

Orton-Gillingham Methodology for Students With Reading Disabilities

30 Years of Case Law

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Although numerous studies have investigated autism methodology case law, few studies have investigated case law regarding reading methodology, particularly the Orton-Gillingham approach, for students with reading disabilities. We provide the results of a systematic case analysis of all published Orton-Gillingham decisions from the original passage of the Individuals with Disabilities Education Act (IDEA) through 2005. Results indicate that in the past 30 years, hearing/review officers and courts reviewed 64 Orton-Gillingham cases, with 77% occurring within the last 10 years. Unlike autism methodology cases, districts have won an overwhelming majority (75%). Although inconclusive, the addition of the terms “peer-reviewed research” and “scientifically based research” in the 2004 reauthorization of IDEA may benefit parents in Orton-Gillingham methodology disputes, thus leading to increased litigation. This article concludes with recommendations for reversing the upward trend in the number of Orton-Gillingham reading methodology disputes.

As the number of special education cases continues to rise (Zirkel & D’Angelo, 2002), so does the need to investigate the causes and nature of such increases. Litigation can be extremely costly and can create undue stress for students, districts, and parents. For example, in several reading methodology cases (e.g., *Bd. of Educ. of the New Paltz Cent. Sch. Dist.*, 1997; *Sch. Admin. Dist. #22*, 2006), the courts ordered the school district to provide private school placement or tuition reimbursement. Tuition costs can be as high as \$38,000 to \$48,000 per year for many preferred private schools (Petersons.com, n.d.). Many of these specialized private school programs—Gow School, Landmark School, and Kildonan—use Orton-Gillingham approaches to mediate student reading difficulties.

Orton-Gillingham (O-G) methodology uses a systematic, multisensory approach to teach students basic reading, spelling, and writing. Advocacy groups and parents of children with reading disabilities often highly recommend O-G instruction. Public general education and special education programs, however, do not always share in such enthusiasm, and many have not adopted O-G as a primary reading methodology. One reason may be that many O-G programs require intensive one-to-one instruction, sometimes several hours a day, which may not be feasible systemwide due to budgetary and personnel restraints (Torgesen et al., 2001). The discrepancy between

parents’ methodology preferences and the districts’ program offerings has led to increasing litigation under the Individuals with Disabilities Education Act (IDEA).

While case analysis literature in other areas of special education methodology is growing (e.g., autism; Choutka, Douloughy, & Zirkel, 2004; Nelson & Huefner, 2003), only one review of reading methodology case law has been published. In a limited review, Bhat, Rapport, and Griffin (2000) examined the case law published between 1989 and 1998 and found 27 reading methodology decisions. Of those identified, the majority of cases involved the O-G method as the preferred methodology, followed by Lindamood-Bell. Bhat et al. found that the majority of reading methodology decisions involved secondary students, which highlights parents’ frustration with their children’s lack of progress. In addition, they found that remedies requested by parents fell into three general categories: (a) reimbursement of private school tuition or program reimbursement expenses, (b) prospective private school or program placement, and (c) prospective provision of requested methodology. Bhat et al. recommended that districts focus not only on early intervention efforts, but also in preparing highly qualified special education teachers through ongoing professional development. While the study provides information about the impact of reading methodology case law on school

districts and parents, it omits cases prior to 1989 and, more importantly, cases since the passage of IDEA 1997. Thus, its usefulness for districts and parents is limited.

The purpose of this article is to synthesize comprehensively yet compactly the case law concerning O-G methodology. Our focus on O-G stems from its popularity among advocates, prevalence in the case law, and connection to costly private schools requested by parents of children with reading disabilities. The result will fill the gap in the professional literature between systematic syntheses of the case law specific to eligibility as a student with a specific learning disability (SLD; Zirkel, 2006) and methodology for children with autism (Choutka et al., 2004; Nelson & Huefner, 2003). This article consists of four parts: (a) an overview of the IDEA framework for the methodology case law, (b) a discussion of O-G methods and the status of research support, (c) a systematic case analysis of the published hearing/review officer and court decisions concerning O-G, and (d) a discussion of practical implications and recommendations.

Legal Framework

Originally enacted in 1975 as the Education for All Handicapped Children Act, and subsequently amended in 1986, reauthorized in 1990, amended in 1997, and reauthorized in 2004, the IDEA is funding legislation that provides eligible children with a “free, appropriate public education” (FAPE) via an “Individualized Education Program” (IEP) in the “least restrictive environment” (LRE). In addition, eligible students and their parents are entitled to various procedural safeguards, including an adjudicative dispute resolution process starting with an impartial hearing officer decision and, in approximately 17 states that have opted to provide it, a review officer decision, followed by a judicial review at a state or federal court. Parents may request attorney’s fees and equitable remedies, such as tuition reimbursement and compensatory education (Zirkel & D’Angelo, 2002).

IDEA does not explicitly mention methodology. Its regulations also do not address it except to the limited extent that they continue to define “specially designed instruction” to include “adapting, as appropriate to the needs of an eligible child . . . , the methodology or delivery of instruction” (IDEA Regulations, § 360.39(b)(3), 2006). The 1999 regulations’ accompanying interpretive commentary opined that “in an individualized education there are circumstances in which the particular teaching methodology . . . is an integral part of what is ‘individualized’ about a student’s education” (IDEA Regulations Commentary, 1999, p. 12552). Conversely, the Office of Special Education Programs’ (OSEP’s) interpretations clarified that the IEP does not have to specify the methodology for “students who do not need a particular instructional methodology in order to receive educational benefit” (IDEA Regulations Commentary, 1999, p. 12552). The 2006 regulations, which did not change this definition of specially de-

signed instruction, incorporated the new statutory requirement that the statement of said instruction in the IEP be based on “peer-reviewed research to the extent practicable” (IDEA Regulations, § 300.32(a)(4), 2006). In the commentary accompanying these latest regulations, OSEP rejected a suggestion that this new requirement extended to methodology, instead reiterating its “longstanding position” that “if an IEP team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods may be addressed in the IEP” (IDEA Regulations Commentary, 2006, p. 46665). Thus, whether to include methodology in the IEP is an IEP team decision, subject to review via IDEA’s dispute resolution process.

Review of Orton-Gillingham

Dr. Samuel Orton and educator Anne Gillingham developed the basic philosophy of Orton-Gillingham throughout the 1930s and 1940s, believing that students with severe dyslexia needed a multisensory approach, particularly the use of auditory, visual, and kinesthetic channels, in their literacy instruction (Sheffield, 1991). However, during the 1940s, the pair split and went their separate ways. Orton continued with his original work, whereas Gillingham joined with Bessie Stillman to publish an expanded and purportedly more effective approach. The resulting two approaches, although very similar, differed in several distinct ways. For example, Orton had students say the sounds of letters as they spelled a word, whereas Gillingham and Stillman had students say the letter names (Gillingham & Stillman, 1956). They also differed in the teaching of the schwa sound, pronouncing the final y, and presenting cursive writing instruction (Sheffield, 1991). In the past 30 years, the two overlapping approaches have taken the form of more than 15 commercial programs and several private schools for students with disabilities (Horowitz, 2005; McIntyre & Pickering, 1995; Sheffield, 1991). Orton’s work is the basis for the Gow School, the oldest secondary school for students with dyslexia, and three popular reading programs: Writing Road to Reading, Project Read, and the Language Tool Kit. The Gillingham and Stillman approach is the foundation for two well known programs: Alphabetic Phonics and the Slingerland Method. Due to the shared philosophy, with commonalities outweighing differences, and the imprecision in professional parlance, Orton-Gillingham (O-G) is used generically herein to refer to the entire group of program variations.

At their most basic level, O-G programs use a multisensory approach to teach basic concepts of spelling, writing, and reading and continually build upon mastered skills. The view is that basic skills are hierarchical, referred to as the bottom-up approach, and the focus is on the automaticity of these specific subskills (Clark & Uhry, 1995). Reports by the National Reading Panel, National Research Council, and National Institutes for Health support the systematic instruction in phonological awareness and phonics that is inherent in O-G pro-

grams (Bright Solutions for Dyslexia, 1998; Reading and Language Arts Centers, 2004). However, traditional O-G does not provide specific instruction in fluency of connected text and comprehension, which these reports also recommend, causing some educators to supplement O-G instruction with additional reading instruction (Clark & Uhry, 1995; Institute for MultiSensory Education, 2000). Notably, Gillingham and Stillman (1960) advised against the use of supplemental reading instruction to encourage students to develop good reading and writing habits. They intended O-G to be the sole reading instruction for struggling students.

The distinguishing characteristics of O-G programs are what and how they teach, with the differences among the programs being relatively minor (Horowitz, 2005; McIntyre & Pickering, 1995; Sheffield, 1991). Students learn skills that become progressively more complex, beginning with instruction in phonemic awareness. They learn how to listen for, manipulate, and identify individual phonemes in words. Once students exhibit phonemic awareness, O-G programs address which letters or groups of letters represent different phonemes and how those letters blend together to make simple words. Next, students learn the six types of syllables found in the English language followed by an introduction to sounds that have multiple spellings. Finally, they learn morphology, roots, and affixes to increase their vocabulary, spelling of new words, and comprehension of text.

Teachers trained in O-G provide instruction using specific instructional techniques (McIntyre & Pickering, 1995). First, teachers present all skills through simultaneous multi-sensory instruction, which includes the demonstration of knowledge through multiple senses—particularly visual, auditory, tactile, and kinesthetic. Second, the instruction is highly intensive and includes direct, explicit instruction in rules of written expression through a logical systematic and cumulative process. Instruction of phonics incorporates synthetic (i.e., using letters/sounds to form words) and analytic (i.e., breaking long words apart) approaches. Finally, teachers regularly assess students' ability to generalize learned rules, and they use this information to guide the instruction, to reteach learned skills, or to increase the difficulty.

Research Support

Do O-G programs meet IDEA 2004's provisions for "scientifically based research" (§ 1411(e)(2)(c)) or "peer-reviewed research" (§ 1414(d)(1)(A)(i)(IV))? The 2006 IDEA regulations (§ 300.35) adopted the No Child Left Behind Act of 2001 (NCLB) definition of *scientifically based research*, which has these six hallmarks:

1. employs systematic, empirical methods that draw on observation or experiment;
2. involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
5. ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
6. has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review. (Section 7801(37))

NCLB uses the term judiciously throughout the act in reference to Reading First programs, Early Reading First funding requirements, Title 1 improvement funding, and in the justification of programs for federal funding (Zucker, 2004). Even more narrowly, IDEA uses the term in limited references to requirements for federal and state grants and contracts and the new evaluation process for students with learning disabilities, commonly referred to as *response to intervention*.

In a review of O-G literature, Ritchey and Goeke (2006) found only 12 published peer-reviewed studies that met the criteria of scientifically based research outlined by NCLB. Their findings highlighted a number of concerns with much of the published O-G research. First, many of the studies failed to use rigorous, systematic, and objective methodology. For example, the sampling procedures were not random in terms of selection from an identified target population and, in most cases, assignment to treatment and comparison groups. Second, data analysis and data reporting were not always appropriate. Reliance on grade equivalents, lack of inferential statistics, and failure to control for pretest differences were frequent flaws. In some comparison studies that used inferential statistics, Ritchey and Goeke found reports of significant differences between pre- and posttests, not between the treatment and control group, obscuring claims of causality. Third, the O-G treatment procedures were rarely operationally defined to allow for direct or systematic replication, and the fidelity of implementation was typically not reported. Moreover, the variations of O-G treatments—intensity of each session, length of program, and size of the group—and the variety in the samples in terms of disability status (e.g., none, learning disability, dyslexia) and grade level further limit attribution of

causality. Finally, a substantial proportion of O-G studies that are peer reviewed appeared in the *Annals of Dyslexia*, an interdisciplinary journal of the Orton Dyslexia Society, now known as the International Dyslexia Association. While not specifically addressed in Ritchey and Goeke's review, this connection has at least the appearance of partiality.

In sum, regardless of the O-G program, the available research suggests that students who receive ongoing, systematic instruction in O-G generally progress in one or more specific areas of reading (Ritchey & Goeke, 2006). However, O-G may not be the most effective program for some students. Ritchey and Goeke found that O-G was more effective than the comparison program was in only 5 of the 12 studies, much less than expected given its popularity. In addition, some have questioned whether increased reading achievement is specifically attributable to O-G, and, if it is, to which variation or component of O-G, since much of the available research is flawed (Clark & Uhry, 1995). As several reviewers have pointed out, the research studies to date have not sufficiently validated the multisensory component that is the core of O-G programs (Moats & Farrell, 1999; Sanders, 2001), nor have they provided scientific support for its effectiveness (Ritchey & Goeke, 2006). The purpose here is not to demonstrate the effectiveness or ineffectiveness of O-G programs, but to reveal the gap that persists between professional advocacy for O-G and the need for scientifically based and peer-reviewed research. In fact, many other popular reading methodologies also do not meet the standards for scientifically based research.

Method

As a threshold matter, for the purposes of interpretation and replication, we make clear the boundaries for the systematic case analysis. First, the analysis is limited to decisions from under IDEA, thus excluding postsecondary or adult court cases and those based on other legal grounds, such as Section 504 (e.g., *Campbell v. Bd. of Educ. of the Centerline Sch. Dist.*, 2003). All cases published between the original passage of IDEA in 1975 and 2005 were included; cases decided after December 31, 2005, were not included in the analysis (e.g., *Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302*, 2006; *Miller v. Bd. of Educ. of Albuquerque Pub. Sch.*, 2006). Second, the analysis is limited to "published" decisions in the sense that they appear in hard copy in an official set of volumes, such as the *Federal Supplement*—"F. Supp." or "F. Supp. 2d"—or in the specialized series, the *Individual with Disabilities Education Law Report*—"IDELR"—or its predecessor, the *Education for the Handicapped Law Report*—"EHLR." As of this time, this broad definition of "published" decisions, which extends beyond the traditional official case reports, is the norm for empirical research (e.g., Choutka et al. 2004; Etscheidt, 2003; Nelson & Huefner, 2003; Yell, Katsiyannis, Drasgow, & Herbst, 2003; Zirkel, 2006; Zirkel & D'Angelo, 2002). The number of pertinent decisions available only on electronic databases is relatively small, and these cases did not even meet

the relatively liberal selection criteria represented by the specialized IDELR. Thus, decisions available solely online, such as *N. Thurston Sch. Dist.* (2005), were not included. Third, O-G must have been at least one of the issues addressed in the case. Several excluded cases mentioned O-G, but it was not an issue (e.g., "Handicapped Child," 1980). For example, in *New York Dep't of Educ.* (2006), Lindamood-Bell had been an issue in a previous case with these parents; however, the current published case related to the provision of school lunch and breakfast during those services. Fourth, the analysis excluded cases in which the parents requested or proposed a reading methodology that was not an identified O-G program. Examples of excluded cases are *El Paso Indep. Sch. Dist.* (1998), *Bd. of Educ. of Victor Cent. Sch. Dist.* (1998), and *Bd. of Educ. of Downers Grove Grade Sch. Dist. No. 58* (1995); in these cases, the parents respectively requested a "Specific Reading Disorders Program," Fast ForWord, and a metacognitive approach, and the district did not propose an O-G program. One excluded example was a close call; in *Gerstmyer v. Howard County Pub. Sch.* (1994), the parents expressed interest in O-G methodology but sought tuition reimbursement for a private school placement that did not offer these services. Finally, when a given case yielded more than one published decision, the entry is limited to the highest level that decided the O-G issue, although the citation includes any further proceedings or other issues. For example, *Ms. M. v. Portland Sch. Comm.* (2003) reached the U.S. Court of Appeals for the First Circuit, but the issue appealed was not O-G. Therefore, the chart cites the decision of Maine's federal district court because it was the highest court that addressed the issue of O-G. The case and its most recent relevant findings figure into the analysis only once, regardless of the number of times published or appealed.

We employed several strategies to locate cases that met the selection criteria. First, we entered the following terms into two popular legal databases, Lexis and Westlaw: *reading methodology, multisensory, Orton Gillingham, Alphabetic Phonics, Wilson Reading Program, Spalding, Herman, Project Read, Lindamood-Bell, DDT, and Slingerland*. Second, we obtained access to the PDF versions of the *Individual with Disabilities Education Law Report* and searched for the above terms. Finally, the first author checked the various possible pertinent IDELR topic headings including principally "Educational Methodologies" and "Specific Learning Disability—Educational Methodologies" under "Specific Learning Disability." Table 1 includes all of the cases identified as meeting the selection criteria.

Table 1 consists of eight columns. The first two columns provide the abbreviated name and the year for each decision, whereas the references include the complete citations. The third column lists the jurisdiction and level within it: "SEA" refers to a hearing or review officer decision; "D," as in "S.D.N.Y." or "D. Vt.," refers to a federal district court; and "App." or "Cir." refers to an appellate court in the state or fed-

(Text continues on p. 181)

TABLE 1. Summary of the Outcomes for Orton-Gillingham (O-G) Case Law from 1975 to 2005

Case citation ^a	Year ^b	Juris- diction ^c	Grade(s) ^d	Proposed reading program ^e	Remedy sought by parent	Outcome ^f	Comments ^g
Morgan Hill Unified School Dist.	1980	Cal. SEA	4	P: Orton-Gillingham or Slingerland D: Multisensory interactive approach in general education class	<ul style="list-style-type: none"> Prospective special education eligibility Placement with O-G or Slingerland 	D	
Town of Burlington	1980	D. Mass.	3-4	P: Orton-Gillingham D: Instruction in a special needs classroom	<ul style="list-style-type: none"> Reimbursement for preparatory expenses Prospective private school placement 	P	Placement at Carroll School
William S.	1981	Mass. SEA	8-9	P: Orton-Gillingham D: Tutoring and remedial reading class	<ul style="list-style-type: none"> Prospective private school placement 	P	Placement at Carroll School
Christopher O., In re	1983	Mass. SEA	8	P: Orton-Gillingham D: Not specified	<ul style="list-style-type: none"> Prospective program placement Prospective provision of O-G 	P	
Scituate School Comm.	1985	D.R.I.	7-8	P: Orton-Gillingham D: Individualized approach in self-contained class	<ul style="list-style-type: none"> Reimbursement for private school placement 	D	Residential placement at Linden Hill
Robert M., In re	1988	Pa. SEA	12	P: Orton-Gillingham D: Not specified	<ul style="list-style-type: none"> Prospective provision of O-G 	D	
Walpole Pub. School	1990	Mass. SEA	5	P: Orton-Gillingham D: Intensive language arts and spelling instruction	<ul style="list-style-type: none"> Prospective private school placement 	D	Placement at Carroll School
Stow Pub. School	1990	Mass. SEA	4-6	P: Orton-Gillingham D: Multisensory, individualized instruction	<ul style="list-style-type: none"> Reimbursement for private school placement Prospective private school placement 	D	Placement at Carroll School
Rochester School Dist.	1991	Vt. SEA	7-8	P: Orton-Gillingham "integrated in all subjects" D: Herman Method then 1:1 Orton-Gillingham	<ul style="list-style-type: none"> Prospective private school placement 	P	Residential placement at Pine Ridge
Garden City Pub. School	1991	Mich. SEA	5-6	P: Orton-Gillingham D: Comprehensive reading instruction	<ul style="list-style-type: none"> O-G expressly incorporated into Individualized Education Program 	D	
Straube	1992	S.D.N.Y.	10-12	P: Orton-Gillingham D: Multisensory approach	<ul style="list-style-type: none"> Reimbursement for private school placement Prospective private school placement 	D	Residential placement at Kildonan
Manchester School Dist.	1993	D.N.H.	10-12	P: Orton-Gillingham or similar D: Not specified	<ul style="list-style-type: none"> Prospective private school placement 	P	Court ruled private school should offer Orton-Gillingham or a similar program
Pomona Unified School Dist.	1993	Cal. SEA	3-4	P: Slingerland D: Whole language	<ul style="list-style-type: none"> Reimbursement for private school placement Prospective private school placement 	P	Placement at Prentice Day School

(Table continues)

(Table 1, continued)

Case citation ^a	Year ^b	Jurisdiction ^c	Grade(s) ^d	Proposed reading program ^e	Remedy sought by parent	Outcome ^f	Comments ^g
Brandywine School Dist.	1994	Del. SEA	6	P: Orton-Gillingham or Alphabetic Phonics (AP) D: Spalding Method	• O-G or AP expressly incorporated into Individualized Education Program	D	Parent prevailed on another issue, which is ESY
Grapevine-Colleyville Indep. School Dist.	1994	Tex. SEA	9	P: Herman Method D: Not specified	• Prospective provision of Herman Method	D	
Grafton Pub. School	1995	Mass. SEA	9	P: Wilson Reading Language System D: Combination of Wilson Reading and Project Read	• Reimbursement for program placement	D	
Schlude	1995	S.D.N.Y.	9	P: Orton-Gillingham D: Special education reading instruction	• O-G expressly incorporated into Individualized Education Program • Prospective private school placement	D	Placement at Kildonan
Waltham Pub. School	1995	Mass. SEA	5	P: Orton-Gillingham D: Not specified	• Reimbursement for private school placement	D	Placement at Carroll School
Oak View Union School Dist.	1995	Cal. SEA	8	P: Auditory Discrimination in Depth D: Not specified	• Reimbursement for preparatory expenses • Prospective program placement	D	
Vista Unified School Dist.	1995	Cal. SEA	9–11	P: Auditory Discrimination in Depth D: Some instruction in Lindamood-Bell (Grade 9), inclusion in general education (Grade 10), special education day class (Grade 11)	• Reimbursement for program placement • Prospective program placement	P	
Mather	1996	D. Vt.	11–12	P: Orton-Gillingham D: Instruction and summer tutoring from a teacher who had Orton-Gillingham training	• Reimbursement for private school placement	D	Residential placement at Landmark School
Evans	1996	S.D.N.Y.	8–9	P: Orton-Gillingham in all subjects D: Independent, multisensory instruction 40 min each day	• Prospective private school placement	P	Placement at Kildonan
Montgomery County Pub. School	1996	Md. SEA	10	P: Lindamood-Bell program D: Tutoring at local center	• Reimbursement for program placement	D	
Wall	1996	E.D.N.Y.	5	P: Orton-Gillingham D: 1:1 decoding and spelling instruction	• Reimbursement for private school placement	D	Residential placement at Landmark School
Bd. of Education of Portage Pub. School	1996	Mich. SEA	9	P: Lindamood-Bell/Orton-Gillingham D: Not specified	• Prospective provision of Lindamood-Bell/O-G	D	
Montgomery County	1997	Md. SEA	K	P: Lindamood-Bell D: Phonological instruction with mainstreaming opportunities	• Reimbursement for private school placement	D	placement at the Lab School of Washington

(Table continues)

(Table 1, continued)

Case citation ^a	Year ^b	Juris- diction ^c	Grade(s) ^d	Proposed reading program ^e	Remedy sought by parent	Outcome ^f	Comments ^g
Austin Indep. School Dist.	1997	Tex. SEA	4	P: Essential Learning System (ELS) D: Alphabetic Phonics & Read Naturally	<ul style="list-style-type: none"> • Prospective provision of ELS 	D	ELS is a computer-based program; Read Naturally is reading fluency instruction
Cronkite	1997	C.D. Cal	11–12	P: Orton-Gillingham and Lindamood-Bell D: Multisensory teaching approach	<ul style="list-style-type: none"> • Reimbursement for Lindamood-Bell placement • Prospective private school placement 	D	Private school placement at the Landmark School
Glazier	1997	Minn. Ct. App.	9–10	P: Orton-Gillingham D: Not specified	<ul style="list-style-type: none"> • Prospective provision of O-G 	D	
Santa Barbara High School Dist.	1997	Cal. SEA	12	P: Lindamood-Bell D: Project Read	<ul style="list-style-type: none"> • Prospective program placement 	D	
Board of Education of the New Paltz Cent. School Dist.	1997	N.Y. SEA	8–10	P: Variant of Orton-Gillingham D: Instruction in team teaching classrooms	<ul style="list-style-type: none"> • Reimbursement for private school placement 	P	Placement at Gow School
Laguna Beach Unified School Dist.	1997	Cal. SEA	2	P: Lindamood-Bell D: Regular education with 1 hr of pull-out	<ul style="list-style-type: none"> • Reimbursement for preparatory expenses • Reimbursement for program placement • Prospective private school placement 	D	
Fremont Unified	1997	Cal. SEA	5	P: “Cohesive, sequential, multisensory approach” D: Multisensory approach based on Slingerland training	<ul style="list-style-type: none"> • Reimbursement for private school placement • Prospective private school placement 	D	Placement at Stellar Academy, which uses Slingerland approach
Gwinnett County School Sys.	1998	Ga. SEA	9	P: Orton-Gillingham D: Special education support	<ul style="list-style-type: none"> • Prospective provision of O-G 	D	
E.S.	1998	8th Cir.	4	P: 1:1 Orton-Gillingham D: Not specified	<ul style="list-style-type: none"> • O-G expressly incorporated into Individualized Education Program 	D	
Plympton Pub. School	1998	Mass. SEA	5	P: Multisensory teaching approach D: Project Read	<ul style="list-style-type: none"> • Prospective private school placement 	D	Residential placement at Landmark School, which uses Orton-Gillingham
Moubray II	1998	D. Minn.	1	P: Orton-Gillingham D: Title I reading services	<ul style="list-style-type: none"> • Prospective provision of O-G 	D	
Bend-Lapine School Dist.	1998	9th Cir.	5–6	P: Auditory Discrimination in Depth D: Phonics program	<ul style="list-style-type: none"> • Reimbursement for program placement 	D	
Pascoe	1998	S.D.N.Y.	11–12	P: Orton-Gillingham D: Special education reading class and special education English/language arts class with teachers trained in O-G	<ul style="list-style-type: none"> • O-G expressly incorporated into Individualized Education Program • Prospective private school placement 	D	Placement at Kildonan

(Table continues)

(Table 1, continued)

Case citation ^a	Year ^b	Juris- diction ^c	Grade(s) ^d	Proposed reading program ^e	Remedy sought by parent	Outcome ^f	Comments ^g
Hingham Pub. School	1998a	Mass. SEA	2	P: Project Read D: Benchmark Revised	• Prospective provision of Project Read	D	
Bd. of Education of Oak Park & River Forest High Sch. Dist. No. 200	1998	N.D. Ill.	10–11	P: Orton-Gillingham D: Remedial reading class	• Reimbursement for private school placement	P	Residential placement at Eagle Hill
Hingham Pub. School	1998b	Mass. SEA	5	P: Additional Project Read tutoring D: Project Read	• Increase of Project Read services • Project Read as extended school year	D	
Unified School Dist. No. 259	1999	Kan. SEA	5	P: 1:1 Alphabetic Phonics or Orton-Gillingham D: Morphographics	• Prospective provision of AP or O-G	D	Morphographics is instruction in how words are formed and related
Ridgewood Bd. of Education	1999	3d Cir.	8–9	P: Orton-Gillingham D: Basic Skills Instruction then Wilson Reading	• Reimbursement for private school placement • Prospective private school placement	Inc	1. Residential placement at Landmark School 2. Inconclusive, remanded to determine (a) whether district placement was appropriate and (b) whether Landmark's program was appropriate
Bd. of Education of Taconic Hills Cent. School Dist.	2000	N.Y. SEA	2	P: Orton-Gillingham D: Not specified	• Reimbursement for private school placement	(P)	1. Placement at Kildonan 2. Ruled at step 2 of tuition reimbursement analysis that OG was appropriate, but parent lost at step 3
Student with a Disability, In re	2000	Mich. SEA	5	P: Lindamood-Bell D: 5–10 hr of special education reading instruction	• Prospective provision of Lindamood-Bell • Prospective provision of Lindamood-Bell as ESY • Reimbursement for program placement	D	
Moubry III	2000	D. Minn.	2–3	P: Orton-Gillingham D: Not specified	• Prospective provision of O-G	D	
Medford	2000	Mass. SEA	6	P: Wilson Reading Program and Project Read D: Some Project Read concepts	• Reimbursement for private school placement	P	Placement at Learning Pre School
M.B.	2002	S.D.N.Y.	7	P: Orton-Gillingham in all areas D: Multisensory approach with some Orton-Gillingham	• Reimbursement for private school placement	D	Placement at Kildonan

(Table continues)

(Table 1, continued)

Case citation ^a	Year ^b	Juris-diction ^c	Grade(s) ^d	Proposed reading program ^e	Remedy sought by parent	Outcome ^f	Comments ^g
Todd	2002	7th Cir.	9	P: Orton-Gillingham D: 1:1 reading instruction	• Reimbursement for private school placement	D	
Davidson	2002	W.D. Tenn.	11–12	P: Lindamood-Bell D: 1:1 tutoring in English and special reading materials	• Reimbursement for program placement • Prospective program tutoring	D D	
Arlington Cent. School Dist.	2002	S.D.N.Y.	Unknown	P: Orton-Gillingham in all subjects D: Not specified	• Reimbursement for private school placement	(P)	Placement at Kildonan. Granted reimbursement for 1999–2000 school year but denied for 1998–1999.
Daniel G.	2002	Pa. Commw. Ct.	7	P: Orton-Gillingham in all subject areas D: 1:1 instruction using Orton-Gillingham approach two times per day	• Reimbursement for private school placement	D	Placement at Oakland School
Banks	2003	D. Conn.	10–11	P: Orton-Gillingham in all subject areas D: Orton-Gillingham one period per day	• Reimbursement of private school placement	D	Placement at Kildonan
Bd. of Education of Rhinebeck Cent. School Dist.	2003	N.Y. SEA	8	P: Orton-Gillingham 60 min daily D: Not specified	• Reimbursement for program placement • Prospective program tutoring	D	
Ms. M Comm.	2003	D. Me.	4–6	P: Wilson Reading Method 1:1 3 hr per week D: Wilson Reading Method 40 min every other day in a small-group setting	• Reimbursement for Wilson program tutoring • Reimbursement for private school placement	(P)	1. Placement at Aucocisco 2. Parent did not win reimbursement for private school placement
Antonaccio	2003	S.D.N.Y.	9–10	P: Orton-Gillingham D: Multisensory approach	• Prospective private school placement	D	Residential placement at Pine Ridge
Grim	2003	2d Cir.	3–5	P: Orton-Gillingham D: Not specified	• Reimbursement for private school placement	D	Placement at Kildonan
Galina C.	2004	D.N.H.	6	P: Orton-Gillingham in all subjects D: Lindamood-Bell and Orton-Gillingham techniques	• Reimbursement for private school placement	D	Placement at Burnham Brook
Horizon Instructional Sys.	2005	Cal. SEA	8	P: Davis Dyslexia Association method (DDA) D: Wilson Reading Program	• Prospective provision of DDA	D	DDA employs a multisensory approach and features “symbol mastery” using clay model pictures
McCarthy	2005	Minn. Ct.	4	P: Orton-Gillingham App. D: Reading Mastery	• Reimbursement for program tutoring • Compensatory education as O-G	D	

(Table continues)

(Table 1, continued)

Case citation ^a	Year ^b	Juris- diction ^c	Grade(s) ^d	Proposed reading program ^e	Remedy sought by parent	Outcome ^f	Comments ^g
Watson	2005	2d Cir.	9–12	P: Orton-Gillingham D: Multisensory reading instruction	• Prospective private school placement	D	Placement at Kildonan
School Administration Dist. #22	2005	Ma. SEA	5–8	P: Orton-Gillingham D: Five different reading programs	• Prospective private school placement • Compensatory education as O-G	P	Placement at Landmark School
Boston Pub. School	2005	Mass. SEA	3–4	P: Orton-Gillingham during summer D: Orton-Gillingham during school year only	• Prospective provision of O-G as extended school year	D	

^aAbbreviated case citation. Please see references for full case citation. ^bYear of decision. ^cSEA” refers to a hearing or review officer decision; “D,” as in “S.D.N.Y.” or “D. Vt.,” refers to a federal district court; and “App.” or “Cir.” refers to an appellate court in the state or federal system, respectively. Highest court that reviewed O-G issue is included. ^dRepresents the grade, or grades in some cases, of the student at the time of the disputed service. ^eReading methodology proposed by the parents, designated as “P;” and the school district, designated as “D.” ^fHearing/review officer’s or the court’s outcome for the O-G issue. “P” = parents won conclusively and completely; “(P)” = parents won partially; “D” = district won completely; and “(Inc)” = inconclusive, i.e., the outcome was subject to further unreported proceedings. ^gAdditional clarifying comments, such as a description of the proposed program or the name of the private school requested by the parents.

eral system, respectively. The fourth column represents the grade, or grades in some cases, of the student at the time of the disputed services. For example, if the student was in the 12th grade at the time of the decision but in the 11th grade when the parents initially disputed the services, the entry is "11." The fifth column provides the name of the reading methodology proposed by the parents, designated as "P," and the school district, designated as "D." This column includes more specific information about the proposed program, such as the amount of time or location of services, or conversely, when the case did not provide this information, "not specified" to clarify the proposed or requested program. The sixth column presents the remedy sought by parents directly related to the O-G issue: (a) reimbursement for related preparatory services (e.g., traveling or testing); (b) reimbursement of private school tuition or program reimbursement expenses; (c) prospective private school or program placement; (d) prospective provision of requested methodology; (e) express incorporation of the requested methodology in the IEP; (f) compensatory education; or (g) requested methodology as extended school year, or "ESY." The next column provides the hearing/review officer's or the court's outcome for the O-G issue: "P" = parents won conclusively and completely; "(P)" = parents won partially; "D" = district won completely; and "Inc" = inconclusive (i.e., the outcome was subject to further unreported proceedings). The final column includes additional clarifying comments, such as a description of the proposed program or the name of the private school requested by the parents.

Results of Case Analyses

An examination of Table 1 reveals that there have been 64 published O-G decisions from the original passage of IDEA in 1975 through 2005. The majority of cases occurred in the last 10 years (76.6%), resulting in a generally upward slope (+0.19). We found no published cases during the 1970s. Throughout the 1980s, the number of cases remained relatively stable, averaging less than one per year. The 1990s brought a dramatic increase in the number of O-G cases. While the early part of the decade experienced an average of two cases per year, in 1995 it rapidly increased to five cases per year, hitting its peak in 1997 to 1998 at an average of seven and one half cases per year. The last 4 years appear strikingly similar to that of the mid-nineties, with 3 of the past 4 years averaging five cases per year.

A little more than half (54.7%) were hearing or review officer, compared to court, decisions. Of the court decisions, six reached the federal appellate courts, with the Second Circuit of Appeals accounting for one third of these decisions. Of all the states, Massachusetts, New York, and California were the highest with regard to the number of "SEA" plus court cases, accounting for 12, 11, and 9 cases, respectively. The southern states accounted for the lowest concentration, specifically two in Texas and one in Georgia.

The grade levels of dispute were most frequently in the upper elementary context (30%), specifically Grades 4 to 6, and the high school context (44%), specifically Grades 9 to 12. Bhat et al. (2000) also found higher concentrations of cases involving secondary students. Relatively few cases were in the primary grades, with 5 of these 11 cases arising in Grade 3. Although the pattern is not clear-cut, perhaps attributable in part to the varying middle-grade level configurations, decisions in Grades 5 to 6 ($n = 22$) and 8 to 9 ($n = 25$), which are years generally just prior to the next school level, appeared more often than did other pairs of years.

As shown in the sixth column, the parent was the party requesting O-G in all but two cases (*Austin Indep. Sch. Dist.*, 1997; *Horizon Instructional Sys.*, 2005). In 24 (39%) of the cases in which the parent requested O-G, the district proposed a similar program—either a specific O-G program or a generic multisensory approach to reading instruction. Of the programs requested, O-G was the most popular (67%), followed by Lindamood-Bell/ADD (16%).

The relief that the parents sought for the O-G issue varied. The most frequently requested remedies were tuition reimbursement and prospective placement (73%), either alone or in successive combination. The most frequently identified private school was Kildonan ($n = 10$), a residential and day school program in New York specifically designed for 2nd-through 12th-grade students with dyslexia that integrates O-G in all academic areas (Kildonan School, n.d.). Parents identified the Carroll School, an O-G day school, and the Landmark School, both an O-G day and residential placement, in Massachusetts for students diagnosed with learning disabilities in five and six cases, respectively. In relatively few cases, parents sought express incorporation of O-G in the IEP. For example, in *Brandywine Sch. Dist.* (1994), the parents wanted O-G or Alphabetic Phonics expressly included in the IEP, even though the school was already providing the student with another O-G program, the Spalding Method. In another example, the child was receiving the preferred methodology, Project Read, but the parents wanted the IEP to reflect increased time in the program (*Hingham Pub. Sch.*, 1998b). Unusually, the parents sought O-G as compensatory education in two cases (*McCarthy v. Indep. Sch. Dist. 284*, 2005; *School Admin. Dist. #22*, 2005).

The Outcome column is probably the most significant for parents and districts. Districts won completely in 75% of the decisions, with parents succeeding completely or partially in only 23% of cases. The remaining single case (*Ridgewood Bd. of Educ. v. N.E.*, 1999) was inconclusive; thus the appellate court sent it back to the lower court to determine (a) whether the district's proposed placement was appropriate, and if not, (b) whether Landmark's program was appropriate, thus leaving the tuition reimbursement decision wide open.

Inasmuch as methodology is a FAPE issue, except for the relatively few pre-*Rowley* decisions, the two standards established by *Bd. of Educ. of Hendrick Hudson Sch. Dist. v. Rowley* (1982) were the applicable framework: (1) whether the

district committed one or more harmful procedural violations and (2) whether the proposed program was reasonably calculated to provide educational benefit. As codified by IDEA 2004, harmful procedural issues are those that significantly impede the opportunity for parental participation, deny the child educational benefit, or deprive the child of FAPE (IDEA, § 1415 (f)(3)(E)(ii)). On the substantive side, the courts have generally established that IDEA does not require districts to provide a “Cadillac” education for students, but only access to meaningful educational benefit (*Banks v. Danbury Bd. of Educ.*, 2003; *Doe v. Bd. of Educ. of Tullahoma City Sch.*, 1993) and that methodology decisions warrant deference to the school district’s discretion (*Glazier v. Indep. Sch. Dist. No. 876*, 1997; *Grim v. Bd. of Educ. of Rhinebeck Cent. Sch. Dist.*, 2003; *Moubry v. Indep. Sch. Dist. No. 696*, 1998).

The prevalence of O-G decisions in favor of the districts is attributable to the latitude that this framework provides for district discretion. First, the districts won the majority of the procedural claims due to the added hurdle of proving harmfulness. For example, the hearing officer in *Austin Indep. Sch. Dist.* (1997) found in favor of the district, concluding that the multiple procedural errors in paperwork and missed timelines did not result in harm since the parents were active participants throughout the IEP process and the student received educational benefit. Second, when the substantive claim was purely an issue of methodology, the decision tended to favor the district in light of the doctrine that provides for deference to school districts’ instructional choices. For example, in *Glazier* (1997), the court refused to order the district to use an O-G–based program on the precedents of leaving choice of methodology to the discretion of the school district. There are numerous examples of this reasoning, and the final results are similar (*Austin Indep. Sch. Dist.*, 1997; *Garden City Pub. Sch.*, 1991; *Grapevine-Colleyville Indep. Sch. Dist.*, 1994; *Moubry v. Indep. Sch. Dist. No. 696*, 1998; *Robert M.*, 1988; *Unified Sch. Dist.*, 1999). In an attempt to avoid the deference doctrine, some parents argued that the issue was one of placement not methodology; yet districts won 32 (68%) of the 47 placement cases, due in part to the student receiving at least some educational benefit in the district program. However, the operational definition of educational benefit lacks not only rigor, but also consistency in the O-G case law. For example, in one O-G case, the court ruled that the student’s passing grades in his regular education classes constituted the requisite educational benefit (*Davidson v. Gibson County Special Sch. Dist.*, 2002), whereas in another, the court regarded the student’s 2-month gain in a 10-month period as sufficient progress to meet the educational benefit standard (*Daniel G. v. Delaware Valley Sch. Dist.*, 2002).

In the limited number of recent parent victories, parents won for a variety of reasons. In a few cases, the procedural violations were so numerous that they were a blatant denial of FAPE (*Evans v. Bd. of Educ. of Rhinebeck Cent. Sch. Dist.*, 1996; *Rochester*, 1991; *Vista Unified Sch. Dist.*, 1995; *Bd. of Educ. of Oak Park v. Kelly E.*, 1998). In a few others, the par-

ents won program or private school tuition reimbursement or placement when the district’s program not only failed to provide the intensive, individualized multisensory language-based instruction the expert witnesses recommended, but also failed to result in the student making progress (*Manchester Sch. Dist. v. Christopher B.*, 1993; *Pomona Unified Sch. Dist.*, 1993; *Vista Unified Sch. Dist.*, 1995). In the remaining cases, the parent won based on the least restrictive environment, or LRE. More specifically, the hearing and review officers concluded that the private O-G placement was the LRE due to the severity of the students’ learning disability (*Manchester Sch. Dist. v. Christopher B.*, 1993; *Rochester Sch. Dist.*, 1991; *Vista Unified Sch. Dist.*, 1995; *William S. v. Chelmsford Pub. Sch.*, 1981).

For two cases in which the parents were partially successful, they did not win the high-stakes O-G issue of tuition reimbursement. In *Bd. of Educ. of Taconic Hills Cent. Sch. Dist.* (2000), the state review officer affirmed the hearing officer’s decision that the district failed to meet its burden of providing FAPE and that the parents had demonstrated that the O-G private school placement was appropriate. However, he did not order the district to reimburse the parents based on equitable considerations, since the parents neither had enrolled their child in the school district nor were interested in any of the district’s services. Indeed, the parents initially approached the district to request special education transportation services to the child’s current private school placement and then moved out of the district, seeking tuition reimbursement 1½ years later. Similarly, the court in *Ms. M. v. Portland Sch. Comm.* (2003) ordered the district to reimburse the parents for O-G tutoring for the prior year, but not for private school placement for the current year, noting that the newly proposed IEP and program were appropriate. Although the frequency of O-G cases is on the upswing, the outcome trend for parents is unpredictable; parents have only completely won six cases during the past 10 years.

Discussion

The 64 published O-G decisions under IDEA are notably more than expected based on the negligible professional literature of case analysis to date. In contrast, for example, the comparable quantity of published decisions on autism methodology has been subject to several analyses in special education journals (e.g., Choutka et al., 2004; Etscheidt, 2003; Nelson & Huefner, 2003; Yell et al., 2003). Perhaps the reasons for the disparity in the literature is the increasing awareness of autism and the largely costly and distinctive methodologies—Lovaas/applied behavior analysis (ABA)/discrete trial training (DTT)—that the parents tend to favor. In any event, this study brings attention to methodology for students with specific learning disabilities through a systematic analysis of the lengthening line of O-G litigation.

The upward trend in the number of O-G cases generally parallels the increasing number of published special educa-

tion cases (Zirkel & D'Angelo, 2002). Similarly, the O-G decisions were prevalent in California and New York, which are among the leaders in special education litigation (Zirkel & D'Angelo, 2000). The upward trend in O-G litigation is likely to continue in light of the emphasis in IDEA 2004 on individual learning disability screening and IEPs based on "scientific, research-based intervention" (§ 1414(b)(6)(B)) and "peer-reviewed research" (§ 1414(d)(1)(A)(i)(IV)). These requirements may provide parent attorneys with another avenue to challenge a district's methodology decisions, particularly because the amendments expressly apply their standards to state and local education agencies, leaving parents' competing choices, at least in tuition reimbursement cases, free from these same standards in light of *Florence County Sch. Dist. Four v. Carter* (1993). In *Carter*, the Supreme Court ruled that in tuition reimbursement cases, parents need not meet the standards for appropriateness that apply to school districts (and states).

An interesting finding that our case analysis revealed was that the number of cases decided at the state level is significantly lower than previously reported. Bhat et al. (2000) found 78% of reading methodology cases were decided at the state level, whereas we found just over half were. Although differences may be attributable to the years reviewed, a closer look at Table 1 reveals another possible explanation. During the last five years, federal courts, not state courts, decided the majority of O-G cases (62%). This raises concern since appeals to higher courts can create additional financial burden for school districts and parents. Further research is needed to understand the increasing prevalence of cases reviewed at the federal level.

The trend toward O-G cases in the later grades is not surprising given that special education, until recently, has depended on a deficit model to identify students with SLD. The stakes become higher as the student progresses through the school system and as parents become more cognizant of the gap that often becomes more glaring at successive grade levels (Bhat et al., 2000). The recent changes in eligibility options under IDEA for the SLD classification, specifically the advent of the response to intervention (RtI) approach (Batsche et al., 2005; Zirkel, 2006), may lead to earlier identification of students, thus reducing the prominence in later grades. While the disputes most frequently involved high school age and upper elementary students, there were also notable concentrations of cases in Grades 5 to 6 and in Grades 8 to 9. These high points are not surprising given that they correspond to important educational transitioning periods, specifically elementary to junior high, junior high to high school, and high school to post-high school education.

The predominance of relief in the form of reimbursement or prospective placement is not surprising given that O-G is often associated with particular private schools, such as Kildonan or the Gow, and the converse resistance of public schools to institutionalize it. On the other hand, it is surprising that despite the deference doctrine and the lack of documented

wins, parents continue to seek the prospective provision of a specific methodology or its express incorporation in the IEP.

The generally unfavorable outcomes for parents in O-G cases differ from the pattern for general special education case law. For example, Maloney and Shenker (1995) found that the distribution in special education litigation only slightly favors the districts, with parents winning 46% of the time and districts winning 54% of the time. The disparity is not entirely attributable to the judicial deference to districts in methodology cases. For example, an earlier review of reading methodology case law found districts winning only 59% of reported decisions (Bhat et al., 2000). In addition, outcomes in autism methodology cases are evenly split between parents and districts, each having a 50–50 chance of winning (Choutka et al., 2004).

The reasons for the outcomes disparity between the O-G and autism methodology cases are subject to speculation. First, students with SLD are more in line with mainstream special education, making up nearly 50% of the total special education population, whereas autism, despite its recent growth, remains a relatively low-incidence disability. Second, the needs and behaviors of children with autism are more dramatically different from both the general and special education populations, requiring the adjudicator to decide among highly specialized methods unlike what most schools offer. Districts often counter parent claims for O-G with generic multisensory approaches or specific O-G variants, albeit a less intensive design, making it easier to refer to the deference doctrine for competing methodologies. Third, the needs of individuals with autism are often immediate and intensive, potentially invoking more sympathy from unspecialized judges, whereas the needs of students with SLD may not be as apparent. Fourth, districts have various standards and curriculum-based measures available to demonstrate progress required by the substantive standards for FAPE in *Rowley*, whereas similar instruments are not as readily available or acceptable for measuring the behavioral and communicative concerns associated with autism. Like Bhat et al. (2000), results of this analysis found that many courts relied on standardized test scores to determine academic progress.

Although the outcomes have overwhelmingly favored school districts in O-G cases, the 2004 amendments to IDEA may mitigate this trend. IDEA specifies that the IEP must include "a statement of special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable" (§ 1414(d)(1)(A)(i)(IV)). The same standard does not expressly apply to parents. Depending on the astuteness of their attorneys and the competency of their experts, parents may be able to convince the courts of the lack of requisite basis for a typical district's generic reading program. Moreover, they may be able to capitalize on the lack of the hearing/review officer's or court's expertise when the district fails to provide peer-reviewed research supporting its proposed specially designed instruction or is less than effective in critiquing the support for the parents' O-G

choice. By way of analogy, consider the Sixth Circuit's assessment of the parents' choice of Lovaas in an autism methodology case. Specifically, the court characterized Lovaas's research as yielding "extraordinary results" (*Deal v. Hamilton County Bd. of Educ.*, 2004, p. 845). Yet, this research was not peer reviewed, and various experts have questioned the rigor of its design (Dempsey & Foreman, 2001; Rogers, 1998).

The few O-G methodology cases that have included arguments about scientifically based research were also prior to IDEA 2004 and, thus, may not be indicative of future case law. In *Horizon Instructional Systems* (2005), the district's attempt to rely on the scientifically based requirement set forth in IDEA failed on two accounts. First, the district cited the scientifically based methodology section of IDEA that applied to the state's professional development requirement, rather than to the district's IEPs. Second, the hearing officer pointed out that IDEA was not yet in effect. In another recent case, the court similarly rebutted a parent's attempt to invoke IDEA's research-based standard prior to the effective date of the 2004 Amendments (*Robert B. v. W. Chester Area Sch. Dist.*, 2005).

In addition to the limited scope of "peer-reviewed research" in comparison to "scientifically based research," the other limitation in the new IEP requirement is the inclusion of the qualifier "to the extent practicable." This flexible exception could conceivably strengthen the deference to districts in O-G methodology case law. For example, Torgesen et al. (2001) concluded that it is impractical to implement Auditory Discrimination in Depth, or ADD, which is similar to many intensive O-G programs, in traditional public school programs. Providing one-to-one instruction one to two times per day, even for 8 weeks, would require extensive human and financial resources, beyond the scope of many school programs. The other new variable in IDEA 2004 is the unsettled shift from the severe discrepancy model to an RtI approach for SLD eligibility. The IDEA's proposed regulations, for example, would require that "prior to, or as part of the referral process, the child was provided with high-quality, research-based reading instruction in regular education settings" (§ 300.309(b)(1)). This element, as it is included in the final version of the regulations, along with the new statutory allowance of up to 15% of IDEA funds for "early intervening services" (§ 1413(f)(1)) may encourage more extensive district institutionalizing of either O-G programs or comparable competing methodologies.

Finally, this systematic case analysis yields recommendations to help districts avoid or combat litigation about methodology in reading instruction. First, districts should implement individualized programs based on "peer-reviewed research." Secondly, districts should mitigate misunderstanding by effectively communicating to the parents why a particular methodology is appropriate for the individual child; yet districts should remain cautious about specifying the methodology, availability and training of staff, and specific materials in the IEP. General descriptions of the methodology, such as the use of a "multisensory approach" or "1:1 instruction in phonological awareness" may suffice where the district has provided an

effective explanation to the parents and adequate accompanying provisions—for example, present educational levels, goals, and reporting provisions that show meaningful progress. Third, parent involvement is critical for reading programs to be successful, warranting careful coordination with and commitment from the home. Finally, districts should employ valid assessments to identify the child's specific areas of concern and monitor progress. The data are necessary to demonstrate the educational benefit standard for FAPE. The failure to use ongoing and appropriate assessments may aid adversarial parents and harm needy students. Although the future of O-G case law is inconclusive, districts have the ability to reverse the upward trend in O-G litigation for the past 30 years.

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