

# CONNELL MICHAEL KERR, LLP

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March 9, 202

Gregg Corr, [gregg.corr@ed.gov](mailto:gregg.corr@ed.gov)  
Al Jones, [al.jones@ed.gov](mailto:al.jones@ed.gov)  
Jennifer Finch, [jennifer.finch@ed.gov](mailto:jennifer.finch@ed.gov)

RE: Continuing Violations in Texas

Dear Mr. Corr, Mr. Jones and Ms. Finch:

We write on behalf of parent led and nonprofit groups who continue to have concerns about Texas' continued failure to comply with the IDEA. We very much appreciate the time and attention that OSEP has paid to this problem. Still, we note that OSEP began communicating with Texas with respect to the issue of Child Find on October 3, 2016 when it wrote a letter of concern about the 8.5% cap. 116 LRP 42430 (OSERS 10/03/16), and November 2016 letter. OSEP monitored during 2017 and issued its original letter of corrective action (Letter to Morath, 01/11/18). Most recently, on October 30, 2020, OSEP issued a letter on TEA's corrective action plan. So here we are, this fall it will have been nearly five years since OSEP first began communicating with Texas about improving Child Find and related aspects of its special education system. This is nearly one-half of the educational life of a child. ***Texas children need OSEP to detail specific solutions to Texas so that this situation resolves on a wide-scale basis and in a timely manner.***

We propose that OSEP issue a detailed and specific order to Texas that will be more directive and specific to help children with disabilities. Here are our suggestions:

**A. DIRECTIVE ORDER TO TEXAS.**

1. **The Dyslexia Handbook.** Prohibit Texas from using the Dyslexia Handbook. Texas issued a "revised" Dyslexia Handbook (November 2018). Advocates at the time (2018) objected to the Handbook. We still do. We ask that OSEP issue a "cease and desist" letter to Texas prohibiting the state from using the Handbook because it remains a barrier to ensure children with dyslexia are timely identified for special education services. Immediately suspend the use of the Texas Dyslexia Handbook in policy and practice until the Handbook no longer interferes with IDEA Child Find requirements and provision of special education and related services.

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2. **Evaluations through IDEA.** Require Texas to evaluate children with dyslexia or who may have dyslexia through the IDEA Full Individual Evaluations (FIEs). Right now, schools in Texas evaluate children for dyslexia outside of the IDEA process. When school districts evaluate children for dyslexia<sup>1</sup>, parents are not informed that they could have their child evaluated through the IDEA. This must stop. Texas §89.1035(b) requires a school district to issue a prior written notice and provide the parent a notice of procedural safeguards if (when) the parent uses the magic words “special education evaluation.” Because parents of children suspected of dyslexia do not know that term, and refer to dyslexia testing, the Handbook and other state policy guide them to other processes. We request that OSEP issue a memorandum requiring Texas to refer a child for special education or a Full Individual Evaluation (FIE) if a parent or teacher “suspects” dyslexia, rather than a “dyslexia assessment” via 504 that is completed under the radar with no information provided about IDEA. Further, if a child has dyslexia, the child should be regarded as having a Specific Learning Disability.
3. **Specialized instruction.** Require Texas to enforce the IDEA mandate that only IEP (ARD) teams can determine what constitutes specialized instruction. Texas law requires schools to offer dyslexia instruction. Because of this, school districts frequently place a child in dyslexia classes without conducting a special education evaluation of the child. This completely eliminates the IEP team decision-making process. But specialized instruction is an ARD (IEP) decision. Texas state policy cannot override the role of IDEA in making eligibility decisions.
4. **Provision of IDEA Notice of Procedural Safeguards (NOPS).** Require Texas to notify all parents about IDEA. Texas school districts must track children on 504 plans and children who are in RTI. Because there is a widespread failure of schools to tell parents about IDEA (before a child enters a 504 or RTI plan), Texas should be ordered to provide all parents of children on 504 or who are in RTI about their rights to seek special education. This should be done through a parent friendly one page letter accompanied by easy-to-read NOPS.
5. **Checklist for Declining Parents.** Require Texas to use a “Declining IDEA Checklist.” School districts frequently claim that parents “declined” special education and FIEs. But parents often say that they did not know they had a choice to have their child evaluated through special education and were led to believe needed interventions were not available to students in Special Education. Parents are still frequently led to believe that certain interventions for dyslexia were available only through “general ed.” They are still often told that the child needs to try RTI or be placed on a 504 plan before a referral for a special education

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<sup>1</sup> A dyslexia assessment is different than the statewide dyslexia “screening” that is completed.

FIE. TEA must require a “Declining IDEA checklist” to ensure parents fully understand the Child Find process and understand what they are giving up when they “decline” a Special Ed evaluation. Parents do not know that if they ask for a special education FIE and don’t agree with it, they can ask for an IEE. Parents do not know that an IEP gives more protection in disciplinary situations, progress reporting, and transition planning. So, they cannot knowingly give up those rights by “declining” a special education FIE. A checklist will help parents know what they are giving up. Checklist, Attachment A.

**6. Search for Children with Disabilities. Require Texas to develop an affirmative Child Find plan, rather than rely on parental inquiry.** TEA is responsible for Child Find, to ensure that children are found. TEA must improve its “plan” rather than Child Find in Texas being parental inquiry dependent. TEA should be required to put together an affirmative far-reaching Child Find plan that finds children who are homeless, children who are in disciplinary schools, children with disabilities in private schools, and children in juvenile facilities.

## **B. OSEP ACTIONS**

While we do want OSEP to require Texas to refrain or take certain actions, we also ask that OSEP take specific actions to effectively monitor the large state of Texas, with 27 million people and over 500,000 children with disabilities. We ask that OSEP assign full-time monitors to ensure that Texas comes into full compliance. These monitors should:

1. Arrange for effective parent call-ins and responses through a 1-800 number.
2. Hold regular bi-monthly ZOOM meetings for Texas parents.
3. Provide specific technical assistance to all school boards in the State of Texas on their responsibilities under the IDEA.
4. Provide specific technical assistance to ensure that all Regional Services Centers in Texas are fully correct in their interpretations and advice given concerning dyslexia.
5. Participate in any and all “stakeholder groups” organized by TEA.
6. Determine whether it is consistent for Texas to require private dyslexia providers to be fully trained (CALT or equivalent MSLEC) but not require that same training for public schools. 20 U.S.C. 1413(a)(3).
7. Require Texas to include all private schools for children with dyslexia on its nonpublic school list (most recent TEA version of 1/26/21 includes no such schools), and to have designated representatives at meetings to discuss same.
8. Order Texas to provide parents information about options for private IEEs which includes providers that are qualified to identify dyslexia.

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We understand that OSEP has many items on its plate, but we believe that unless and until OSEP develops a more concrete specific plan, Texas will simply continue with “business as usual” continuing to deny children with dyslexia their lawful rights under the IDEA. We hope that OSEP will consider these requests and respond to us to ensure that all children with dyslexia in our state receive the FAPE to which they are entitled.

Should you have any questions, please feel free to contact us (there is a contact list for the signers as Attachment B). The best means to reach me will be by email at [sonja@cmklawfirm.com](mailto:sonja@cmklawfirm.com) or my cell which is 610-675-7192. If you utilize the cell, please contact me first and advise of your number as otherwise the call may go to voicemail.

On behalf of the children of Texas, thank you.

Very truly yours,

*s/Sonja D. Kerr*

Sonja D. Kerr  
Catherine Michael

On behalf of:  
Conroe ISD Dyslexia Group  
Decoding Dyslexia Texas  
Discovering Dyslexia  
Dyslexia Smart  
Empower Dyslexia  
Empowering Dyslexia For Spring Branch Houston  
Kitchen Table Group  
Round Rock ISD Dyslexia Group  
The Dyslexia Initiative

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## ATTACHMENT A -- CHECKLIST

I/We understand that by declining a special education Full Individual Evaluation of my child, I/We are giving up the following rights:

1. A free full and comprehensive evaluation of all of my child's potential disabilities, including dyslexia, specific learning disability, OHI (ADHD,), emotional disabilities, vision, hearing, speech and language.
2. If we disagree with a FIE, I/We are expressly giving up the right to a free Independent Educational Evaluation (IEE).
3. An Individual Education Program (IEP) that details a child's present levels of performance, goals, accommodations/modifications, and services, including specially designed instruction, counseling, speech therapy, occupational therapy, and other services.
4. Special protections in disciplinary matters.
5. Individualized dyslexia instruction that is tailored to the unique needs of the child.
6. Full parental participation in IEP/ARD meetings, progress reporting on our child's skills as frequently as report cards are issued.
7. Transition planning for our child once the child is 14 or in 9<sup>th</sup> grade (or earlier if needed).
8. Extended School Year services if the child needs assistance during summer breaks.
9. Reimbursement for services that we privately provide because the school district has failed to do so (i.e. tutoring).
10. Compensatory education for services that the school district has failed to provide.
11. The right to free mediation services.
12. The right to have a free facilitator at our meetings.
13. The right to a due process hearing when we disagree with the school district where an impartial hearing officer can determine if the child has been denied an appropriate education and order remedies.

## ATTACHMENT B

### SIGNERS CONTACT INFORMATION

#### List Attachment Contact info groups

Conroe ISD Dyslexia Group

Nicole May - [REDACTED]

Decoding Dyslexia Texas

Daphne Corder ([REDACTED])

Discovering Dyslexia

Lois Holguin [REDACTED]

Dyslexia Smart

Melissa Guerra [REDACTED]

Empower Dyslexia

Steven Yearout [REDACTED]

Empowering Dyslexia For Spring Branch Houston

Jennifer Hyland [REDACTED]

Kitchen Table Group

Rebecca Holmes [REDACTED]

Round Rock ISD Dyslexia Group

Heidi Goldman [REDACTED]

The Dyslexia Initiative

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