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Special Educational Needs and Disability tribunals: Dyslexia, scientific validity and equity

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Abstract

This paper examines the operation of the English Special Educational Needs and Disability tribunal system in relation to children who present with a dyslexia diagnosis. It identifies a number of significant weaknesses; in particular, the absence of clear diagnostic criteria capable of differentiating such children from large numbers of other struggling readers. It then explains why it is inappropriate to identify particular cognitive processes as indicating the presence of dyslexia, as distinct from a broader reading difficulty. The paper subsequently explores the erroneous nature of claims about specialised dyslexia teaching and resourcing that, while often asserted with confidence by some privately funded assessors, are not supported by the scientific literature. It is argued that the tribunal system is an inappropriate method for reconciling the competing needs of a diagnosed dyslexic subgroup in relation to the wider population of struggling readers, estimated to be 20% of the school population.

KEYWORDS

dyslexia, equity, SEND tribunal

INTRODUCTION

While the topic of dyslexia can conjure strong feelings and vigorous debate, there is little division regarding the paramount importance of literacy development for all, and the need for effective and rigorous systems that identify and address the needs of all those who struggle.

Key insights

What is the main issue that the paper addresses?

This paper addresses the problematic use of SEND tribunals for children diagnosed as dyslexic. It shows that while such diagnoses are often employed to justify the case for additional high-cost support, it is impossible to provide a clear distinction between supposed dyslexic and non-dyslexic poor readers by means of clinical assessment using cognitive tests. Neither, despite frequent claims, is there any form of intervention that is more appropriate for diagnosed dyslexic children than for other struggling readers reading at the same level. However, such diagnoses (often easier to obtain by families with socioeconomic advantage) usually carry significant sway with tribunal panel members.

What are the main insights that the paper provides?

In reporting on the significant growth of the SEND tribunal caseload, this paper highlights the larger difficulty of applying this approach equitably for those with other forms of high-incidence special educational need. In many such cases, resources spent on a small proportion of children would be better employed to ensure that mainstream school SEND provision operates effectively.

Literacy difficulties can impact education, employment and mental health, and are associated with limited lifelong outcomes, which often prove to be highly deleterious to both the individual and wider society (Moll et al., 2023).

Even in the most technologically advanced societies, literacy acquisition for all continues to be a significant problem, with estimates of as many as one in five children in industrialised countries such as the United Kingdom and the United States struggling with reading (Hill et al., 2023; Pennington et al., 2019; Shaywitz & Shaywitz, 2020). Unfortunately, the costs involved in comprehensively meeting the needs of all children who struggle with reading are seemingly always greater than the resources available, a situation that requires education policy makers and managers to make difficult decisions about who does or does not get additional help.

In addressing children's special educational needs, England's Special Educational Needs and Disability (SEND) Code of Practice (Department for Education & Department of Health, 2015) sets out a model of graduated response whereby needs can be identified at school level using an Assess, Plan, Do, Review approach. To support this, all schools receive a SEND budget from their Local Authority (LA), taken from funding allocated by central government. Where it is considered that additional resources may be required to meet needs above and beyond 'what is ordinarily available' in schools, a request can be made for an Education, Health and Care Needs Assessment (EHCNA). In most cases, this will lead to an Education, Health and Care Plan (EHCP) issued by an LA, which is legally responsible for ensuring that the support stated in the plan is being provided by the school that a child or young person attends. Where disputes arise about the level of support and provision required to meet a young person's needs, parents are entitled to bring an appeal to a SEND tribunal.

THE ENGLISH SEND TRIBUNAL SYSTEM

The SEND tribunal system was developed as part of a series of special educational needs-related measures established by the Education Acts 1993 and 1994. The aim was to provide children with special educational needs and their parents access to the same frameworks of choice and accountability as all other children. This system arose in recognition of systemic idiosyncrasies such as the limited rights of parents of children with special educational needs regarding school choice, as well as the cumbersome procedures of appeals systems, which entailed both local appeals and direct appeals to government ministers responsible for education.

The first-tier tribunal (SEND tribunal) was created in 2008 to rationalise the tribunal system. It has the specific role of hearing parents' and young people's appeals against LA decisions relating to SEND.

A child's parent, or a young person, may appeal to the first-tier tribunal against several matters, including the following:

- An LA decision not to carry out an EHCP needs assessment.
- An LA decision not to issue an EHCP once an assessment has been completed.
- A desire to change what's written in an EHCP.
- Consideration as to whether to maintain an EHCP.

The SEND tribunal operates as a free service, enabling all parents and young people to have a decision with which they don't agree heard by an independent panel at a higher level. The panels are each chaired by a legally qualified tribunal judge, together with members who are held to be experts in their field, such as teachers, health professionals or educational psychologists. The tribunal panel should be impartial and base their decisions on the evidence presented to them, with advice on points of law provided by the chair.

The number of appeals to SEND tribunals has increased year on year since the Education Act reforms of 1994. In 1995–1996 there were 1161 cases; by 2010 this number had almost tripled to 3280. In the academic year 2022–2023, 13,658 appeals were registered—an increase of 24% on the previous year.

In many cases, judgements appropriately reflect the requirements of the Children and Families Act 2014, which places the views, wishes and feelings of the child/young person and their family at the centre of any decision-making. Positive outcomes of the tribunal system are no doubt manifold and act as an important means of ensuring that LAs fulfil their obligations.

However, while performing an important service that has encouraged LAs to pay greater heed to parental voice and ensure that they offer appropriate provision, one cannot ignore some problematic aspects of the tribunal system (Evans, 1999). The panel's deliberations are necessarily focused on the needs of a specific child and, as a consequence, its rulings typically do not consider the wider remit of LA special educational needs services and the impact of tribunal decisions on budgets available to support other children with special needs. Of course, in many ways this is a strength, as it is essential that the needs of the child with complex learning difficulties are adequately met, whatever the burden on LA budgets. However, it becomes problematic when:

a. the particular educational difficulties under consideration are experienced by vast numbers of children, and only a few families are able to make effective use of this route;
b. decisions taken mandating the provision of expensive independent special school places necessarily dilute the capacity to operate system-wide educational initiatives.

This tension highlights a mismatch between elements of the Children and Families Act and the SEND Code of Practice (2015), as well as cumulative inconsistencies between education policies aimed to promote inclusion and those purported to champion excellence. Unfortunately, the pressure upon schools to perform well in public examination league tables has resulted in 'perverse incentives' (Daniels et al., 2019, p. 24) that hinder the operation of inclusive practices.

The remit of the current paper is not to explore or adjudge the effectiveness or suitability of the tribunal system as a general mechanism of recourse, although we do reference significant difficulties that are emerging. Rather, the primary focus is on the relevance of its current operation for children judged to be dyslexic. We argue that, in relation to tackling severe reading difficulties, the tribunal system is not working as intended and, although operating with the best of intentions, it perpetuates inequality and inequity. Fundamentally, this is a consequence of dyslexia's presentation as qualitatively different from other reading difficulties and the disproportionate channelling of resources that results.

SEND TRIBUNALS AND DYSLEXIA

A common area of need considered at SEND tribunals is centred around children's literacy difficulties, which are typically framed by reference to the child 'having dyslexia'. In the appeals it is frequently claimed that schools and LAs are failing to meet a particular dyslexic child's needs, in particular highly specialised teaching delivered in small-group settings. An implicit suggestion is that the needs of such children are different from those of other struggling readers. This begs questions as to whether such a diagnosis is valid and, if so, whether this group should have greater influence with tribunal panels than others with similar levels of reading difficulty who, for a variety of reasons, lack this diagnosis.

Thus, we need to ask:

a. To what extent is a diagnosis of dyslexia scientifically valid and educationally meaningful?
b. Does a diagnosis of dyslexia indicate the need for a particular form of intervention additional to, or different from, that which should be made available to other poor readers?
c. Is there a persuasive argument that those diagnosed as dyslexic have a stronger case for additional resources than other poor readers? If not, what is the best way to use finite resources to help all struggling readers?

THE VALIDITY OF DYSLEXIA DIAGNOSES

SEND tribunals rarely contain panel members with deep expertise in specific areas of need so, in arriving at decisions, they must rely on expert opinion as to whether a child can be considered to have a particular disorder or disability and the type of provision that is required. In the case of dyslexia, diagnostic reports produced by 'expert' assessors and funded by the child's family are frequently submitted, which often conclude that the child concerned has dyslexia and needs special help above and beyond that which a school might be expected to provide.

Whether there exists a subgroup of poor readers that can and should be identified as dyslexic is a matter of ongoing controversy and debate (Elliott & Grigorenko, 2014, 2024a, 2024b; Johnston & Scanlon, 2021; Shaywitz & Shaywitz, 2020). A significant complication is that the term is understood in many differing ways (Elliott, 2020).

Leading researchers across relevant sciences (i.e., genetics, neuroscience, cognitive science/psychology and education) tend to use the term dyslexia synonymously with reading disability to describe a word-level reading difficulty that involves both reading accuracy and fluency (Fletcher et al., 2019; Lopes et al., 2020; Pennington et al., 2019). (Note: Poor reading comprehension, while closely linked to decoding, is considered to represent a separate difficulty.) Underpinning this understanding is the recognition that reading is a skill which is normally distributed in the population with no clear boundary existing between so-called 'normal' and 'disabled' performance.

> Dyslexia is mainly defined as the low end of a normal distribution of word reading ability.
>
> (Peterson & Pennington, 2015, p. 285)

> Dyslexics are children (and later adults) whose reading is at the low end of a normal distribution. Reading skill results from a combination of dimensional factors (that is, ones that vary in degree), yielding a bell-shaped curve. The reading difficulties of the children in the lower tail are severe and require special attention. 'Dyslexia' refers to these children. Viewed this way, dyslexia is on a continuum with normal 'reading'. All children face the same challenges in learning to read but dyslexics have more difficulty with the essential components.
>
> (Seidenberg, 2017, pp. 156, 157)

> There is no doubt that dyslexia exists as the lower part of a continuous distribution of basic reading skills.
>
> (Miciak & Fletcher, 2020, p. 346)

On the basis of this understanding, participants in dyslexia research studies are typically recruited on the basis of low performance on simple reading measures (Lopes et al., 2020).

The understanding that dyslexia is a term used simply to describe severe reading (decoding) difficulty is not shared by all. Dyslexia diagnosticians and lobbyists often contend that it describes a distinct type of problem that separates those with dyslexia from other struggling readers. This raises the question of how to differentiate meaningfully between these two groups. Of course, bifurcated groups are not difficult to create; we could, for example, divide poor readers between male/female, tall/short, extravert/introvert or perhaps by ethnicity, social class, regional location or family size. However, whatever the form of differentiation that is suggested, it would be necessary to demonstrate that this is relevant scientifically and meaningful educationally. If we wish to differentiate between dyslexic and non-dyslexic poor readers, we must be assured that (a) there are clear, scientifically valid, criteria that underpin this distinction and (b) the resultant categories have value for informing policy and guiding practice.

Differentiating a dyslexic from a non-dyslexic poor reader used to be relatively easy. For many years, the diagnosis was predicated on the notion that the condition was indicated by a discrepancy between reading performance and intelligence, as measured by IQ. This notion was, and continues to be, very attractive to many struggling readers who have often been perceived as lacking in intelligence, with many having had their lives scarred as a result (Riddick, 2010).

The validity of the IQ discrepancy model for identifying a dyslexic subgroup was challenged at the end of the last century and has since been discredited. The approach has no validity in differentiating between the reading performance of high and low-IQ groups (Stanovich, 1991; Vellutino et al., 2000), in informing the nature of educational intervention (Elliott & Resing, 2015; Kearns & Fuchs, 2013) or in indicating the likely response to intervention (RTI) (Hurford et al., 1994; Stuebing et al., 2009). In their review of this issue, Fletcher et al. (2019) conclude that these groupings

> … do not differ practically in behavior, achievement, cognitive skills, response to instruction, and neurobiological correlates once definitional variability is controlled … The classification lacks validity. (p. 52)

Additionally, there are serious ethical questions about targeting resources solely at those with higher measured intelligence scores and thus failing to provide appropriate literacy support to less intellectually able children (Huettig & Ferreira, 2023; Siegel & Hurford, 2019; Siegel et al., 2022).

The accumulation of a substantial body of knowledge about the inadequacy of the discrepancy model has gradually led to acceptance by dyslexia lobby groups that measured intelligence has no role in the diagnosis of dyslexia. The website of the International Dyslexia Association, for example, states:

> Research indicates that dyslexia has no relationship to intelligence. Individuals with dyslexia are neither more nor less intelligent than the general population.
> (https://dyslexiaida.org/dyslexia-at-a-glance/; retrieved 25 January 2024)

Similarly, the British Dyslexia Association states:

> Dyslexia occurs over the range of intellectual abilities.
> (https://www.bdadyslexia.org.uk/dyslexia/about-dyslexia/what-is-dyslexia; retrieved 14 December 2023)

Somewhat surprisingly, however, such recognition has failed to influence the practice of many dyslexia assessors who, ignoring the science, continue to diagnose dyslexia on the basis of IQ discrepancy (Al Dahhan et al., 2021; Sadusky et al., 2022; see also Elliott & Grigorenko, 2024a for a discussion of the primary reasons for this phenomenon).

The demise of the IQ discrepancy model presented a considerable challenge to dyslexia assessors as it was now difficult to justify a diagnostic distinction. More recently, approaches that seek to base a diagnosis on an individual's pattern of cognitive strengths and weaknesses have been espoused (particularly in the United States). As for the IQ discrepancy approach, these have been found to have poor predictive validity, offer no valuable information for intervention (Burns et al., 2016; Siegel & Hurford, 2019), are excessively expensive and time-consuming (Fletcher & Miciak, 2017) and, by excluding from a dyslexia diagnosis those who fail to show cognitive strengths, some struggling readers will fail to receive adequate reading support.

Since the demise of cognitive testing for dyslexia diagnosis, assessors have sought other ways to enable a clinical distinction from other poor readers. In the United Kingdom, definitions provided either by the British Psychological Society (BPS) Division of Educational and Child Psychology (1999) or the Rose Report (Rose, 2009) have sometimes been utilised for this purpose.

The BPS definition states that:

> Dyslexia is evident when accurate and fluent word reading and/or spelling develops very incompletely or with great difficulty. This focuses on literacy learning at the 'word' level and implies that the problem is severe and persistent despite appropriate learning opportunities. (p. 30)

The Rose Report went rather further in its definition, outlining a number of common features of dyslexia:

> Dyslexia is a learning difficulty that primarily affects the skills involved in accurate and fluent word reading and spelling. Characteristic features of dyslexia are difficulties in phonological awareness, verbal memory and verbal processing speed. Dyslexia occurs across the range of intellectual abilities. It is best thought of as a continuum, not a distinct category, and there are no clear cut-off points. Co-occurring difficulties may be seen in aspects of language, motor co-ordination, mental calculation, concentration and personal organisation, but these are not, by themselves, markers of dyslexia. (p. 30)

Neither definition provides a ready means for assessors to split those with severe reading difficulties into clear dyslexic and non-dyslexic groups. Both understand dyslexia as describing a severe and persistent reading difficulty that sits at the far end of a reading performance continuum, a perspective which closely mirrors that of many leading researchers working in the field (see also recent statements by Elliott & Grigorenko, 2024a, 2024b; Snowling & Hulme, 2024; Vaughn et al., 2024). However, when faced with a struggling reader, rather than using past and present reading performance, dyslexia diagnosis is typically based on a clinical assessment of underlying cognitive processes (see Elliott & Grigorenko, 2024a, 2024b for a detailed discussion). However, neither the BPS nor the Rose definition provide the means to enable a dyslexic/non-dyslexic distinction using such an approach.

It is correct that phonological deficits often underpin complex reading difficulties (Perfetti et al., 2019), yet it is erroneous to seek to use their presence/absence as a means of diagnostic differentiation (Brady, 2019; Catts et al., 2024; Elliott & Grigorenko, 2024a). Research has demonstrated that '… not every person with dyslexia has a phonological deficit' (Snowling, 2019, p. 55) and not all those with a phonological deficit experience a reading disability (Bishop et al., 2009; Catts et al., 2017; Ramus et al., 2013). Misunderstandings in this respect can have serious implications for those struggling readers who do not present with a phonological problem and, as a result, could be excluded from special accommodations and resources (Brady, 2019; Pennington et al., 2012, 2019; Protopapas & Parrila, 2018; Ring & Black, 2018).

The case for using other cognitive (or perceptual) processes associated with reading difficulty (e.g., poor verbal working memory, inefficient rapid naming, slow processing speed, poor visual or auditory processing/attention or problems with executive functioning) as means to differentiate dyslexia from non-dyslexic (sometimes known as 'garden variety') poor reading is no stronger. Research has clearly shown that there is no consistent cognitive profile which can characterise those with dyslexia (Catts et al., 2024). Diagnosing dyslexia on the basis of the presence of any cognitive deficits is unjustifiable on scientific grounds and of no value for determining appropriate forms of intervention (Elliott & Grigorenko, 2014, 2024a; Gibbs & Elliott, 2020; Johnston & Scanlon, 2021). In our use of the term 'scientific', we emphasise the role of high-quality empirical research evidence, situated across a variety of relevant scientific disciplines, in helping specialists build an understanding of the origins and nature of reading disability and its remediation. It is unfortunate that, in the field of dyslexia, many claims about causal factors and treatments cannot be substantiated by empirical findings from rigorous research (Elliott & Grigorenko, 2024a).

It is now increasingly understood that no single process is necessary or sufficient to cause reading disability (Compton, 2021; Fletcher et al., 2019; Pennington et al., 2019). Simple unitary causal explanations have been replaced by growing recognition that reading difficulties are multifactorial (Catts & Petscher, 2022; Fletcher et al., 2019; McGrath et al., 2020) and a consequence of the interplay of multiple risk and resilience (protective) factors (Mascheretti et al., 2018). Rather than offering deterministic explanations, multifactorial causal models are essentially probabilistic; that is, many factors, both biological and environmental, work in combination to increase or decrease the probability that a particular individual will encounter difficulty in learning to read (Gotlieb et al., 2022). Given the complexities involved, it is a fallacious exercise to try to split those with reading difficulties into discrete dyslexic and non-dyslexic categories.

Given the seeming impossibility of specifying scientifically and educationally justifiable criteria that might differentiate the dyslexic child from other struggling readers, some diagnosticians resort to the claim that, as experienced assessors, they can recognise a dyslexic child when they see one. Critiquing such a position, Lilienfeld et al. (2007) describe as an alchemist's fantasy

> … the belief that disparate pieces of data which are invalid on their own are somehow transformed into clinically important information when combined with other data by the expert clinician. (Harrison & Sparks, 2022, p. 271)

Research studies have demonstrated that, in their desire to help their clients, clinicians often fail to draw upon the existing empirical literature when making diagnoses and disability determinations relating to learning difficulties (Suhr & Johnson, 2022). In the case of dyslexia, widely differing conceptualisations, together with the absence of agreed, valid criteria, are likely to increase the risk of bias and conflicts of interest.

> As an advocate, it is difficult for the client to deny the wishes of the client, even if the clinician knows that the accommodation requested by the client is contraindicated or not supported by the objective data or evidence-based research (Epstein, 2017). Furthermore, assuming the role of advocate makes it virtually impossible to provide an independent, objective evaluation of a client's disability status for legal purposes (Hearn, 2011; Weinstein, 2001). More problematic would be a clinician who views his/her role as a mission to help clients to access accommodation even in the absence of objective evidence.
>
> (Harrison & Sparks, 2022, p. 271)

In such cases, there may be a greater tendency on the part of some clinicians to erroneously interpret isolated test scores and discrepancies among test scores as supportive evidence of the child's disability or impairment.

Where a dyslexia diagnosis is presented by an ‘expert’, challenges by LA personnel can cause difficulties for members of the tribunal panel, who are hardly in a position to determine the credibility of opposing viewpoints and thus often feel obliged to accept the diagnosis as valid. It can be argued that the focus of the tribunal is not on the existence of the label itself but rather, on the extent to which the child's needs are being met, and whether additional or alternative provision is required. However, this overlooks the fact that alongside the label sits the presupposition that a dyslexia diagnosis demonstrates a particular disability, with particular needs, that differentiates the child concerned from large numbers of others with similar, or worse, reading performance.

Large numbers of children struggle to learn to read. Estimates of dyslexia vary, depending on the understanding of this term, but have been estimated to be as high as one in five of the school population (Pennington et al., 2019; Shaywitz & Shaywitz, 2020). Determining which struggling readers require resourcing beyond that which a school should ordinarily provide, typically in England by means of an EHCP, is not an easy undertaking—especially given steadily increasing demand. Figures for 2024 demonstrate that 4.8% of the school population now have an ECHP, up from 4.3% the previous year.

Appeals to tribunals reflect this growth pattern. As for ECHPs, demand is particularly great for autistic spectrum disorder, with a rise from 1024 cases in 2011–2012 to 6190 cases in 2022–2023. While considerably fewer in number, specific learning difficulty appeals rose from 301 in 2012 to 607 over the same period.

Almost all appeals, irrespective of their category, are found in favour of the appellants. Of the 7968 tribunal decisions reported in 2022–2023, the LA's original decision was upheld in only 133 cases. For specific learning difficulty, the LA decision was upheld in 9 of 432 cases. Unfortunately, official statistics offer only a very broad picture and there are no data available that can indicate the nature of the appeals for dyslexia, the proportion of these that fall within the category of specific learning difficulty, or how many appeals result in placement at an independent school. It is also not clear to what extent LAs may be reluctant to go to tribunal in cases where a child has a formal dyslexia diagnosis. As a very small proportion of appeals are subsequently denied, it is likely that there will be internal pressure on LAs to avoid tribunal hearings by agreeing to parental requests.

Given the significant scale of reading difficulties, and the pressure on school and LA SEND budgets, many parents of struggling readers have understandable concerns about the level of support that is made available to their child (Harding et al., 2023). However, where they are unsatisfied by responses to their requests for greater assistance, only a small proportion have the financial means to procure privately funded individual assessments that can add the support necessary to succeed with a formal appeal. It is unsurprising, therefore, that dyslexia diagnoses and resourcing are not randomly distributed across social or ethnic groups (Knight & Crick, 2021; Odegard et al., 2020, 2021). This reflects other evidence indicating that the likelihood of many SEND labels is predicted by higher socioeconomic status, despite the fact that children with special educational needs are disproportionately found in disadvantaged communities (Parsons & Platt, 2013). It is also in line with more recent trends in England, which show that children eligible for free school meals (a UK-based measure of socioeconomic disadvantage) are less likely to have an EHCP if they live in lower-income areas (Campbell, 2023). Indeed, as background to this paper, Freedom of Information requests made by the authors to 10 LAs revealed that, of the six that responded, the financial spend on specialist dyslexia provision varied between £400,000 (in more affluent authorities) to £0 in areas marked by economic deprivation. This is also consistent with a statement reported by Cambridgeshire County Council in 2020 (see Kale, 2020) that all the children whose placements in independent (specialist or mainstream) settings were directed by the first-tier tribunal primarily on the basis of their diagnoses of dyslexia lived in the most affluent areas of the county. In light of such discrepancies, future research could profitably examine socioeconomic influences on resourcing for dyslexia in LAs across the country.

Direction from a tribunal that the LA should fund a high-cost placement for a dyslexic child needs to be understood in the context of what Elliott (2020) has referred to as a zero-sum game. This funding must be taken from the same pot of resources (‘the high needs block’) that is available to meet the needs of all children who fall under the remit of the LA. The resultant benefits for identified dyslexic children come at the direct expense of access to funding to others with literacy or other special educational needs.

Access to tribunals is not based on absolute need but is conditioned by the family's ability to source the resources required to take the case forward. This may explain the findings from a recent national survey showing that SEND tribunal appeals and hearing rates in areas of low socioeconomic status are significantly lower than in more advantaged areas (Marsh, 2022). Costs are incurred if families instruct a solicitor, seek private assessments and pay for their own witnesses to attend. More affluent parents typically have access to social and cultural capital, and financial resources that provide them with greater ability to act as advocates for their reading-disabled children (Nevill et al., 2023). In addition to the socioeconomic imbalance in those families who appear at tribunals, it is also likely that LAs will show greater willingness to accede to the appeals of more advantaged parents in order to offset the risk and cost of a tribunal hearing.

Accountability for inequities arising from the tribunal system cannot be considered to lie with parents; quite understandably, they will do what they perceive to be necessary to ensure that their children's needs are met, including making use of the resources available to them (Holt et al., 2019; Kirby, 2020a, 2020b; Kirby & Snowling, 2022; Knight & Crick, 2021; Morgan & Klein, 2000; Parsons & Platt, 2013). In some cases, families are advised to take up an independent school place in the hope that, in their subsequent appeal for state funding, the tribunal will be reluctant to remove a child once they are settled in a school. Nevertheless, despite our sympathies with parents who are seeking what they consider to be best for their children, the system for resource allocation in relation to dyslexia must be challenged. The wider systemic factors that lead to the perpetuation of inequalities in access and resourcing for reading difficulties need to be identified, addressed and reformed.

THE ROLE OF DIAGNOSTIC DYSLEXIA REPORTS IN RESOURCE DECISION-MAKING

When a dyslexia assessment is commissioned, usually by parents, they are likely to assume that (a) any diagnosis will be scientifically credible and (b) this diagnosis, and associated recommendations, will be used to directly improve provision for their child. They may also consider that a dyslexia label will provide their child with additional socioemotional benefits and an enhanced sense of self (see Elliott & Grigorenko, 2024a, pp. 250–255, 269–274). However, as noted above, diagnoses are often based on outmoded and discredited understandings of reading disability and its causes. Reports provided by independent assessors may convey a picture of forensic proficiency by their excessive length and inaccessible technical language, particularly in relation to findings from the various psychometric tests employed. The more recondite the language, the more the customer is likely to be persuaded of the scientific credibility of the assessment and its conclusions (see Weisberg et al., 2008). Not only are the measures utilised often irrelevant for diagnostic and intervention purposes but, additionally, many reports show an absence of school information; in particular, description and evaluation of current provision and the response of the child to any additional assistance they may have received.

Common recommendations included in such reports include: a change of placement to a specialist school, specified specialist dyslexia tuition, small class sizes, and a need to include the child in a cohort of children with a similar profile. The dilemma facing the teacher here is that none of these recommendations concern what they can do to improve the child's literacy skills. This has long been a cause for practitioner concern. For example, a web-based forum for special needs teachers on the topic of dyslexia (SENCO-Forum, 2005) indicated that teacher referral of children to specialist dyslexia agencies was largely motivated by their desire for advice on how best to help the child's reading. However, the guidance subsequently received from the assessors tended to offer little more than recommendations for small-group teaching and suggestions for educational practice that were already in widespread use. In line with such complaints, Vellutino et al. (2004) criticised clinicians' reports for rarely having significant prescriptive value for educational or remedial planning. Rather than seeking to provide diagnostic categories, these authors argued that assessors should devote their energies to providing guidance to educators to help with the implementation of appropriate remedial interventions tailored to each child's individual needs.

Just as some privately funded assessors may be subconsciously motivated to provide diagnoses and recommendations that will be met with favour by their clients, one might question the motivations of professionals employed by LAs who, arguably, may be influenced by the limited availability of resources at LA level. One can understand parental frustration should professionals appear reluctant to recommend extra resources for their child.

Psychologists or other experts from both sides of any dispute between a family and the LA will no doubt express a strong belief that they are acting independently in the best interests of children. However, a key difference is that the private expert needs only to focus on one individual's needs, while LA psychologists will consider these in the light of those of many other children whom they also serve (Evans, 1999) and the ways that finite resources may be best employed to meet the needs of large numbers of struggling readers. LA educational psychologists have no commercial influences that might lead to unconscious bias; neither should their conditions of employment, or their managers, require them to ignore genuine need. Nevertheless, systematic analysis of pressures experienced by educational psychologists in this respect would be helpful. Future research could also profitably explore whether diagnosed dyslexic children appearing at SEND tribunals differ from other struggling readers, not in terms of their diagnosis, but in respect of their actual learning difficulties.

SEND tribunals were established to ensure that the needs of individual children were not overlooked by their LA. The procedure is designed to tackle egregious decision-making and it should work effectively in situations where a small number of children with highly complex problems require, but are not receiving, appropriate support. In the case of reading, as noted earlier, up to 20% of children experience significant difficulty and are considered by some experts to be dyslexic (Shaywitz & Shaywitz, 2020). Given that not all these children can be given substantial personalised additional support, there is an obvious problem of determining which have the strongest case. One approach is to have a diagnostic process that can serve as a resourcing bottleneck; in order to be equitable and effective, this needs to be reliable, valid and transparent. However, this is typically not the case for dyslexia, and many diagnosed children who find their way to tribunals do not appear to teachers and LA specialists to have literacy-related difficulties that set them apart from very large numbers of similarly impacted peers.

Having argued that appeals to tribunals for additional resources should take into consideration whether the child's reading needs are substantially greater than those of the remainder of the 20% of the school population who struggle with literacy, we now turn to an examination of the nature of extra provision that is often recommended.

Dyslexia-specific intervention programmes

In line with the traditional medical model, it is widely believed that a dyslexia diagnosis will point to a special and uniquely valuable form of intervention; this is often the basis for appeals to tribunals. However, there is no evidence of any specific programmes for ‘dyslexic’ children that are not equally appropriate for other struggling decoders.

It is widely accepted that throughout the school years the level of explicitness, structure and intensity of reading instruction required will need to vary according to the struggling reader's response to subsequent educational intervention. However, a dyslexia/poor reader binary offers no answers for programming and, instead, it is important to closely tailor the nature of the intervention offered to the particular strengths and weaknesses of the individual (Johnston & Scanlon, 2021).

Structured approaches to reading, in which phonics plays a significant role, have been found to be valuable for children at risk of reading difficulty (Hall et al., 2022). The role of phonics forms the cornerstone of the much-vaunted ‘science of reading’—currently the hottest topic in literacy education (Grote-Garcia & Ortlieb, 2023)—and the benefits appear to apply to most struggling readers. Dyslexia associations, dyslexia advocates and specialist dyslexia teachers (Boardman, 2020; Clemens & Vaughn, 2023; Stevens et al., 2021) have endorsed highly structured phonics programmes involving very fixed sequences of letters, sounds and letter patterns, such as those employed by the Orton-Gillingham programme:

'… the calling card of many private schools' (Sayeski & Zirkel, 2021, p. 484). However, systematic research evaluations have generally concluded that there is little evidence to support claims that the Orton-Gillingham programme, or the branded programmes that have been modelled on this, are more effective with struggling readers than are other structured approaches to reading instruction (Ritchey & Goeke, 2006; Stevens et al., 2021; Wanzek & Roberts, 2012; What Works Clearinghouse, 2010).

One instructional element widely associated with the Orton-Gillingham programme, multisensory teaching, has been frequently highlighted as particularly valuable for dyslexic children. However, beyond the use of auditory, visual, tactile and kinaesthetic learning experiences, elements that are commonly found in everyday classroom practice, there is little consensus about how multisensory instruction should be defined and operationalised (Fletcher et al., 2019) and few studies have evaluated whether the multisensory element adds unique value to structured phonics-based instruction. Most published investigations have taken the form of case studies (Riccio et al., 2010) and while several have been positive (Fernald & Keller, 1921; Strauss & Lehtinen, 1947), what is necessary for the endorsement of practice is not anecdotal reportage but findings from systematic, high-quality research studies. Where these exist, evidence supporting the additional benefits of the multisensory component has proven to be far from persuasive (Al Otaiba et al., 2018; Hall et al., 2022; Petscher et al., 2020; Solari et al., 2021).

In their examination of instruction for struggling adolescent readers, Lovett et al. (2021) concluded that there is very little evidence to support claims that any one particular approach is more appropriate for certain types of poor reader than any other. Neither is there any evidence to support the belief that certain combinations of approaches, or weightings, lead to superior long-term gains. Rather, as is noted above, it is important to utilise a broad-based multi-element approach to specialised reading instruction in which the balance is determined by individual strengths and weaknesses. Typically, this will incorporate, but not be limited to, structured phonics:

> Individuals who argue that the solution to reading difficulties is simply to introduce more phonics instruction in the classroom, without incorporating instruction in other critical reading skills (e.g. fluency, vocabulary, comprehension) are not attending to … the converging scientific evidence.
>
> (Fletcher et al., 2019, p. 163)

Given extant knowledge, petitions to tribunals to mandate LAs to fund special school placements for individual children on the grounds that they need highly specialised dyslexia reading instruction programmes are hard to justify.

Specialist dyslexia teachers

Tribunals are often asked to consider requests for young people to be taught (either all the time or for specific interventions) by a specialist dyslexia teacher. An unfortunate component of the vigorous lobbying by some dyslexia groups is that mainstream schools have sometimes been portrayed as ignorant of, or opposed to, methods of instruction that are suited for dyslexic children. According to this misdirected narrative, often reinforced in the mass media, dyslexic children can be presented as needing to be saved from an unhelpful state school system by private providers certified in the delivery of structured programmes (Gabriel, 2020).

The need for expert support is an intuitively understandable argument and some schools may lack teachers with sufficient expertise to adequately help struggling readers. However, schools have a responsibility to ensure that they employ teachers who are appropriately skilled (perhaps with the support of suitably trained teaching assistants). Such skills apply equally to any poor reader and it is inaccurate to suggest that 'dyslexic' children require a different form of instruction to other struggling readers. Having considered this issue in detail, the House of Commons Science and Technology Committee (2009) highlighted the following point:

> We conclude that 'specialist dyslexia teachers' could be renamed 'specialist literacy difficulty teachers'. There are a range of reasons why people may struggle to learn to read and the Government's focus on dyslexia risks obscuring the broader problem. The Government's support for training teachers to become better at helping poor readers is welcome and to be supported, but its specific focus on 'specialist dyslexia teachers' is not evidence-based. (Para. 77)

Small class sizes

A recommendation that the dyslexic child should be placed in a smaller class grouping is a very common component of private assessments brought to literacy-related tribunal appeals. It is true that struggling readers may require explicit literacy instruction that can best be delivered one-to-one or in small groups. However, such provision does not necessitate a smaller class size for all curricular activities. An RTI approach involving multitier systems of support (MTSS) (Fletcher et al., 2019; Gibbs & Elliott, 2020), for example, enables the child to remain in normal class settings for most of their classes.

The RTI/MTSS approach requires the identification of all struggling readers from an early age and operation of a tiered approach to the provision of educational input. Underpinning such an approach, mainstream early years teachers need to be appropriately skilled in the teaching of reading and understand how to identify and help those who may be at risk or who are making slow progress. Sound screening procedures can help schools to identify those children who are at risk of reading difficulty (Snowling et al., 2011; Vaughn & Fletcher, 2021). Nevertheless, however skilled the class teacher or sophisticated the screening measures, some children will still make limited progress and require greater assistance. According to the RTI/MTSS model, the amount of additional assistance required should be a direct function of the child's response to the help that they have previously received. Where there has been insufficient progress, despite additional assistance, the child would typically progress from Tier 1 to a higher tier (typically Tier 2 and, if necessary, then Tier 3) where individual or small-group provision for literacy instruction becomes increasingly explicit, systematic and intense. As the child passes from Tier 1 to Tiers 2 and 3, more detailed individualised assessment of the child's difficulty may be needed to inform an increasingly bespoke intervention that addresses their unique strengths and weaknesses. Crucially, however, in the case of reading difficulties, the focus should be on academic skills and the child's response to the help and support provided, rather than underlying cognitive processes that offer little value for guiding reading and spelling instruction (Elliott & Grigorenko, 2024a; Fletcher et al., 2019; Vaughn et al., 2024; Vellutino et al., 2004).

In their analysis of best practice, Miciak and Fletcher (2020) summarise the key components of the approach succinctly:

> … identification and treatment processes should be built within well-implemented multitier systems of support (MTSS) that include universal screening, evidence-based Tier 1 instruction, preventive intervention, ongoing progress monitoring

> for high-risk students, and mechanisms to intensify interventions for students who demonstrate inadequate response to quality instruction. (p. 343)

The operation of a system that allocates additional assistance and resources in the light of the child's ongoing development and their response to differing levels of reading instruction rules out any need for a dyslexia diagnosis (Stanbridge et al., 2023). As noted above, the label adds no additional information to guide intervention as there should be no alternative educational instructional approaches for struggling readers that are more suited to the 'dyslexic' child. The RTI/MTSS approach is designed to provide an organisational framework enabling the provision of evidence-based interventions that, as discussed above, are increasingly individualised, explicit, comprehensive and intense, should the child continue to make insufficient progress (Al Otaiba et al., 2023; Hall et al., 2022). If appropriate interventions are not being provided, one cannot conclude that RTI as a general approach is wrong; rather, the problem is that it is not being implemented appropriately.

The operation of a system-wide approach that identifies, and caters for, all struggling readers is both complex and expensive. To be successful, scarce resources need to be employed in the most cost-effective and equitable fashion. Current funding approaches, where schools and LAs both hold budgets for children with SEND, can lead to tensions and inequitable approaches. Let us consider a hypothetical scenario in which a school lacks teachers with appropriate expertise, or provides insufficient resources, to cater for the needs of struggling readers. A parent of a child at the school, despairing of their child's slow progress, obtains a dyslexia diagnosis from a privately funded assessor and, after a period of disagreement with the LA, eventually appeals to a tribunal, requesting a place at an independent school for dyslexic children. The child's school sides with the parents at the tribunal, arguing that they lack the expertise and resources to cater for dyslexia. Given the dyslexia diagnosis, the school's stance that this is a complex condition for which they are not staffed or resourced, the argument that specialist dyslexia teaching is necessary, and the wishes of the parents, the tribunal may be understandably minded to rule in favour of the parent. Where this is indeed the outcome, the cost of the child's education at an independent (and in some cases an out of county/district and, therefore, residential) school placement must be funded by the LA.

Providing expensive places at private schools that cater for children diagnosed as dyslexic from public funds that would otherwise be used by the LA to provide strategic support to a wider group of children with SEND cannot be defended. For such practice, a strong case would need to be built showing that the child has unique and exceptional needs that are significantly different from very large numbers of other struggling readers, and that the specialist provision requested can meet the child's needs in a way that a well-structured, effective mainstream school could not. Currently, there appears to be a shortage of research evidence to support claims that specialist independent school provision leads to significantly superior reading outcomes for struggling readers when compared with appropriate support delivered within maintained provision. Certainly, some mainstream state schools are likely to be failing to provide this and, indeed, some might welcome the child's relocation to alternative provision (Daniels et al., 2019) In such cases, the schools concerned should be required to address any inadequacies. It is surely inappropriate to deal with a school's poor practice by requiring the LA to take over responsibility and perhaps even be required to pay for private schooling. Such expense would be to the detriment of their ability to enhance adequate provision for their entire struggling reader community.

Gabriel (2020) describes similar problems in the United States. She contends that in public debate over how best to tackle complex reading difficulties, insufficient emphasis has been placed on the need for school systems to address systemic failings or inadequacies; instead, the particular needs of dyslexic children have been prioritised over and above those of other poor readers and a privatised assessment and intervention industry has been widely held to offer greater understanding and superior instructional solutions.

Thomas et al. (2023) have identified a significant increase in private school places for a variety of children's special educational needs, and cite many risks associated with this, not least the threats posed to the development of inclusive solutions to children's problems at state schools. Their review of provision across 24 LAs in England found that many of the schools to which children were sent appeared to offer accounts of identification and 'treatment' that reflected

> … quasi-medical diagnoses rather than specification of actual need. This lends itself to a tendency to seek placements offering straightforwardly to cater for these putative categories and conditions rather than seeking solutions that offer multi-layered, bespoke responses to children's difficulties. (p. 11)

Thomas et al. (2023) offer a powerful argument against the high costs of such provision and cite a Department for Education (2022) report stating that this often represents poor value for money. Noting the deleterious impact such expenditure has on LA budgets, Thomas et al. (2023) argue that this would be better spent on developing inclusive practices that can serve the needs of these, and many other, children. Unfortunately, there is no contextual mechanism built into the tribunal decision-making process that requires consideration of the child's needs in relation to the wider community with similar difficulties. In the case of dyslexia, where the dyslexic child's individual needs are rarely significantly different from those of large numbers of other struggling readers, it is difficult to offer an ethical or logical justification for such disproportionate expenditure. Arguments by LA educational psychologists that there is no basis for claims that there is a form of specialised instruction more appropriate for diagnosed dyslexic children than for other struggling readers are often challenged by independent 'experts', despite there being no basis for this rebuttal in the scientific literature (Elliott & Grigorenko, 2024a; Miciak & Fletcher, 2020). Furthermore, while there is a suggestion that smaller, specialist schools may help children with severe reading difficulties to have more positive self-perceptions and greater self-efficacy (Burden & Burdett, 2005), detailed evidence (as opposed to anecdote) is lacking to support the claim that children who obtain such placements subsequently make greater progress in their reading than similar children in mainstream settings. Indeed, the seeming reluctance of many specialist schools to involve LA professionals in systematic and independent review of the child's progress undermines opportunities to build an evidence base showing the benefits that may accrue from special schooling.

SUMMARY AND CONCLUSIONS

In any society where educational resources are finite, it is a challenge to ensure that extra support is made available to those who most require it. Unfortunately, it is a sad but inevitable truth that not all those who struggle with learning will have access to the resources that are necessary for them to maximise their potential. However, it behoves society to develop mechanisms capable of identifying those in greatest need and maximising the use of those resources that are available.

In the case of reading, it is not difficult to identify those children experiencing the greatest difficulty; however, the use of an assessment process geared to formal diagnosis and labelling as key determinants of resource allocation is likely to impact negatively on the creation of educational systems that can cater effectively for all children who experience severe reading difficulties (Cruz et al., 2023). To achieve such an outcome, the effective deployment of skilled class teachers, appropriate curricula and a structured approach to the provision of additional intervention and resourcing (e.g., employing an RTI/MSS) is recommended. When operating effectively, this approach should be capable of identifying the literacy difficulties of children at an early age, addressing them using evidence-informed interventions, targeting resources where they are most needed and justifying decisions where necessary (see Kale, 2020 for illustrations of relevant initiatives in England).

The current SEND tribunal system in relation to needs identified as dyslexia often results in judgements that run counter to contemporary scientific understandings about the nature and treatment of severe reading difficulties and disproportionately targets public funds at providing resources to individuals rather than a wider community of struggling readers. Decisions often fail to reflect extant knowledge about evidence-based approaches to intervention, and confident, yet wholly erroneous, assertions by some privately funded experts can be all too easily accepted.

While the children considered by tribunals may benefit from additional resourcing, it must be understood that this is at a significant cost to many others with similar needs. Given the nature and costs of the tribunal appeals system, a desired outcome for the 'dyslexic' child is often not mediated by need but by socioeconomic advantage (Marsh, 2022) and such outcomes contribute to the perpetuation of educational inequality. Furthermore, by mandating large expenditure for a very small proportion of struggling readers, the disproportionate drain on resources actively undermines the effective and equitable implementation of system-wide initiatives. Further research into these issues is urgently required, although obtaining the data necessary to provide a comprehensive picture of LA and SEND tribunal practice is likely to prove challenging. Such work could profitably be incorporated within broader research examining the use and costs of private SEND schooling and its impact on inclusive practices (Thomas et al., 2023).

The focus of this paper is on the unique problems that result from the use of a dyslexia label to prioritise the needs of some struggling readers over others whose difficulties are often very similar. However, it should be noted that the use of the tribunal system to address the needs of children with other high-incidence forms of SEND is also potentially problematic. Given the ever-increasing numbers of children deemed to have special educational needs and the absence of sufficient resources to cater for them (with some LAs currently close to bankruptcy), a tribunal model that considers the needs of an individual child in isolation from those of their peers, and then mandates LA expenditure accordingly, would appear to be unsustainable. Despite this, while placing a premium on the requirement to use scarce resources as efficiently and effectively as possible (an important component of the SEN statementing procedure introduced in the 1981 Education Act), there will always be a need to protect those children with the most extreme needs. To manage and reconcile these inherent tensions, the focus in tribunal decision-making may need to shift to consider a proportionate response in terms of public funds.

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CONFLICT OF INTEREST STATEMENT

There were no conflicts of interest encountered in the collection or analysis of data.

DATA AVAILABILITY STATEMENT

The Local Authority FOI data reported in this study are available on request from Dr Stanbridge. All other data are publicly available from government websites.

ETHICS STATEMENT

The data reported in this study involved no personal contact with individuals. In line with BERA Ethical Guidelines, ethics approval was not required.

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