# Why Schools Cannot Use the “Severe Discrepancy” Model to Block Dyslexia Services

## 1. IDEA Prohibits Mandatory Severe Discrepancy

• 34 C.F.R. § 300.307(a) – States “must not require” the severe discrepancy method.
• Districts must also allow Response to Intervention (RTI) or other research-based procedures.
• Key Point: If a district’s policy or practice effectively makes discrepancy the gatekeeper, that violates federal regulations.

## 2. Evaluations Must Be Comprehensive – Not a Single Test

• 34 C.F.R. § 300.304(b) – Schools must:
 - Use a variety of assessment tools.
 - Not rely on any single measure or score (such as an IQ-achievement gap).
• Impact: Practices that screen dyslexic students in or out based on a single discrepancy score are unlawful.

## 3. RTI/MTSS May Not Delay Evaluation

• OSEP Memo 11-07 (2011): Districts cannot keep students in RTI until a large discrepancy appears.
• Legal Duty: If a student shows red flags, the district must promptly seek parental consent for an IDEA evaluation.

## 4. Child Find Obligations

Schools violate Child Find when reliance on discrepancy or prolonged RTI delays identification.
• Cases:
 - Compton USD v. Addison (9th Cir. 2010) – District’s failure to act timely violated IDEA.
 - El Paso ISD v. Richard R. (5th Cir. 2009) – District failed to conduct a timely evaluation.
 - Spring Branch ISD v. O.W. (5th Cir. 2019) – Clarified duty for expedited evaluations.

## 5. Direct Case Against Exclusive Discrepancy Use

• Michael P. v. Hawaii DOE (9th Cir. 2011):
 - State violated IDEA by requiring exclusive reliance on discrepancy.
 - Court emphasized § 300.307(a) prohibits this.
 - Student with dyslexia was wrongly denied eligibility.

## 6. ADA & Section 504 – Discrimination Angle

• ADA Title II: 28 C.F.R. §§ 35.130(b)(8) (screen-out) & (b)(3) (methods of administration).
• Section 504: 34 C.F.R. § 104.4(b)(4).
• Key Point: Rules that “screen out” dyslexic students until they “fail enough” are unlawful.
• Case: Alexander v. Choate, 469 U.S. 287 (1985) – Recognized disparate-impact discrimination under 504.

## 7. Supporting Guidance

• OSERS Dear Colleague Letter on Dyslexia (2015): Encourages using the term dyslexia and tailoring services to student needs.
• State Guidance: Many states (including WDE) echo federal rules—districts must seek consent for evaluation if progress isn’t made after appropriate RTI.

## 8. How to Frame the Argument

Thesis: The district’s reliance on a severe-discrepancy formula (or waiting for a large IQ–achievement gap) is unlawful because:
1. IDEA forbids requiring discrepancy and forbids single-measure evaluations.
2. It violates Child Find when used to delay identification.
3. Under ADA/504, it is a discriminatory screening method that excludes dyslexic students from timely evaluation and instruction.

Authorities to Cite Together:
• IDEA regs: §§ 300.307(a), 300.304.
• Michael P. (2011).
• OSEP Memo 11-07 + Compton, El Paso, Spring Branch.
• ADA/504: 28 C.F.R. §§ 35.130(b)(8), (b)(3); 34 C.F.R. § 104.4(b)(4); Alexander v. Choate.
• OSERS 2015 DCL.

## 9. Sample Language for Letters/Briefs

The district’s practice of conditioning SLD identification on a severe IQ–achievement discrepancy contravenes IDEA because States and LEAs “must not require” the discrepancy method and must consider other research-based procedures; moreover, evaluations must use a variety of tools and cannot rely on a single criterion. 34 C.F.R. §§ 300.307(a), 300.304. Courts have invalidated exclusive reliance on discrepancy for dyslexic students. See Michael P. v. Hawaii DOE, 656 F.3d 1057 (9th Cir. 2011). Further, to the extent the district uses RTI/MTSS to postpone IDEA evaluation until a large discrepancy emerges, that violates OSEP Memorandum 11-07’s directive that RTI may not be used to delay or deny a full evaluation, and it breaches Child Find. See Compton USD v. Addison, 598 F.3d 1181 (9th Cir. 2010); El Paso ISD v. Richard R., 567 F.3d 918 (5th Cir. 2009). Finally, under ADA Title II and Section 504, a policy or method of administration that screens out or has the effect of excluding students with dyslexia from timely identification and services is unlawful. 28 C.F.R. § 35.130(b)(8), (b)(3); 34 C.F.R. § 104.4(b)(4); see also Alexander v. Choate, 469 U.S. 287 (1985).