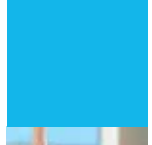
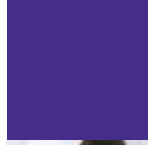


Understanding Your Rights



LearningAlly



The Law is Your Bodyguard

In order to engage your child's school to pursue appropriate accommodations to help your child learn, you will need some context on all the legal elements at play. This summary is intended to give you a general overview and some framework to help you understand the landscape. Getting support will involve navigating often complicated bureaucracies in order to secure the resources needed to reshape your child's school environment. Keep in mind that you may be a pioneer at your child's school—you may have to train the teachers and the administration regarding what is legally and professionally necessary. That said, this summary is not intended as a guide for legal action. I do include information on how to select legal counsel if you get to that point, but you should not use this information as your guide for court. Instead, I want to give you basic vocabulary for asserting your child's rights, as well as prepare you for the common pitfalls many parents face.

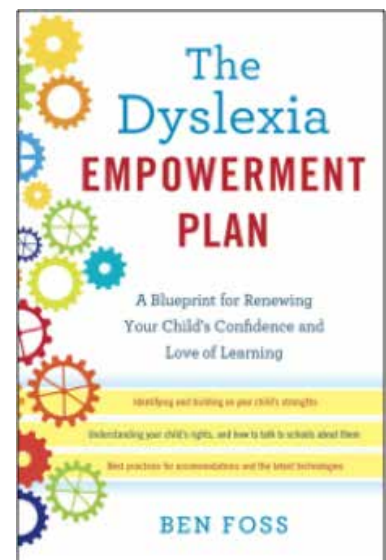
The law functions best when it acts as a bodyguard; people tend to pay attention when you walk into a room accompanied by a big guy in dark sunglasses! You don't want your bodyguard to do much beyond look menacing: if he acts, it may encourage others to get their own bodyguards, aka lawyers and bureaucrats. Merely noting in a passing comment that you have a bodyguard is more effective than boasting what your guard could do if you wanted him to.

Understanding the school's legal obligations and how to obtain what you need for your child is your chief goal.

In many cases the best path will be to avoid a legal battle, because they are costly and emotionally

draining, and they take a long time. The best scenario is that you'll be able to keep 90 percent of the knowledge in this summary in your back pocket and only have to display it from time to time in order to signal to others that you know what you're doing.

From the Book, *THE DYSLEXIA EMPOWERMENT PLAN* by Ben Foss.
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How You and Your Child Got Your Rights

Legally, the right to a free and appropriate education that your child now enjoys can be traced directly to the principles of the 1954 Supreme Court case *Brown vs. Board of Education*. A case that focused on racial integration in schools, *Brown* established that “separate is not equal.” The legislative history of the Education for All Handicapped Children Act, the basis of the support for special ed in U.S. Schools made law in 1975, points directly to *Brown*: “The Supreme Court of the United States (in *Brown v. Board of Education*) established the principle that all children be guaranteed equal educational opportunity. The Court stated, “Such an opportunity . . . is a right which must be made available to all on equal terms.”

The main purpose of the 1975 act, retitled the Individuals with Disabilities Education Act in 1990, was to fund programs and the teacher training needed to include children with disabilities in classrooms. Unfortunately, some schools made poor choices about spending these government funds (for example, investing in remediation at the cost of accommodation), and generally, funding keeps getting cut in education. The legacy of those choices and the strained funding persists today.

There also are a number of court cases that are more specifically focused on the issue of dyslexia and accommodation. In 1997, a seminal case taken up against Boston University underscored that dyslexic students are entitled to rights as students with disabilities. The president of the university had previously stated that he thought people who are dyslexic or had specific learning disabilities were “lazy fakers.” The university lost this case to the tune of millions of dollars in legal fees, and the precedent that was set has made it standard for all universities in the United States to include students with specific learning disabilities and dyslexia in the group that gets accommodations.

Dyslexia and other specific learning disabilities are now considered “high-incidence” disabilities, meaning that those with this identification are a large portion of the total number of students with disabilities in public schools. “Low-incidence” disabilities include most of the ones the mainstream thinks of as a disability: blindness, deafness, autism, needing to use a wheelchair, and so on. Autistic children make up only about 6 percent of the special ed population, and those with visual impairments less than 0.5 percent. U.S. Department of Education data from 2010 suggest that specific learning disabilities affected roughly 40 percent of the population, with speech and language



impairment (SLI) affecting an additional 25 percent of those receiving special education. The categories are fuzzy, but it is safe to assume that dyslexia is half or more of the subcategory of SLDs and some part of SLI.

Today, the total population of students with disabilities is over 6.5 million, much higher than ever contemplated by the Individuals with Disabilities Education Act. If funding was stretched then, it is stretched all that much thinner now. This is the main reason schools will resist an identification of dyslexia or other specific learning disabilities. It is nearly impossible for a school to reject the claim that a student is blind or has a hearing impairment, but dyslexia can be ignored more easily.

The Major Laws to Understand

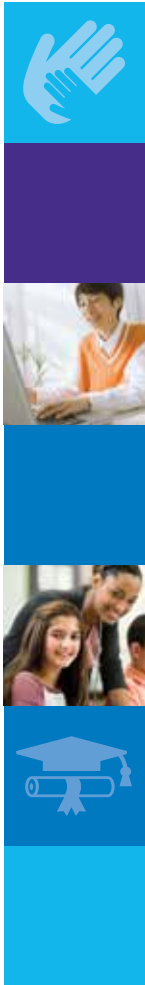
Today there are three major legal frameworks that directly affect children with dyslexia. You don't need to master the content of each, but you do need to be able to cite some key pieces of legislation in conversation and understand some core precepts from them in order to deal with your child's school most effectively.

In order of importance to the education of your child, they are the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act.

IDEA provides federal funding to public schools to support a "free and appropriate education" (FAPE) to students. It defines thirteen categories of disability and applies to children ages three through twenty-one who are determined by a multidisciplinary team to have a disability. Dyslexia falls squarely within one of the thirteen categories: "specific learning disability." IDEA and U.S. Department of Education regulations regarding Section 504 explain that this statement applies to "any person who:

- (i) has a physical or mental impairment which substantially limits one or more major life activities,
- (ii) has a record of such an impairment, or
- (iii) is regarded as having such an impairment."

For a person with dyslexia, the relevant "major life activity" is defined in law as "learning" and, under recent amendments to the ADA, specifically, "reading." Note that



the regulation points to the importance of a record of the impairment, so getting the certification and a formal record (identification) of your child's disability is extremely important.

Under IDEA, it is the obligation of elementary, middle, and high schools to find all students with disabilities within their district. Legal experts call this provision "child find." In theory this means that your school should be looking hard for students with disabilities. In practice it means that while they'll do their best, you're going to need to highlight this issue for them to take notice, given the non-obvious nature of dyslexia. Once the school is made aware of your child's identification, they are legally obliged to provide you with services and accommodations at no cost to you.

Section 504 and the ADA are both civil rights laws, as opposed to federal funding acts (which is what IDEA is). Section 504 protects people with disabilities from discrimination in private or public programs that receive federal funds. Private schools that receive money from the U.S. government are also subject to Section 504's guidelines, even if these funds are unrelated to special education (for example, if the school has subsidized meal programs or scholarship funds from Washington). The ADA applies more generally to employment, public services, and accommodations such as buildings and facilities. In the context of schooling, you would rarely use ADA claims, instead relying on Section 504. However, the ADA applies to nonsectarian private schools (but not to religious organizations) even if they do not receive federal funds, a narrow space where it would be the relevant law rather than Section 504. If you get to a point where you need to understand this level of detail, it is likely time to get a lawyer.

Both IDEA and Section 504 require that a student be educated in the "least restrictive environment" (LRE). This is generally interpreted to mean, to the maximum extent appropriate, that students are to be educated with their peers who do not have disabilities. The effect of this provision is that schools are not allowed to segregate your child from the mainstream classroom unnecessarily. While it might be appropriate to ask that your child leave a classroom for one-on-one sessions with a learning specialist once a day, it would not be appropriate for your child to have a totally different set of classes than her peers unless there was something specifically identified in her IEP that made this the most appropriate way to educate her, and therefore something you have agreed to. If your school proposes this accommodation, consider it a red flag, and dig more to determine the benefit of pulling her out of the mainstream.



You should be concerned about students being left out of the social and academic life of their school, rather than in them leaving the mainstream school all together. Generally, I have a bias in favor of inclusion, the term experts use to describe keeping students with disabilities integrated into the general education classroom setting. There are circumstances where a public school simply does not have the programming or resources to provide an appropriate education. In these situations, shifting to a school focused on dyslexia is a good option, providing you can afford it or you are able to strike a deal with your district to have them pay the bill in lieu of services they should be providing.

Most of the enforcement for IDEA and section 504 are overseen by the Office for Civil Rights in the U.S. Department of Education. The reality is that people in these offices have too much on their plate and you're unlikely to get a lot of help from them unless you get yourself into a legal wrangling of national significance, not something that will be much fun. It is more likely that if you have a dispute you will end up using the arbitration mechanisms built into these two laws, and if you find yourself in that position, you're going to want to consult a legal expert. This basic background will allow you to engage your school in a meaningful way. It is definitely best to try to build relationships by being polite and professional, while being ready to press your case if you find you need to invoke the bodyguard that is the law when you need the back-up.