**Deliberate Indifference** and **Intentional Discrimination –**

**Legal Definitions and Standards** (2)

*as they apply in* ***special education law*** *for students with disabilities, under the IDEA, Section 504 of the Rehabilitation Act, and the ADA:*

**1. Deliberate Indifference**

**Definition:**
In disability law (especially under Section 504 and the ADA), *deliberate indifference* means that a school district **knew of a substantial risk of harm to a student’s federally protected rights and failed to act appropriately**. It is more than negligence or poor judgment — it requires proof that the school **was aware of the problem and consciously disregarded it**.

**Standards in the Courts:**

* The U.S. Supreme Court (e.g., *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998), though a Title IX case, has been applied to ADA/§504) and federal circuits require:
	1. **Actual knowledge** – The school had actual notice of the student’s disability-related needs or the discriminatory conduct.
	2. **Failure to act** – The school responded with deliberate inaction, or its response was clearly unreasonable in light of the known circumstances.

**Special Education Context:**

* A district shows deliberate indifference if, for example, it **knows a student requires evidence-based reading instruction (per evaluations, data, IEP team agreements)** and yet administrators order its removal, refuse to implement it, or intentionally delay action.
* Courts distinguish this from mere negligence: failure to follow best practice is not enough; ignoring a known legal duty **after being put on notice** is deliberate indifference.

**2. Intentional Discrimination**

**Definition:**
Intentional discrimination under Section 504/ADA occurs when a district **denies services or accommodations because of a student’s disability** or treats a student differently *because* of disability. Unlike deliberate indifference, which is about ignoring known rights, intentional discrimination involves **affirmative acts or policies that disadvantage students with disabilities**.

**Standards in the Courts:**

* Most circuits (e.g., 9th, 10th, 11th) recognize intentional discrimination when a school acts with:
	1. **Discriminatory animus** – actions taken *because* of the disability, or
	2. **Deliberate indifference** – \*\*some courts hold that deliberate indifference itself can constitute intentional discrimination.
* Remedies under §504/ADA (such as compensatory damages) generally require a showing of intentional discrimination, proven through either **discriminatory motive** or **deliberate indifference**.

**Special Education Context:**

* Examples:
	+ A district policy that caps or prohibits structured literacy interventions, knowing this disproportionately excludes dyslexic students.
	+ Refusal to implement IEP/504 accommodations (e.g., extended time, Wilson Reading) despite clear evidence of need.
	+ Administrative directives to remove a methodology solely because it is “too costly” or “too resource-intensive,” despite disability need, can be treated as intentional discrimination.

**3. Key Distinctions**

| **Concept** | **Requires Knowledge?** | **Nature of Conduct** | **Remedy Implications** |
| --- | --- | --- | --- |
| **Deliberate Indifference** | Yes – actual knowledge of a disability need or violation | Failure to act or unreasonable response | Can establish intentional discrimination; supports damages under §504/ADA |
| **Intentional Discrimination** | Yes – or purposeful action based on disability | Direct adverse treatment *because of* disability, or policies that exclude | Necessary to recover compensatory damages under §504/ADA |

**4. Practical Use in Special Education Cases**

* **IDEA Claims**: Do not require proving deliberate indifference or intentional discrimination; parents can secure services and compensatory education based on FAPE denial.
* **Section 504 / ADA Claims**: Require higher proof — showing the district acted with at least deliberate indifference (and sometimes actual discriminatory intent) to obtain damages.
* **Litigation Strategy**: Parents often frame systemic removal of effective reading programs, refusal to implement known accommodations, or repeated IEP team overrides by administrators as deliberate indifference that rises to intentional discrimination.

**REMEMBER\*\*\* The Role of “Harm” in Deliberate Indifference**

1. **Actual Knowledge of Risk of Harm**
	* Courts require that the school had actual knowledge of a substantial risk of harm to the student’s federally protected rights (e.g., access to education, reasonable accommodations, equal opportunity).
	* “Harm” in this context is not just physical harm — it can include educational harm, denial of equal access, or exclusion from participation.
2. **Failure to Act (Causation of Harm)**
	* The district’s unreasonable inaction must cause or allow the harm to continue.
	* Example: If the school knows a child cannot read without structured literacy, but refuses to provide it, the resulting academic regression and loss of educational benefit is the harm.
3. **Not Mere Negligence**
	* If a school makes a mistake, that’s negligence.
	* If a school knows its inaction will harm a student and chooses not to act, that rises to deliberate indifference.

**Case Support**

* *Duvall v. County of Kitsap*, 260 F.3d 1124 (9th Cir. 2001): deliberate indifference exists when a public entity has knowledge that harm to a federally protected right is substantially likely, and fails to act.
* *Liese v. Indian River County Hosp. Dist.*, 701 F.3d 334 (11th Cir. 2012): deliberate indifference requires both knowledge of the need and a failure to act, causing denial of meaningful access.

# A.J.T. v. Osseo Area Schools (2025): What This Means for Parents & Students

 Lower legal hurdle: Families don’t need to prove bad faith, only that discrimination occurred.
 Access to legal relief: More ADA/§504 cases can move forward.
 Better protection: Schools must provide equitable instruction and accommodations.

## **Key Takeaway**

A.J.T. v. Osseo ensures students with disabilities are protected under ADA/§504 without unfair legal obstacles. The focus is on whether equal access to appropriate education and needed accommodations were provided.

**In Special Education Context**

* Yes, **harm** is part of the standard — it is the denial of meaningful access to education or services.
* For students with dyslexia, harm looks like:
	+ Regression in reading when effective instruction is withheld.
	+ Anxiety, loss of self-esteem, or avoidance of school.
	+ Being excluded from academic opportunities peers enjoy.

The deliberate indifference standard requires knowledge of likely harm to the student’s protected rights and a failure to act, which then causes that harm.