

**Testimony by the New York Legal Assistance Group (NYLAG) on Students with
Dyslexia in New York City Public Schools Before the New York City Council**

Committees on Education and State and Federal Legislation

December 14, 2023

Chairs Abreu and Joseph, Council Members, and staff, good afternoon and thank you for the opportunity to testify regarding Students with Dyslexia in New York City Public Schools (“NYCPS”). My name is Calleigh Higgins, and I am an Equal Justice Works Fellow sponsored by Mayer Brown and Spotify in the Special Education Unit at the New York Legal Assistance Group (NYLAG). NYLAG uses the power of the law to help New Yorkers in need combat social, racial, and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence survivors, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBTQ community, Holocaust survivors, veterans, as well as others in need of free legal services.

For more than twenty years, NYLAG’s Special Education Unit (“SEU”) has advocated on behalf of low-income children with disabilities. Our lawyers collaborate with families to ensure that students receive the educational services to which they are entitled. Our advocacy includes representing students at IEP meetings, impartial hearings, and appeals to the State Review Office and Federal Court; securing appropriate school placements and related services; and obtaining independent educational evaluations. The Special Education

Unit also provides education advocacy through partnerships with other NYLAG units and community-based organizations. Through this work, we ensure that families are well-informed and have advocates to help them navigate the complexities of the special education system. Further, we partner with NYLAG's Special Litigation Unit in bringing impact litigation seeking systemic change to NYC's education system.

My fellowship focuses on ensuring that students with Dyslexia have access to evidence-based reading interventions. I serve students and their families by providing community education, free legal representation, and by advocating for policies that increase access to literacy. I appreciate the opportunity to testify before both the Committee on Education and State and Federal Legislation regarding students with Dyslexia in NYC.

Dyslexia is defined as an unexpected difficulty in reading in an individual who has the intelligence to be a much better reader.¹ Dyslexia impacts approximately 20% of all children, and while it develops equally across all races and genders, access to meaningful reading interventions in New York City is not equal across demographics.² For example, last school year, half of all New York City students were proficient readers, but for Black and Hispanic students, only 33% were achieving proficiency in reading.³ When Black and Hispanic students enter the special education system, they have less access to meaningful

¹ Sally Shaywitz, *What is Dyslexia?*, THE YALE CENTER FOR DYSLEXIA AND CREATIVITY, <https://dyslexia.yale.edu/dyslexia/what-is-dyslexia/>.

² Sally Shaywitz, *Multicultural Dyslexia Awareness Initiative*, THE YALE CENTER FOR DYSLEXIA AND CREATIVITY, <https://www.dyslexia.yale.edu/advocacy/ycdc-initiatives/multicultural-outreach/>

³ Julian Shen-Berro, NYC test scores: Roughly 50% proficient on reading, math exams, data shows, CHALKBEAT, <https://www.chalkbeat.org/newyork/2023/10/4/23904023/nyc-test-scores-state-exam-math-reading-disparities/>

literacy interventions compared to their white peers.⁴ Providing evidence-based reading interventions in public schools is therefore not just a disability rights issue; it is also a racial justice issue.

Dyslexia cannot be cured, but scientists have been able to use brain imaging to unlock the science behind reading, and the science is clear. Reading is not an innate ability in children, but rather a skill that must be explicitly taught. All children, but especially children with Dyslexia, benefit from reading instruction rooted in phonics. A call for evidence-based reading instruction is one that respects the role that phonics must play in a school's reading curriculum.

Yet, for several decades, New York City students were not exposed to phonics.⁵ Instead, the assumption was that all children would become strong readers if they were merely in proximity to books. The thinking throughout the past two decades was that by finding topics of high interest and looking at visual clues, like pictures, students would absorb the skill of reading. This process is not reflective of the science behind reading, and its practice harmed many students. Chancellor Banks called the prior curriculum “fundamentally flawed” and accepted that “it was [the NYCPS’s] fault.”⁶

⁴ Black and Hispanic students in special education are more likely to be classified with emotional disturbance than a learning disability, like Dyslexia. These discrepancies reflect implicit biases about the abilities of children from different races rather than statistical differences in the rate of occurrence of these two disabilities across races. See SALLY SHAYWITZ & JONATHAN SHAYWITZ, *OVERCOMING DYSLEXIA* 23 (2nd ed. 2020); Cheri Fancsali, *Special Education in New York City: Understanding the Landscape* (Aug. 2019), <https://steinhardt.nyu.edu/research-alliance/research/publications/special-education-new-york-city>; U.S. DEPARTMENT OF EDUCATION, *OSEP Releases Fast Facts on the Race and Ethnicity of Children with Disabilities Served under IDEA Part B* (Aug, 2020), <https://sites.ed.gov/osers/2021/08/osep-releases-fast-facts-on-the-race-and-ethnicity-of-children-with-disabilities-served-under-idea-part-b/>; Laura Schifter, *The ADA Has Fallen Short for Black Students. It's Past Time to Fix That*, *EDUCATIONWEEK* (2020), <https://www.edweek.org/teaching-learning/opinion-the-ada-has-fallen-short-for-black-students-its-past-time-to-fix-that/2020/07>.

⁵ Troy Closson, *New York Is Forcing Schools to Change How They Teach Children to Read*, *N.Y. TIMES*, May 9, 2023; <https://www.nytimes.com/2023/05/09/nyregion/reading-nyc-schools.html>.

⁶ *Id.*

At the behest of Mayor Adams and Chancellor Banks, NYCPS has taken the important initial step towards acknowledging the science of reading by transitioning the elementary school reading curriculum to include a phonics component. This is a critical positive change for the next generation of NYC students. But it fails to benefit the prior generation of NYC students now sitting in public middle and high school classrooms, who never received phonics instruction. This oversight is especially dangerous considering that the majority of children with Dyslexia do not receive a diagnosis until 3rd grade or later.⁷ NYLAG's clients with Dyslexia reflect this reality. They are middle and high school students who have average to high intelligence, who are not performing up to their potential because they never learned to read. They know something has gone wrong but their middle and high schools do not have teachers or curriculums in place to address their needs. Many of these cognitively bright middle and high schoolers have reading skills on an early elementary school level. Requiring phonics-based curriculum in elementary schools will hopefully prevent this harm from befalling the next generation, but it does nothing to repair the harm already done to the roughly 200,000 current students diagnosed with Dyslexia in NYC.⁸

For NYLAG's middle and high school aged clients, it is not uncommon for members of the IEP team, including NYCPS educators and parents, to agree that a student with Dyslexia is struggling to read and requires additional supports to learn how to read. However, where discrepancies arise between NYCPS educators and parents is in the stage of suggesting services. Under the Individuals with Disabilities Act (the "IDEA") and NY state and federal implementing regulations, IEP teams are not allowed to make

⁷ SALLY SHAYWITZ & JONATHAN SHAYWITZ, *OVERCOMING DYSLEXIA* 11 (2nd ed. 2020).

⁸ *Mayor Adams, Chancellor Banks Announce Comprehensive Approach to Supporting Students with Dyslexia*, NYC OFFICE OF THE MAYOR, <https://www.nyc.gov/office-of-the-mayor/news/293-22/mayor-adams-chancellor-banks-comprehensive-approach-supporting-students-dyslexia#/0>.

recommendations based on the availability of a service at their school or in the public school system at large.

The law mandates that the IEP team recommend appropriate educational supports, services, and programs for the student to achieve meaningful educational progress, irrespective of availability or cost. The logistics of delivering that service should align with that recommendation, not dictate it. But, in reality, this is not what happens for NYLAG clients. Schools know that their students with Dyslexia need an evidence-based reading program, but they also know there is no one in their middle or high school who can provide this type of service. And so, contrary to the law, the team will often leave off the only service that is scientifically proven to benefit a student with Dyslexia—an evidence-based reading intervention.

Not only have we witnessed IEP teams deny access to evidence-based reading interventions based on availability, but NYLAG clients continue to provide us with copies of IEPs that reference disproven reading programs, such as Fountas and Pinnell or Lucy Caulkin’s “Units of Study”.⁹ NYLAG clients will frequently have reading scores from these programs included in their IEP, and these scores will then dictate the types of services a client is qualified to receive. These reading scores are not reliable, and in some cases, they mask the student’s true needs. Reading scores from these programs better reflect a student’s ability to be an educated guesser than a reader. Yet, schools will deny a student with Dyslexia’s need for targeted reading intervention because their IEP reflects that they can “read” under prior flawed programs.

⁹ Emily Hanford & Christopher Peak, Influential authors Fountas and Pinnell stand behind disproven reading theory, APM (Nov. 19, 2021), <https://www.apmreports.org/story/2021/11/19/fountas-pinnell-disproven-childrens-reading-theory>; Dana Goldstein, In the Fight Over How to Teach Reading, This Guru Makes a Major Retreat, N.Y. TIMES (May 22, 2022), <https://www.nytimes.com/2022/05/22/us/reading-teaching-curriculum-phonics.html>.

In one of NYLAG's cases, a school took the extraordinary step of declassifying a middle school student with Dyslexia. As part of this determination, the school relied on data from one of these outdated and inaccurate reading programs and concluded that the student was reading on grade level. The student's parent knew their child was not reading at grade level and requested that an Independent Education Evaluation be funded by NYCPS. The evaluation confirmed what the parent saw each night at homework time. This middle school student was a bright child but lacked the basic reading skills expected of an early elementary student due to his Dyslexia. The school's continued reliance on a disproven reading program obscured the student's disability and resulted in a declassification that deprived the student of services for months. Ultimately, the student's special education services were reinstated based on the results of the independent reevaluation, but since the student's middle school does not have an educator equipped to teach a phonics-based reading program, this bright student continues to read many grade levels behind their ability.

Based on our experience representing students with Dyslexia, we urge you to consider policies that repair the harm done to older New York City students with Dyslexia. The adoption of a phonics-centered reading curriculum within elementary schools marks a significant change in the approach to teaching reading for NYC students; however, it fails to support students who have already experienced significant educational setbacks due to NYCPS's failure to teach them to read. Additionally, as Dyslexia screenings capture more students in need, there must be services in place to meet the needs of students in every grade level. **No student is too old to become a reader. And every NYC student should have the right to be given the tools to become one.**

We ask the Council to support policies that require middle and high schools to have access to a reading specialist. A reading specialist is a teacher who has been trained in a evidence-based reading programs, such as Orton-Gillingham or the Wilson Reading System. The programs are highly structured reading systems designed to help struggling readers. Professionals trained in these approaches can provide students with Dyslexia the opportunity to become readers and to participate to their full potential. And it is critical that these professionals are made accessible to middle and high school students.

We also urge the Council to support the continued investment in schools focused exclusively on serving students with Dyslexia. The South Bronx Literacy Academy is a testament to the city's commitment to ensuring that students with Dyslexia are not limited by their disability status. NYLAG's clients with Dyslexia are low-income and overwhelming students of color, and we ask that as the city continues to invest in schools for students with Dyslexia, this population should be centered. Students of color in special education are the least likely population to receive appropriate reading interventions and are most in need of being in proximity to a school that serves students with Dyslexia. Specifically, there is a noted lack of public, state-approved, or even private schools that have the resources to serve students with Dyslexia in Eastern Brooklyn. In East NY and Brownsville, only 10% of students in special education are reading proficiently. Additionally, Black and Hispanic students are overrepresented in special education in these two neighborhoods.¹⁰ We urge

¹⁰ On average, 20% of NYC students are enrolled in special education, but in East NY and Brownsville, the average is 24% and 28%, respectively. DOE Data at a Glance, NYC DEPARTMENT OF EDUCATION, <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance>; NYC Geog Dist #23 - Brooklyn Enrollment (2021 - 22), NYSED, <https://data.nysed.gov/enrollment.php?year=2022&instid=800000043733>; NYC Geog Dist #19 - Brooklyn Enrollment (2021 - 22), NYSED, <https://data.nysed.gov/enrollment.php?year=2022&instid=800000044521>.

the council to support the development of more schools like The South Bronx Literacy Academy, and we ask you to prioritize these vulnerable communities when doing so.

Finally, NYCPS has shown itself to have the capacity to be flexible in the face of crisis. After the pandemic, IEPs were modified to include a section that addresses compensatory services for students who lost access to special education programming and services during the pandemic. The lack of an evidence-based reading curriculum for decades in NYCPS has led to a different kind of crisis — a literacy crisis. The vast majority of current NYC students were never exposed to phonics, and for the roughly 20% of those students who are Dyslexic, the task these students were given was impossible: learn to read without access to any of the proven tools that would enable them to do so. To address this crisis, we ask the Council to consider urging NYCPS to add a section to IEPs that allows students who never received an evidence-based reading curriculum to have their harm directly addressed through automatic access to compensatory reading services. Schools can either directly provide compensatory services through a school-based reading specialist or can provide families with Related Services Authorization (“RSA”) vouchers that allow families to access independent reading specialists at enhanced rate.

We thank the committees on Education and State and Federal Legislation for the work they have done to support evidence-based phonics instruction to NYC students and for holding this hearing. We hope NYLAG can be a resource for you going forward.

Respectfully submitted,

Calleigh Higgins

New York Legal Assistance Group