**Common False Statements Parents Hear from Districts —**

**And the Law that Counters Them**

*Quick legal backup you can cite in meetings, emails, PWNs, and due process filings (Wyoming & federal).*

## Key Takeaways (Yes, You Can…)

* Yes, dyslexia is recognized under federal law and Wyoming rules.
* Yes, a specific methodology (e.g., Wilson/Orton‑Gillingham) can and **must** be specified in the IEP when necessary for FAPE.
* Yes, ESY decisions must be individualized using established NINE legal factors (not blanket denials).
* Yes, Stay‑Put protects the current placement/services during disputes, and courts recognize ADA/§504 damages for deliberate indifference.
* No, districts cannot cite cost caps to deny services required for FAPE.
* No, districts cannot

## 1) “We don’t recognize dyslexia in Wyoming.” — False

Federal IDEA regulations explicitly list dyslexia within the definition of a Specific Learning Disability (SLD). Wyoming’s special‑education rules adopt and implement IDEA for all districts statewide.

* **Legal backup:**

• IDEA: 34 C.F.R. § 300.8(c)(10) — SLD includes dyslexia.

• Evaluation rules: 34 C.F.R. § 300.304 — comprehensive evaluation; multiple measures.

• Wyoming: Chapter 7, Services for Children with Disabilities — statewide rules implementing IDEA.

## 2) “We can’t specify Wilson/OG in the IEP.” — Often False

While schools usually have latitude on methodology, courts and federal guidance recognize that when a particular method is necessary for the child to receive FAPE, the IEP MUST specify it on the IEP. Predetermination or refusing to consider an appropriate methodology can violate IDEA.

* **Legal backup:**
* Deal v. Hamilton County Bd. of Educ., 392 F.3d 840 (6th Cir. 2004) — Procedural FAPE violation where district refused to consider ABA methodology (predetermination).
* \*\*R.E.B. v. Hawaii Department of Education (9th Cir. 2017)

**\*\*Strong Language Requiring Methodology on the IEP**

\*\*In R.E.B v. Hawaii DOE the Ninth Circuit of Appeals held that when a particular methodology plays a **“critical role” in the student’s educational plan, “it must be specified in the student’s IEP”.**

* OSEP guidance: IEP may include methodology when needed for FAPE; methodology deference is not absolute.
* General rule: If the student is not making appropriate progress, the team must revisit and may need to specify an effective methodology.

## 3) “We have a cap on spending.” — Illegal

Cost cannot be used to deny services required for FAPE. The Supreme Court has held that districts must fund necessary services, even when costly.

* **Legal backup:**

• Cedar Rapids Community Sch. Dist. v. Garret F., 526 U.S. 66 (1999) — District required to provide needed nursing services; cost defense rejected.

• 34 C.F.R. § 300.101 (FAPE must be available to all eligible children).

## 4) “Your child doesn’t qualify for ESY.” — Must Be Individualized

ESY decisions must be individualized based on multiple factors (e.g., regression/recoupment, emerging skills, severity, behaviors, availability of alternatives, vocational needs). Blanket denials or ‘no regression’ policies are unlawful.

* **Legal backup:**

• Johnson v. Indep. Sch. Dist. No. 4 of Bixby, 921 F.2d 1022 (10th Cir. 1990) — ESY requires individualized analysis; regression/recoupment key.

• Reusch v. Fountain, 872 F. Supp. 1421 (D. Md. 1994) — Courts articulated multiple ESY factors; decisions must be timely and individualized.

• Wyoming WDE ESY Guidance (2013) — Lists factors and emphasizes individualized determinations.

## 5) “Standardized test scores prove your child is fine.” — Wrong Standard

IDEA requires a variety of assessment tools and prohibits using any single measure (like one standardized test) as the sole criterion for eligibility or programming decisions.

* **Legal backup:**

• 34 C.F.R. § 300.304(b)(2) — No single measure may be the sole criterion for eligibility or the educational program.

• OSEP Memo 11‑07 — RTI/MTSS cannot be used to delay or deny evaluations.

**6) “Your child doesn’t qualify under SLD on the IEP because of the district’s discrepancy provision.”**

**Why that statement is wrong—quick cites**

* Federal statute: Districts are not required to use an IQ–achievement severe discrepancy to identify SLD; they may use RTI and other research-based procedures. 20 U.S.C. § 1414(b)(6)(A)–(B).
* Federal regs (state criteria): States must not require a severe discrepancy, must permit RTI, and may permit other research-based procedures (e.g., PSW). 34 C.F.R. § 300.307(a)(1)–(3).
* Federal regs (team decision): A child may be found SLD if (a) achievement is inadequate and either (i) the child doesn’t make sufficient progress under an RTI process or (ii) shows a pattern of strengths & weaknesses (PSW)—not just discrepancy. 34 C.F.R. § 300.309(a)(2)(i)–(ii).
* No “single test” gatekeeping: Teams may not use any single measure (like a discrepancy score) as the sole criterion for eligibility. 34 C.F.R. § 300.304(b)(2).
* RTI cannot be a stall: OSEP warns districts may not use RTI/MTSS to delay or deny a timely IDEA evaluation. OSEP Memorandum 11-07 (Jan. 21, 2011).
* **Case law you can cite**
* State rules can’t mandate discrepancy: The Ninth Circuit condemned Hawaii regulations that required the severe-discrepancy model and recognized this could taint eligibility; the state later amended the rule to comply with IDEA (must allow RTI). *M.P. (Michael P.) v. Hawaii DOE*, 656 F.3d 1110 (9th Cir. 2011). [Ninth Circuit Court of Appeals](https://cdn.ca9.uscourts.gov/datastore/opinions/2011/09/08/09-16078.pdf?utm_source=chatgpt.com)
* Child Find—can’t “wait for a discrepancy”: Child-Find claims are cognizable; districts violate IDEA by failing to timely evaluate when disability is suspected (you can’t sit on your hands while awaiting a bigger “gap”). *Compton USD v. Addison*, 598 F.3d 1181 (9th Cir. 2010). [Ninth Circuit Court of Appeals+1](https://cdn.ca9.uscourts.gov/datastore/opinions/2010/03/22/07-55751.pdf?utm_source=chatgpt.com)
* Comprehensive evaluation: Courts require assessment in all suspected areas; failure to do so violates IDEA (another reason a single discrepancy rule fails). *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202 (9th Cir. 2008).
* 5th Cir. timing example: Using general-ed processes instead of promptly evaluating can breach Child Find. *Spring Branch ISD v. O.W.*, 961 F.3d 781 (5th Cir. 2020). [Fifth Circuit Court+1](https://www.ca5.uscourts.gov/opinions/pub/18/18-20274-CV1.pdf?utm_source=chatgpt.com)

**Wyoming-specific backup**

* WY allows options: WDE materials show teams may use either the Wyoming Severe Discrepancy Formula or an RTI process for SLD—i.e., discrepancy is optional, not mandatory (consistent with IDEA).
* Current Chapter 7 text: When a district chooses the discrepancy route, it must apply Wyoming’s formula—but that does not make discrepancy a universal prerequisite to SLD. (This aligns with 34 C.F.R. § 300.307’s “must not require” rule).

One-sentence script for your PWN request

“Please issue Prior Written Notice explaining how the district’s reliance on a ‘discrepancy provision’ complies with 20 U.S.C. § 1414(b)(6) and 34 C.F.R. §§ 300.307, 300.309 and 300.304(b)(2), and identify why RTI/PSW pathways were rejected, given OSEP Memo 11-07 and cases such as *M.P. v. Hawaii DOE* and *Compton v. Addison*.”

## 7) Deliberate Indifference (ADA/§504) & Stay‑Put

Parents may seek damages under §504/ADA where they prove ‘deliberate indifference’ (knowledge of likely violation and failure to act). During disputes, ‘Stay‑Put’ keeps the current placement/services in place until proceedings end.

* **Legal backup:**

• Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001) — Deliberate indifference standard.

• S.H. v. Lower Merion Sch. Dist., 729 F.3d 248 (3d Cir. 2013) — §504/ADA intentional discrimination uses deliberate indifference standard.

• 34 C.F.R. § 300.518 — ‘Stay‑Put’ keeps current placement during due process.

• N.D. v. Hawaii DOE, 600 F.3d 1104 (9th Cir. 2010) — Explains scope/limits of stay‑put in system‑wide changes.

## Practical How‑To for Parents (Use in Meetings & PWNs)

1. Bring this handout and cite the law by section number and case name.
2. If the district refuses a methodology that worked (e.g., Wilson), ask the team to document progress data and why the proposed alternative is reasonably calculated to enable appropriate progress (Endrew F.).
3. If ESY is denied, request a written analysis of each ESY factor the team considered and the data relied upon in the PWN
4. If evaluation is delayed due to RTI/MTSS, cite OSEP Memo 11‑07 and request an immediate comprehensive evaluation under 34 C.F.R. §§ 300.304–300.305.
5. If services are reduced during a dispute, invoke Stay‑Put (34 C.F.R. § 300.518) in writing.

### Primary Sources (Quick Citations)

• 34 C.F.R. § 300.8(c)(10) (SLD includes dyslexia).

• 34 C.F.R. § 300.304(b)(2) (multiple measures; no single test).

• 34 C.F.R. § 300.101 (FAPE available to all).

• 34 C.F.R. § 300.518 (Stay‑Put).

• OSEP Memo 11‑07 (RTI/MTSS cannot delay/deny evaluation).

• Johnson v. ISD No. 4 of Bixby, 921 F.2d 1022 (10th Cir. 1990) (ESY).

• Reusch v. Fountain, 872 F. Supp. 1421 (D. Md. 1994) (ESY factors).

• Cedar Rapids v. Garret F., 526 U.S. 66 (1999) (cost not a defense).

• Deal v. Hamilton Cty. Bd. of Educ., 392 F.3d 840 (6th Cir. 2004) (predetermination/methodology).

• Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001) (deliberate indifference).

• S.H. v. Lower Merion Sch. Dist., 729 F.3d 248 (3d Cir. 2013) (§504/ADA standard).

• Wyoming: Chapter 7 – Services for Children with Disabilities (WDE).