommodations for students labeled with dyslexia; 1997 law addressing early identification). Worthy at 411. *See also* Stoker at 10 for a comprehensive history of dyslexia related laws in Texas.

intended to serve students with "dyslexia" who do not meet the more intricate and complex definition of a "Specific Learning Disability" under the IDEA.

When first enacting its state dyslexia law, Texas attempted to operationalize a definition of "dyslexia." Texas' statutory definition of "dyslexia" has remained the same for thirty-five years. Under Texas law, "dyslexia" simply "means a disorder of constitutional origin manifested by a *difficulty in learning to read*, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity." Tex. Educ. Code § 38.003(d)(1)(Emphasis supplied). Plainly and simply, Texas considers "dyslexic" any student for whom learning to read, write, and spell is difficult, after being provided core reading instruction and taking into consideration whether the student presents with average intelligence and has not been deprived of educational opportunities due to socioeconomic status. Texas' definition was intentionally crafted to be more generous than the IDEA's definition of SLD and to reach more students.

D. Students in Texas do not have to be eligible for special education to be considered dyslexic or to access dyslexia intervention services.

Texas school districts must screen or test all students for "dyslexia" starting in kindergarten. Tex. Educ. Code § 38.003(a). Procedures for screening and testing students for "dyslexia" must be in compliance with procedures adopted by the State Board of Education. Tex. Educ. Code § 38.003(b). Those procedures are found in *The Dyslexia Handbook*, incorporated by reference into state law at 19 Texas Administrative Code § 74.28(c) – Figure. The *Dyslexia Handbook* states that

evaluation for "dyslexia" will be conducted one of two ways—under the procedures for Section 504 (general education) or the IDEA (special education). TEXAS EDUCATION AGENCY, THE DYSLEXIA HANDBOOK, PROCEDURES CONCERNING DYSLEXIA AND RELATED DISORDERS 2018 UPDATE, p. 25 (Nov. 2018). *The Dyslexia Handbook* explicitly addresses whether a school district must refer every student suspected of having dyslexia for a full individual evaluation (FIE) under the IDEA.

> **Must a school district refer every student suspected of having dyslexia for a full individual and initial evaluation (FIE) under IDEA?**
>
> No. As the U.S. Department of Education Office of Special Education Programs (OSEP) stated in its January 11, 2018 letter to the Texas Education Agency, "It is certainly permissible to provide services to children with dyslexia under Section 504."

Dyslexia Handbook at 77. *See also* Department of Education: Louisiana Believes, *A Guide to Dyslexia in Louisiana*, https://www.louisianabelieves.com/docs/default-source/academics/a-guide-to-dyslexia-in-louisiana.pdf?sfvrsn=4. ("What educational services are available if a student has dyslexia and is not an IDEA eligible student? Students identified as having characteristics of dyslexia but not characteristics of an IDEA disability are entitled to remediation in an educational program that meets requirements of the Louisiana Dyslexia Law."); Mississippi Department of Education, *Dyslexia Frequently Asked Questions*, https://www.mdek12.org/sites/default/files/Offices/MDE/OAE/OEER/Dyslexia/dysle xiafaq_general2017.pdf ("If a student is diagnosed with dyslexia does he/she

automatically receive special education services? No, each local school district shall make an initial determination whether a student with dyslexia qualifies under the Individuals with Disabilities Education Act (IDEA) to receive services and funding under the provisions of the IDEA. If the student is ineligible for special education services, then the local district may decide if a 504 Plan is warranted.")

The Dyslexia Handbook also provides educators with guidance on determining whether a student should be referred for a full and individual initial evaluation (FIE) under the IDEA. *Id*. Referral to special education is not automatic. The TEA resource cited by Decoding Dyslexia Texas in its amicus brief reinforces that "[n]ot all children with reading difficulties, including dyslexia, will qualify for special education." TEXAS EDUCATION AGENCY, DYSLEXIA, DYSGRAPHIA, AND DYSCALCULIA IN THE INDIVIDUALIZED EDUCATION PROGRAM, P. 3.

E. Students can access dyslexia services more quickly through Texas' general education dyslexia program than through IDEA special education services.

Before a student can access Texas' dyslexia services, he must be determined to exhibit the characteristics of "dyslexia" (i.e., evaluated for dyslexia). The fastest way to make this determination is through the Section 504 process, as opposed to the IDEA evaluation process. If the district court's decision stands, school districts will be compelled to evaluate for dyslexia as an SLD under the IDEA process rather than through the Section 504 process. Not only will this result in delay as described below but also may result in many students not qualifying for services, because the IDEA's

standards are more rigorous.

Section 504 regulations pertaining to evaluation allow a school district to establish its own local standards and procedures for evaluation. 34 C.F.R. § 104.35. While Section 504 regulations provide that "placement" decisions must be made by a group of persons knowledgeable about the child, the meaning of evaluation data, and placement options, there is no explicit requirement for an evaluation to be conducted by a multidisciplinary team of professionals. 34 C.F.R. § 104.35(c). There are some similarities between evaluations under Section 504 and those conducted pursuant to the IDEA (e.g., using tests that have been properly validated, administration by trained personnel, using tests that are tailored to assess specific areas of educational need and not merely to provide a single IQ score, using instruments that accurately reflect a student's abilities). *Id*. However, the IDEA's evaluation requirements are considerably more rigorous, especially when evaluating for a "Specific Learning Disability."

For IDEA eligibility, a student must be evaluated by a group of qualified professionals or multidisciplinary team, including the parents, the child's regular teacher, a licensed specialist in school psychology (LSSP), educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability or a licensed or certified professional for a specific eligibility category. 34 C.F.R. § 300.306(a), .308; 19 Tex. Admin. Code § 89.1040(b). This multidisciplinary team must conduct a full and individual initial evaluation (FIE). 34

C.F.R. § 300.301(a). The completion of an FIE can, and often does, take up to 60 days[2] to complete due to the comprehensive nature of the evaluation, as described below. 34 C.F.R. § 300.301(c). In the case at bar, W.V.'s dyslexia evaluation outside of this IDEA-SLD process was completed within days of the parent's executing the consent forms. Consent was obtained on May 16, 2016. ROA 1918; ROA 2287-2288; ROA 2833: 14-2834:25. The "dyslexia" evaluation was completed and presented to an IEP team within fifteen days--by May 31, 2016. ROA 2380-2387.

Under the IDEA process, a detailed notice[3] must be provided to parents before starting the evaluation to obtain informed consent. 34 C.F.R. § 300.304(a). In conducting the evaluation, the school district cannot administer a single screener or assessment; it cannot "use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability." 34 C.F.R. § 300.304(b)(2). The school district must "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child" to determine whether the child is a "child with a disability under § 300.8" and the content

[2] Through state law, Texas has shortened this timeline to 45 school days. Tex. Educ. Code § 29.004(a).

[3] A notice of an IDEA evaluation must include: 1) a description of the action proposed (evaluation) by the school district; 2) an explanation of why the school district proposes to evaluate; 3) a description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed evaluation; 4) a statement that the child's parents have protection under the procedural safeguards of the IDEA and a copy of the procedural safeguards; 5) sources for the parent to contact to obtain assistance in understanding part B of the IDEA; 6) a description of other options that the IEP team considered and the reasons why those options were rejected; and 7) a description of other factors that are relevant to the school's proposal to evaluate. 34 C.F.R. § 300.503(b).

of any needed IEP. 34 C.F.R. § 300.304(b)(1)(i-ii). The school district must use "technically sound instruments that…assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." 34 C.F.R. § 300.304(b)(3). The school district must ensure that the variety of instruments administered are: 1) selected and administered so as not to be discriminatory on a racial or cultural basis; 2) provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally; 3) are used for the purposes for which the assessment is considered valid and reliable; 4) are administered by trained and knowledgeable personnel; and 5) are administered in accordance with the instructions provided by the producer of the assessment. 34 C.F.R. § 300.304(c)(1)(i-v). The assessment instruments must be tailored to assess specific areas of educational need and not merely designed to provide a single general intelligence quotient. 34 C.F.R. § 300.304(c)(2). If the child has impaired sensory, manual, or speaking skills, the assessment instruments must be selected with care to ensure that the results will accurately reflect the child's aptitude or achievement level or whatever factor the test purports to measure, rather than the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure). 34 C.F.R. § 300.304(c)(3). The child must be assessed in "all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and

emotional status, general intelligence, academic performance, communicative status, and motor abilities." 34 C.F.R. § 300.304(c)(4). The evaluation must be sufficiently comprehensive to identify all of the child's special education needs, whether or not commonly associated with the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6). An IEP team and other qualified professionals must review existing evaluation data on the child, including evaluations and information provided by the parent; current classroom-based, local, and state assessments; classroom-based observations; and observations by teachers and other related service providers. 34 C.F.R. § 300.305(a). Those are the basic requirements for any FIE under the IDEA.

When evaluating for an SLD, schools must follow further requirements. There is a special rule for the composition of the team that makes an SLD eligibility determination. 34 C.F.R. § 300.308. In addition to the parent and professional evaluators, the team must include a regular classroom teacher or, for students too young to attend school, an individual qualified to teach a child of his age under state rules. *Id*. Moreover, the IDEA requires that states adopt additional criteria for determining whether a student has an SLD. 34 C.F.R. § 300.307. Texas' additional criteria for SLD include an examination of whether the suspected disability is due to a lack of appropriate instruction in reading or mathematics, including a review of: 1) data that demonstrate the student was provided appropriate instruction in reading and

mathematics within a general education setting delivered by qualified personnel; and 2) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal evaluation of student progress during instruction. 19 Tex. Admin. Code § 89.1040(c)(9).

Only after a student has been evaluated through this extensive process may he be determined eligible under the IDEA as a student with an SLD. The district court erred when it relied upon CCISD's initial non-SLD dyslexia testing to find W.V. eligible for special education as a student with an SLD. CCISD's subsequent comprehensive SLD evaluation determined W.V. did not meet the eligibility criteria for an SLD. But more importantly, such extensive evaluation was not necessary for W.V. to receive evidence-based dyslexia services through the CCISD's general education dyslexia program pursuant to state law—services from which the district court concluded W.V. benefitted.

A general education dyslexia committee, via Section 504, must review only data about the student's performance to determine that a student qualifies for dyslexia services under the Texas Education Code. It can conduct additional testing, if necessary, but this committee does not have to make the detailed findings required of an IDEA-SLD determination. Compare 34 C.F.R. § 104.35 (Section 504) and §§ 300.8(10), .304, .305, .309 (IDEA).

Students identified as having dyslexia under Texas' definition may receive

services guided by either an IEP under the IDEA (if they qualify as SLD) or a Section 504 Plan. *See* Stoker at 9. Data collected by the Texas Education Agency reflect that, during the 2017-18 school year, 169,036 (or 3.29%) of Texas' 5,143,315 students were identified as having dyslexia. Stoker at 19, § 4.4. Over 80% of those students were provided dyslexia interventions through general education Section 504 interventions and not through an IEP under the IDEA. *Id*. In fact, less than 20% were identified as eligible for special education services under the IDEA. *Id*. Having to complete a comprehensive IDEA-FIE, as described above, would delay students' access to needed dyslexia services and impose a significant burden on Texas public schools, which would have to dedicate more staff and resources to IDEA evaluations that would not benefit the student.

The prospect of delay is important. Early identification and treatment of dyslexia have been associated with improved outcomes for students. Stoker at ix. Texas' more generous definition of dyslexia (and less rigorous evaluation process) allows struggling students to access general education dyslexia services more quickly than they can through the IDEA special education FIE process.

F. General education dyslexia services are not "specially designed instruction" as a matter of law.

Texas requires school districts to provide general education dyslexia services referred to as Standard Protocol Dyslexia Instruction (SPDI) as described in *The*

Dyslexia Handbook. *The Dyslexia Handbook* at 22. Providing general education SPDI is a far cry from attempting to "wiggle out" of serving a student with dyslexia. SPDI includes specified components for dyslexia instruction such as "phonological awareness, sound-symbol association, syllabication, orthography, morphology, syntax, reading comprehension, and reading fluency." *Dyslexia Handbook* at *22.* SPDI is evidence-based, multisensory, systematic, and intentional. *Id*. But, under state educational policy, it is *not* considered special education:

> Standard protocol dyslexia instruction is <u>not specially designed instruction</u>. Rather, it is programmatic instruction delivered to a group of students.

Id. (emphasis added).

SPDI must be implemented with fidelity (i.e., by trained personnel who follow the structure of the program). *The Dyslexia Handbook* at 39. However, the staff may "differentiate" the instruction to address learning styles, ability levels, and to promote progress among students. *Id*. at 40. This differentiation does not equate to "specially designed instruction." "Specially designed instruction differs from standard protocol dyslexia instruction in that it offers a more individualized program specifically designed to meet a student's unique needs." *Id*. at 40. If student data suggest that the "unique needs of a student…require a more individualized program than that offered through [SPDI]," then there may be a reason to suspect that special education services are necessary for the student. *Id.* at 22. Where SPDI is sufficient for a student, as it

was for W.V. in this case, he does not need special education (i.e., specially designed instruction) through the IDEA process.

G. W.V.'s accommodations and daily dyslexia services did not constitute special education.

The district court erred in determining that W.V. needed or received "specially designed instruction" because he received dyslexia services by an interventionist. The IDEA's definitions of "special education" and "specially designed instruction" are of little practical value in determining whether a student *needs* IDEA services as noted by the district court. ROA 5072. *See also* 20 U.S.C. § 1401(29); 34 C.F.R. § 300.39(b). The district court concluded that W.V.'s daily dyslexia services and accommodations were not minor so they must constitute "specially designed instruction." For those outside the education profession, such services and accommodations might seem like significant adaptations to instruction and, thus, special education. But for decades now, teachers have provided differentiated and targeted instruction as programmatic measures for students so that they will meet the educational standards applicable to all children. Appellants conceded that W.V.'s dyslexia services were general education services. Brief of Appellant at 15 ("CCISD put W.V. in a general education Wilson Reading Program…."); ("CCISD's *general education* Wilson program")(emphasis in original). The state of Texas does not consider general education dyslexia services to be specially designed instruction, and neither should this Court.

Nor should the Court support the district court's characterization of W.V.'s

classroom accommodations as "specially designed instruction." They were basic classroom interventions: extra time to complete assignments; having an opportunity to repeat and explain instructions; sit near the teacher; receive reminders to stay on task; and have all material, except reading class passages, read to him. They do not rise to the level of special education services.

If all students with "dyslexia" necessarily must receive services under IDEA, all would require "specially designed instruction," which must be provided by certified special education teachers, as opposed to general education teachers with special reading training. Currently, Texas has thousands of excellent, well-trained reading teachers and interventionists who provide effective reading support for students with dyslexia but who are not certified special education teachers. To get all of these teachers certified as special education teachers would drain resources away from students without helping students with dyslexia.

Texas has successfully implemented an extensive intervention program for students who have dyslexia—a program that has helped thousands of students and possibly prevented the need for further interventions or special education needs. A state's policy decision to mandate programmatic interventions for a specific disorder should not result in a bypass of the IDEA-eligibility process. The district court's decision results in an end-run around the collaborative process to be followed by IEP teams for determining eligibility and need for special education services due to a

recognized disability.

A diagnosis under the Texas definition of "dyslexia" is different from an SLD determination under the IDEA. It is entirely possible (and certainly not a *per se* procedural violation of the IDEA) for a student to be determined eligible for general education dyslexia services as a student with "dyslexia" pursuant to Texas Education Code § 38.003 but not to meet the additional requirements of being a student with a "Specific Learning Disability" under 20 U.S.C. § 1401(30). Moreover, general education dyslexia services and basic classroom accommodations are not "specially designed instruction." The hearing officer understood this distinction, which is why she ruled in CCISD's favor.

For these reasons, TASB LAF respectfully requests that this Court affirm the judgment in CCISD's favor on this additional basis and clarify that a diagnosis of "dyslexia" does not equate to the IDEA's definition of SLD and that states may determine as a matter of educational policy which programs are considered general education and which constitute special education.

II. The Fifth Circuit should not adopt a standard broader than that required by the Supreme Court's ruling in *Endrew F.*

This Court articulated four factors to determine whether a school district fulfilled its obligation to provide FAPE: (1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the least restrictive environment; (3) the services are provided in a coordinated and collaborative

manner by the key "stakeholders"; and (4) positive academic and non-academic benefits are demonstrated. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253 (5th Cir. 1997).

Appellants concede that *Michael F.* is compatible with the Supreme Court's requirement that "an educational program [be] reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"[4] and challenges only the district court's application of the *Michael F.* factors to the case at bar. Brief of Appellant at 16. However, COPAA, in its amicus brief, urges this Court to impose additional conditions on the *Michael F.* analysis. Specifically, COPAA argues that *Endrew F.* requires "robust" expansion of the first (individualization) and fourth (progress) factors. Brief of COPAA at 11-12. COPAA would ask that reviewing courts evaluate every goal and short-term objective in a student's IEP to determine whether it is "appropriately ambitious" and "challenging" in light of the student's unique circumstances. *Id.* They further urge this court to attempt to establish a rule quantifying "sufficient progress" for students in light of their circumstances. Brief of COPAA at 13-14.

Like several other circuits, the Fifth Circuit's existing standard for determining the appropriateness of an IEP meets and works in tandem with the *Endrew F.* standard.

[4] *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.* RE-1, 137 S. Ct. 988, 197 L. Ed. 2d 335 (2017).

In 2018, this court explicitly reaffirmed the validity of its *Michael F.* test in light of *Endrew F.* *See E. R. by E. R. v. Spring Branch Indep. Sch. Dist.,* 909 F.3d 754 (5th Cir. 2018) (per curiam). Most recently this Court ruled, "The substantive contours of the IDEA have been fully articulated by the Supreme Court in *Endrew F.* so, we need not do the same here. Importantly, *Endrew F.* has not changed or eliminated our circuit's use of the 'reasonably calculated' factors as we announced them twenty-two years ago in *Michael F." A.A. v. Northside Indep. Sch. Dist*., 951 F.3d 678, 690 (5th Cir. 2020). The creation of additional factors by which IEPs may be challenged and scrutinized is not necessary for the Court to decide this case. This case presents no unique set of facts warranting an expansion of the Fifth Circuit's long-standing four factor test, especially when courts may refer to the substantive contours of the IDEA as fully articulated by the Supreme Court already in *Endrew F*.

CONCLUSION

Amici urge this Court to overrule the district court's misapplication of IDEA eligibility standards when it held that W.V.'s dyslexia diagnosis and receipt of interventions required by Texas regulations made him eligible under IDEA. The district court's ruling, if upheld, could require school districts in the Fifth Circuit to find many more students eligible under IDEA, unnecessarily delaying crucial dyslexia interventions, placing thousands of students in special education programs when not necessary, and diverting already-stretched school district resources.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Fed. R. App. P. 29 and 32, the amici curiae brief is proportionally spaced, has a typeface of 14 points Times New Roman Font using Microsoft Word Office 365 and contains 6,251 words, excluding the parts of the brief exempted by Fed. R. App. P. 29 and 32.

/s/Holly B. Wardell
Holly B. Wardell

CERTIFICATE OF CONFERENCE

I hereby certify that on April 27, 2020, consent to file the amici curiae brief in support of Appellee was sought from the parties in this matter. The parties provided consent to this filing on April 27, 2020.

/s/Holly B. Wardell
Holly B. Wardell

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will serve the parties of record.

/s/Holly B. Wardell
Holly B. Wardell

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A Critical Analysis of Dyslexia Legislation in Three States

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Abstract

After a multitude of studies across more than a century, researchers have failed to consistently identify characteristics or patterns that distinguish dyslexia from other decoding challenges. Many researchers and educators argue the construct is too vague and contradictory to be useful for educators. Nevertheless, attention to dyslexia in policy and practice has increased at a rapid rate; 37 states now have dyslexia laws, and national legislation was passed in 2016. Employing Bakhtin's concept of authoritative discourse (AD) as a theoretical lens, we examined the emergence and current state of dyslexia legislation and policy in Texas, Indiana, and Florida, three states that represent various histories of legislation and stages of policy implementation. Our analysis found similarities among the states' legislation, particularly regarding how the policies emerged and the AD embedded within them. The International Dyslexia Society's recommendations for a specific intervention approach that is "multisensory, systematic, and structured" appear in each state's laws. This approach is not well supported by research, but it is officially sanctioned through legislation in many states and has had a profound effect on policy and practice. By not engaging in the discourse or using the word "dyslexia," literacy researchers and educators place themselves outside of a closed discourse circle that influences policy and practice and deeply affects students. We encourage active participation in the conversation and in policy

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decisions that are currently taking place without the input of literacy educators and researchers.

Keywords
policy, dyslexia, legislation, authoritative discourse

Although the term dyslexia was coined in the late 19th century (Duane, 1985; Guardiola, 2001), dyslexia has more recently garnered widespread attention in policy and practice. Texas passed the nation's first dyslexia law in 1985, identifying dyslexia as a disability under Section 504 of the Rehabilitation Act (Council for Exceptional Children, n.d.). The law set up an identification and intervention process that is separate from the process for specific learning disabilities (SLDs). Since that time, 36 additional states have approved dyslexia laws, most of them passed since 2010, and additional bills continue to be proposed (Eide, 2017). Youman and Mather (2013) describe the laws as "characterized by variability and inconsistency" (p. 133). Attention is growing nationally as well; in 2016, President Obama signed into law the bipartisan Research Excellence and Advancements in Dyslexia (READ) Act, which requires the National Science Foundation to devote a minimum of $250 million annually for dyslexia research (Govtrack.us, 2016).

Few would argue that some children struggle specifically with learning to decode print, which is the central issue in what is termed dyslexia. However, despite thousands of studies, researchers have failed to consistently identify characteristics or unique patterns of reading that set students identified as dyslexic apart from other readers with decoding challenges (Elliott & Grigorenko, 2014; Vellutino, Fletcher, Snowling, & Scanlon, 2004). In fact, the most recent *Diagnostic and Statistical Manual of Mental Disorders*, Fifth edition (DSM-5; American Psychiatric Association [APA], 2013), no longer lists dyslexia as a separate category because "the DSM-5 Neurodevelopmental Work Group concluded that the many definitions of dyslexia and dyscalculia meant those terms would not be useful as disorder names or in the diagnostic criteria" (APA, n.d., para. 4.). Similarly, many literacy education researchers, literacy teacher educators, and literacy specialists avoid the term dyslexia because it is so vague that it "has lost any real value for educators" (Elliott & Grigorenko, 2014; Harris & Hodges, 1981, p. 9).

Nevertheless, an authoritative discourse (AD; Bakhtin, 1981) that speaks of a definitive definition, a unique set of characteristics, and a specific form of intervention saturates policy and practice around dyslexia. As educators and parents search for answers about their children's struggles with reading, they encounter this discourse, which may persuade them to trust ideas and approaches that are not well supported by research and that may not be in their children's best interests.

Review of Research

In our examination of research across a range of fields, we found many contradictions, inconsistencies, and questions, and few areas of consensus about dyslexia. For instance, early researchers and educators believed dyslexia resulted from visual deficits characterized by letter and word reversals, which are now known to be common in inexperienced readers (Lieberman, 1985). Researchers now agree that dyslexia is related to language rather than vision and that the predominant challenge in what is termed dyslexia is accurate and fluent decoding (Elliott & Grigorenko, 2014; Vellutino et al., 2004).

For many years, researchers have searched for clear distinctions between learners considered dyslexic due to a discrepancy between achievement and IQ and those without such a discrepancy. However, in research comparing the spelling and reading of students identified as dyslexic, poor readers, and normally achieving readers matched for achievement level, researchers have not been able to consistently identify "idiosyncratic processes" or signature patterns of dyslexia (Cassar, Treiman, Moats, Pollo, & Kessler, 2005; Ramus & Szenkovits, 2008). These findings are consistent with the perspective, supported by research, that reading proficiency occurs on a continuum and that there is no well-identified cutoff point that separates dyslexia from other reading difficulties (Shaywitz, Morris, & Shaywitz, 2008; Vellutino et al., 2004). Ellis asserts:

> Dyslexia is not a disease like measles, which a person can be clearly diagnosed as either having or not having. There is a gradient from good through average to very poor reading, and it is largely arbitrary where one draws the line and says that children below this line are candidates for the label "dyslexic." (p. 95)

Similarly, there are no universally employed measures or procedures for identifying dyslexia. Practices, instruments, and interpretation used in diagnosis of learning disabilities and dyslexia vary from place to place, even within the same city or state (Elliott & Grigorenko, 2014; Moats & Lyon, 1993).

Across a variety of perspectives on reading instruction, researchers and educators agree decoding instruction is an essential component of reading instruction. For students with decoding challenges, including those identified as dyslexic, more intensive instruction is needed. However, there is no best method for teaching decoding (National Institutes of Child Health and Human Development, 2000; Shaywitz et al., 2008). Yet, many sources, including the International Dyslexia Association (IDA; Just the facts . . . , 2009) and various state guidelines (Youman & Mather, 2013), authoritatively recommend variations of the Orton-Gillingham approach (O-G), which focuses on the teaching of phonograms, syllable types, and syllable juncture rules for decoding and spelling (Gillingham & Stillman, 1936, 2014). In a comprehensive review of research on such programs (e.g., Alphabet Phonics, Herman Method, Project Read, Wilson), Ritchey and Goeke (2006) pronounced the existing

research "inadequate, both in number of studies and in the quality of research methodology, to support that O-G interventions are scientifically valid" (p. 182). Similar results were found by What Works Clearinghouse (2010). Further, researchers from a variety of perspectives agree that all students need a comprehensive, meaning-based approach to reading instruction that includes decoding as one component (Johnston, 2011; Shaywitz et al., 2008; Vellutino & Scanlon, 2002).

From a review of research published between 1960 and 2011, Lopes (2012) concluded that the vast majority of dyslexia research is published in medical or psychology journals and that the "education perspective is underrepresented in published research about dyslexia" (p. 215). Lopes found that the top 10 most published authors of dyslexia research were physicians, psychologists, and neuropsychologists; none were teacher educators or literacy education researchers. Our literature review supports Lopes's conclusion. Further, dyslexia research is conducted outside of classrooms, using tasks based on a narrow view of reading (e.g., reading isolated words, pseudowords, or test passages) in which students' background and affective factors, among others, are minimized.

Theoretical Framework

Bakhtin's (1981) writings about discourse provide a useful frame for examining dyslexia research and legislation. As humans develop their worldviews (what Bakhtin calls "ideological becoming"), they encounter various points of view expressed as often-oppositional discourses. One type of discourse is internally persuasive discourse (IPD), which is grounded in multiple perspectives, exploration of ideas, and negotiation of meaning. IPD fosters dialogue and an attitude of inquiry. For this research, we employed Bakhtin's writings about a contrasting form of discourse, "authoritative discourse" (AD), which has a single, static, inflexible meaning. According to Bakhtin, "It enters our verbal consciousness as a compact and indivisible mass . . . It is indissolubly fused with its authority" (p. 343). Because AD is not open to interpretation or questioning, it limits possibilities for multiple perspectives.

Research and practice focusing on learning difficulties is replete with AD and "taken-for-granted assumptions," often stemming from biological and cognitive perspectives that consider learning differences to be intrinsic and pathological (Skrtic, 2005, p. 509). In our experience, we have found that dyslexia policies and practices advance similar assumptions, conveyed with certainty, and expressed as "generally acknowledged truths of the official line" (Bakhtin, 1981, p. 344). Some assumptions around dyslexia that are present in policy, practice, and the media are that it is a neuropathological condition with unique characteristics that set it apart from other reading difficulties, that dyslexia only occurs in students with average to above-average intelligence, that dyslexic individuals are creative, that dyslexia affects one in five people, and that dyslexia can only be addressed with a specific type of instruction provided by educators with training in that method. For this research, we employed AD as a lens to examine the historical roots and current iterations of

dyslexia legislation and policies. We chose three states in which we are teachers and teacher educators. These states represent various histories of legislation and stages of policy implementation: (a) Texas, which passed the first law in 1985; (b) Indiana, which passed its first law in 2015; and (c) Florida, which proposed a bill in 2015 that was not passed.

Method

The researchers include current and former elementary classroom teachers and reading specialists, as well as teacher educators and researchers. We have seen increased attention to dyslexia in recent years, and we share an interest in learning about dyslexia policies and how they affect teachers and students.

Data sources varied by state and included dyslexia bills, laws, and accompanying documents that shaped or were shaped by dyslexia policy. Each state's research group engaged in a recursive process of analysis, starting with examining that state's documents using inductive analysis to generate open codes, meeting together to discuss and refine the codes, returning to the data to test them, and then combining the codes into categories that best represented the data (Patton, 2001). Next, each group posted their categories on a shared online document and met to discuss our initial analysis for each state and combine the codes we had generated into broader cross-state categories. At this phase, we examined additional relevant sources. For example, the website and newsletters from the IDA helped explain word choices used in development of state policies. The final phase of analysis consisted of rereading the state documents, comparing their content to the themes generated in team meetings, refining the themes, and returning to the data to test and refine them further. We continued this process until we came to consensus on three themes that represented the major ideas in the data: (a) There is a specific discourse of dyslexia that saturates dyslexia policy; (b) this discourse exists in a closed circle of organizations that largely excludes teachers and teacher educators; and (c) dyslexia legislation parallels the emergence of the learning disabilities construct. We begin the findings by describing dyslexia legislation in each state. Next, we present the cross-state themes.

Findings

Dyslexia Legislation

Texas: Where it all began. The major data source for the Texas analysis was the most recent update of the *Texas Dyslexia Handbook* (Texas Education Agency, 2014). The first *Handbook* was developed by the state in 1992 to provide guidelines to school districts for implementing dyslexia legislation. The *Handbook* has been updated and revised periodically to keep up with changing laws and guidelines (1998, 2001, 2007, 2010, and 2014). The 179-page document details the dyslexia definition and characteristics, assessment and identification procedures, and instructional guidelines. Appendices for the most recent (2014) revision include the laws, rules, and state statutes, and

"The story of the Texas Dyslexia Laws," authored by Geraldine "Tincy" Miller that provides a timeline and explanation of Texas dyslexia legislation milestones.

Miller, who believed her son did not get the help he needed in school, spearheaded the original legislation. She had worked as a dyslexia interventionist and was appointed to the Texas State Board of Education (SBOE) by Governor White. The first Texas laws concerning dyslexia identification, screening, and treatment passed in 1985. Since then, Texas has passed dyslexia legislation on a range of issues. As in other parts of the nation, the education system in Texas has become increasingly focused on testing and accountability, and a dyslexia law in 1991 required testing accommodations for students labeled with dyslexia. The 1997 law addressed early identification.

Among most researchers, the term dyslexia is used interchangeably with Specific Learning Disability (SLD) (Shaywitz et al., 2008; Vellutino et al., 2004). However, laws in Texas and a growing number of other states treat dyslexia separately from SLD (Youman & Mather, 2013). In Texas, this distinction allows districts to bypass the 2004 Individuals with Disabilities Education Improvement Act (IDEA; U.S. Department of Education, n.d.), which directs schools to employ response to intervention (RTI) before considering a diagnosis of SLD in reading. The *Dyslexia Handbook* states, "Progression through a tiered intervention is not required in order to begin the identification of dyslexia" (Texas Education Agency, 2014, p. 14). The wording opens the door to the use of IQ tests in identification of dyslexia, even though decoding ability is largely independent of IQ (see, e.g., Gunderson & Siegel, 2001), notwithstanding the cultural biases inherent in tests of intelligence (Shepard, 1987). The separation of dyslexia from other forms of reading difficulty is also seen in the state's laws requiring the licensing of dyslexia "practitioners" and "specialists," educators who must be trained in specific "multisensory, structured, phonics" programs provided almost exclusively outside of teacher preparation programs. These laws indicate a marked difference between how the state sanctions expertise in dyslexia and expertise in other reading difficulties. Particularly, the specific term "multisensory" is prevalent in legislation. Although the legislation and the *Handbook* provide only general guidelines for implementation, as opposed to specific measures or instruments, this language points to a specific method of instruction and limits the authorization of institutions from which dyslexia expertise can be obtained, specifically those with a "multisensory structured language education training program" (Texas Education Agency, 2014, p. 50) and not those that have traditionally prepared reading specialists. Additional legislation mandates instruction in dyslexia detection and education in teacher education programs, specifically requiring information on "effective, multisensory strategies for teaching students with dyslexia" (p. 43). The state also requires education in dyslexia research and practices as part of ongoing education requirements for educators who teach students with dyslexia, including classroom teachers.

Indiana: How a bill became a law. In May 2015, Indiana Governor Pence signed the state's first dyslexia law, Indiana House Bill 1108 (Indiana General Assembly,

2015a). Cheryl Clemens, mother of three children diagnosed with dyslexia and a leader of Decoding Dyslexia Indiana (DDI), enlisted the help of Representative Woody Burton to introduce the bill. In a video recording of a special committee hearing posted by DDI (2015), Burton explained that he and Clemens met at a Town Hall meeting he was hosting. She was the only person to attend the meeting, so she had the opportunity to share her experiences as a mother of children diagnosed with dyslexia and as someone trained to use O-G. Her advocacy, along with the support of Burton, greatly influenced the development and passage of the bill.

The first version of the bill defined dyslexia as a "specific learning disability" affecting "decoding, fluent word recognition, and related skills, and is neurological in origin," in which the reading difficulties must be "unexpected" in relationship "to other cognitive abilities and the provision of effective classroom instruction" (Indiana General Assembly, 2015a, p. 1). The first version of the bill also outlined additional requirements for teacher preparation programs to teach preservice teachers the characteristics of "specific learning disabilities related to reading, including dyslexia" (Indiana General Assembly, para. 1).

After the bill was introduced, it was sent to the education committee. During the committee hearing, misunderstandings about dyslexia abounded. For example, one of the committee members, a retired special education teacher, shared a brief story about a student whom she recalled having dyslexia because the student reversed letters d and b. Burton himself shared that—after learning more about dyslexia—he had discovered that he might have dyslexia because he sometimes had to read things more than once. Clemens and Burton reminded the committee that these children are "smart," with "average to above average" intelligence, negating the possibility that someone who scored below average on a measure of intelligence might also have dyslexia. After her testimony in the committee hearing, committee members asked Clemens about the effectiveness, the cost, and the ease with which she learned to implement Orton-Gillingham. At that time, committee members began to weigh whether to add proficiency with the Orton-Gillingham program to the bill for teacher education certification requirements. The Indiana legislature did not move forward with teacher certification requirements.

The second version provided education service centers authority to offer "courses for teachers on dyslexia screening and appropriate interventions" (p. 2), specifically naming "Orton-Gillingham" as the program of choice for intervention (Indiana General Assembly, 2015b, p. 2). However, in the final version, Orton-Gillingham was no longer specifically named; it was replaced with "a structured literacy approach that is systematic, explicit, multisensory, and phonetic" (Indiana General Assembly, 2015c, p. 2). This move away from specifically naming Orton-Gillingham reflects the decisions made by the IDA, who chose "structured literacy" as an "umbrella" term for IDA approved approaches to teaching reading (Malchow, 2014, para. 6).

Florida: A dyslexia magnet school and a failed bill. The data sources for Florida included the state bill authored by Florida Senator Aaron Bean, as well as news reports and

blogs relevant to the history and controversy surrounding the bill. Florida's foray into dyslexia legislation began with Guiding, Reading, and Accelerating Student Performance (GRASP) Academy, the nation's first, and thus far only publicly funded school for dyslexia. Located in Jacksonville, Duval county, GRASP offers small classes, mentoring, and free transportation to students across the county identified as dyslexic. The school "specializes in teaching bright students with a dyslexic profile" (GRASP Academy, n.d., para. 1), and the curriculum "utilizes multi-sensory learning environments, Orton-Gillingham based prescriptive intervention" (GRASP Academy/Homepage, n.d., para. 2). The school's founder is Duval County Superintendent Nicolai Vitti; Vitti and his two sons are identified as dyslexic. Mr. Vitti was criticized for the disproportionate amount of resources spent on students in the school (Thompson, 2015) and for putting "his own children first" while "other people's children aren't having their needs tailored to let alone met" (Education Matters, 2015, para. 2). Rachel Vitti, Mr. Vitti's wife, enlisted the financial support of donors to spearhead a bill for a pilot program, modeled after GRASP, that would create a "Dyslexia Choice Academy in five participating school districts to provide evidence-based instruction to meet the needs of students with dyslexia" (Florida Senate, 2016). Like GRASP, the Choice Academies would have small classes, specialized curriculum, mentoring, and free transportation. The Florida legislature considered the bill (Pillow, 2015), but it did not pass, possibly because of the controversy surrounding it and because GRASP fared poorly in the state's accountability program, receiving a grade of "F" (Amos & Phillips, 2016).

Themes

Discourse of dyslexia. Our analysis suggests that legislation and policy documents are infused with an "official" AD around dyslexia, which has become common in practice. It includes a set of "generally acknowledged truths" about the definition, identification, and instruction of students identified as dyslexic (Bakhtin, 1981, p. 344). Much of the discourse stems from the medical field and features terms such as diagnosis, screening, specialist, treatment, and intervention. It also includes language such as "neurobiological in origin," and "often unexpected in relation to other cognitive" abilities from the IDA's definition of dyslexia (Definition of Dyslexia, n.d.), which is also the definition used by the National Institutes of Child Health and Human Development. The IDA also describes dyslexia traits, such as "different wiring of the brain," and that it is a lifelong condition with "no cure" (Dyslexia at a Glance, para. 2). The discourse used in IDA's descriptions of Orton-Gillingham and Orton-Gillingham-based approaches—intensive, multisensory, phonetic methods—is recycled and replicated in legislation, policy documents, and dyslexia training programs. These descriptors appear 22 times in the *Texas Dyslexia Handbook* and are in the dyslexia bills or laws of every state as a guideline for intervention (Youman & Mather, 2013).

Another example of authoritative dyslexia discourse comes from reactions to APA's decision to drop dyslexia as a separate category of mental disorder from the DSM-5 (APA, n.d.). A group of attorneys and neuroscientists from the Yale Center for Dyslexia and Creativity (Colker, Shaywitz, Shaywitz, & Simon, n.d.) requested that APA reconsider its decision. Their response uses language and ideas consistent with the authoritative discourse of dyslexia, including the idea that dyslexia is well defined:

> Dyslexia is a well-described and long-standing entity that adheres to a well-specified medical model including, known neurobiology, pathophysiology, symptoms and developmental manifestations, treatment, and long term outcome. In contrast to the other domains included under SLD, dyslexia is not a feature but a well described disorder. (p. 2)

Couched in medical language, this message is conveyed with the certainty that characterizes AD (Bakhtin, 1981), despite the fact that research does not support the claim that dyslexia is a "well-described" disorder with "well-specified" origin, symptoms, and treatment.

Closed circle. Our analysis also showed that dyslexia discourse is propagated by a closed circle of intricately connected organizations including, but not limited to, the IDA, the Academic Language Therapy Association (ALTA), and the International Multisensory Language Education Council (IMSLEC). For example, IMSLEC started as an IDA committee, and ALTA certifies dyslexia specialists in the multisensory language approach, which in turn is consistent with IDA's standards for educator preparation in reading (Knowledge and Practice Standards, n.d.). The IDA began certifying teachers in 2016, in addition to accrediting dyslexia teacher training programs. The websites of each of these organizations contain information and links to each other and to Decoding Dyslexia, a network of parent organizations with chapters in every state. All Decoding Dyslexia sites employ language from IMSLEC and IDA in their lobbying materials and mission statements.

These organizations advance the view that there is a definitive definition and discrete characteristics of dyslexia and that only one kind of program is appropriate for instruction. Although these views clash with research, as shown in the literature review, they have become common in policy and practice and thus are "institutionally sanctioned" (Brantlinger, 1997, p. 509). The social status and authority of such language can intimidate those outside of the circle and by the same token make the language untouchable (BaglierI, Valle, Connor, & Gallagher, 2011). The closed circle creates a kind of vacuum that does not include major teacher education institutions or major literacy education and research organizations like the International Literacy Association, Literacy Research Association, and National Council of Teachers of English.

The IDA explicitly excludes "many" public school teachers, and by implication teacher educators, by questioning teachers' knowledge: "In public school settings

where many teachers are not knowledgeable about this condition, students with dyslexia may be considered stupid or lazy" (Dyslexia at a Glance, n.d., para. 3). The IDA draws parents of children diagnosed with dyslexia into the circle through this language, which positions educators as part of the problem, as well as through Decoding Dyslexia organizations, which also dismiss educational perspectives. For example, in their "Steps to Lobby for Dyslexia Legislation," Decoding Dyslexia Massachusetts (n.d.) advises parents to:

> Respectfully request that biology and neuroscience guide the definition [of dyslexia] and not educational theories or previous misguided educational regulations. Teachers and educational administrators and policymakers should be guided by facts and science in matters of students with well-researched disabilities like dyslexia. ("Dyslexia Talking Points," para. 6)

IDA also implicitly advises parents to bypass schools, recommending that they "seek out reading instruction that is based upon a systematic and explicit understanding of language structure, including phonics" (Dyslexia at a Glance, n.d., para. 3).

In a move to tighten the circle further, IDA published a new marketing strategy proposing to unify these programs with a new name, "structured literacy," which refers to the "many programs that teach reading in the same way." The site explicitly criticizes reading approaches used in some schools as "not effective for struggling readers" and as "especially ineffective for students with dyslexia." Further, IDA implies that structured literacy should be more widely used: "This approach not only helps students with dyslexia, but there is substantial evidence that it is more effective for *all* readers." According to the IDA, the purpose of this new name is "to help us sell what we do so well" (Malchow, 2014, para. 6).

Parallels with the emergence of learning disabilities. Our analysis of dyslexia laws and policies suggests that the emergence of dyslexia as a discrete reading disorder parallels the history of learning disability (LD or SLD), as seen in Sleeter's (1987) critical analysis. According to Sleeter, the LD legislation was spearheaded by middle-class parents and "the category offered their children a degree of protection from probable consequences of low achievement because it upheld their intellectual normalcy and the normalcy of their home backgrounds" (p. 210). Commenting on Sleeter's article, Blanchett (2010) added that students identified as LD were

> deemed intellectually superior or privileged compared to their peers because they are reported to have average or above intelligence, which set them apart from students identified with developmental disabilities, who are reported to have significantly lower levels of intellectual ability. ("Learning Disabilities: A Category of Privilege for the Privileged," para. 3)

The central tenet of LD was its designation as a learning challenge that is *unexpected* in relation to intellectual ability and adequate opportunity. The 2004 reauthorization

of the Individuals with Disabilities Education Act IDEA (U.S. Department of Education, n.d.) discontinued the use of intelligence tests in LD identification, substituting RTI. Thus, LD no longer served as a means to separate students who scored high on intelligence tests. We suggest that this change may have led to the current focus on dyslexia as a unique disorder and, in some states, as separate from LD. This hypothesis is supported by the fact that unexpectedness is also key to the definition of dyslexia and that 35 of 37 states with dyslexia legislation passed their first dyslexia laws after 2004. Further, the language in definitions of dyslexia is strikingly similar to the language in LD definitions and policy in its focus on "adequate intelligence" and "sociocultural opportunity" (Texas Education Agency, p. 8). As they were with LD, these language and ideas are conveyed in policy documents, making them officially sanctioned (Bakhtin, 1981).

Importance and Implications of the Research

Reading difficulties are real, and they are perplexing. Parents and children who are affected by reading difficulties understandably want to find answers. Unfortunately, when parents, teachers, legislators, and other education stakeholders search for information about dyslexia, they do not generally hear the perspectives of professionals who prepare teachers and reading specialists. That silence is often filled by the AD of dyslexia organizations, whose central message is that dyslexia is a discrete, easily identifiable disorder that can be remediated only through a specific approach to instruction (Malchow, 2014). This message, delivered with certainty, might be pleasing to people in search of definitive answers, but it is not supported by research. Even so, it has become officially sanctioned through legislation in many states and has had a profound effect on policy and practice.

Another finding from our research is that the language of legislation and policy in some states effectively separates dyslexia from other reading difficulties in ways that parallel the construct of LD. The language in dyslexia laws can be interpreted in ways that allow districts to employ the construct of intelligence despite IDEA's 2004 recommendations for RTI and despite research showing the independence of decoding and intelligence. Thus, the designation of dyslexia separates students with *unexpected* reading difficulties from other struggling readers without a *specific* challenge in reading and who may somehow be considered to have inadequate sociocultural opportunity. These other students are too often placed in low-ability groups and tracks rather than receiving attention and intervention. By privileging students who are labeled with dyslexia, these policies disadvantage students who are not afforded the label. If dyslexics are creative and smart, what does that make nondyslexic struggling readers by default?

The dyslexia label may also lead teachers and parents to feel their children will "get the help they need" (Michigan Medicine, n.d.), but if that help consists of a program that looks the same for all students, is focused primarily on decoding, and does not provide students with opportunities to read engaging materials, we question if it is in students' best interests. Decades of research on these reading interventions have failed

to support their effectiveness (Ritchey & Goeke, 2006; What Works Clearinghouse, 2010). When emotions are involved, as they are when children have reading challenges, claims of expertise and straightforward guidance can be easier to digest than the message from many literacy educators and researchers that reading difficulties are complicated and that there are no easy answers (International Literacy Association, 2016; Johnston, 2011).

By not engaging in the discourse or using the word "dyslexia," literacy researchers and educators place themselves outside of a closed discourse circle that influences policy and practice and deeply affects students. Their understandings of literacy can serve to provide additional perspectives on the topic of reading difficulties and ensure that practice is being guided by an established research base. Ferri, Connor, Solis, Valle, and Volpitta (2005) suggest that if we want to be heard, we will need to engage in the discourse and dominant ideologies and to cultivate dialogue rather than respond with "righteous authority" when responding to others' perspectives and ideas that might differ from our own. The International Literacy Association began such a dialogue in the form of a research directive on dyslexia (2016). The directive described research consensus and myths and highlighted the message that reading difficulties are complex and variable and there is no substitute for knowledgeable teachers, careful assessment, responsive instruction, and a comprehensive approach to reading instruction that includes plenty of opportunities to read engaging texts.

It is important to remember that the central issue in the conversation about dyslexia is that there are children who struggle mightily with reading, and the goal is meeting their needs. We seek to promote dialogue with anyone who shares this goal, with the hope that our conversations will enrich our mutual understandings of reading difficulties. The parents who are behind dyslexia legislation are fighting for their children and for other children affected by reading challenges. As literacy educators, we can learn a lesson from parents who actively seek a forum for their voices, even when we might not agree with their message. In the spirit of IPD (Bakhtin, 1981), Morson (2004) reminds us that "difference may best be understood not as an obstacle but as an opportunity for continued growth and learning" (p. 317).

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