**Deliberate Indifference Under Section 504**

**for Students with Dyslexia:**

**Legal Standard and Application**

**1. Legal Framework of Section 504 and Deliberate Indifference**

**Section 504 of the Rehabilitation Act of 1973** prohibits discrimination against individuals with disabilities by entities receiving federal funding, including public schools. It ensures that students with disabilities have access to **a Free Appropriate Public Education (FAPE)**, which includes necessary accommodations, modifications, and services.

To establish **deliberate indifference** under Section 504, a plaintiff must prove:

1. **The student has a qualifying disability** (dyslexia qualifies as a specific learning disability under Section 504).
2. The school district had **actual knowledge** of the student’s disability.
3. The district failed to act appropriately despite this knowledge, exhibiting **deliberate indifference**.
4. The district’s inaction caused the student to be denied meaningful access to education or subjected them to discrimination.

**2. Legal Standard for Deliberate Indifference**

Courts have defined **deliberate indifference** in the context of Section 504 and ADA claims as:

* **Knowledge of the disability:** The district was aware of the student’s dyslexia and the associated need for intervention.
* **Failure to act or inadequate action:** The district either failed to take reasonable steps to address the student's needs or provided ineffective, non-evidence-based interventions.
* **Intentional or reckless disregard:** The school’s inaction demonstrated more than mere negligence—it showed conscious or reckless disregard for the student’s educational rights.

**\*\*Key Distinction:** Unlike IDEA, Section 504 claims for deliberate indifference can result in **monetary damages** if the school’s conduct meets this higher threshold of culpability.

**3. Application of Deliberate Indifference to Dyslexia Cases**

**A. Failure to Identify or Evaluate Dyslexia**

When a school district **fails to identify or evaluate** a student for dyslexia despite clear signs of reading difficulties, this may constitute deliberate indifference.

* **Application:**
  + Ignoring repeated requests for evaluation from parents or teachers.
  + Refusing to conduct dyslexia-specific evaluations or screenings, despite the student’s history of severe reading challenges.
  + Relying on flawed or outdated evaluation models (e.g., only using the **discrepancy model**) that discriminate against students with dyslexia by excluding them from services.
* **Legal Precedent:**
  + *Duvall v. County of Kitsap*, 260 F.3d 1124 (9th Cir. 2001): The court held that deliberate indifference under Section 504 requires proof of knowledge and failure to act. Schools ignoring the need for evaluation despite clear signs of disability can demonstrate deliberate indifference.
  + *K.M. v. Tustin Unified Sch. Dist.*, 725 F.3d 1088 (9th Cir. 2013): Failure to properly evaluate a student’s need for assistive technology was found to be discriminatory under Section 504, constituting deliberate indifference.

**B. Refusal to Provide Appropriate Evidence-Based Intervention**

If a district knowingly denies a student access to **evidence-based, systematic, and explicit dyslexia interventions** (such as Orton-Gillingham), it may demonstrate deliberate indifference.

* **Application:**
  + The school refuses to implement Orton-Gillingham or other IDA-approved programs despite being aware of the student’s diagnosis.
  + The district provides **ineffective, generic interventions** (e.g., whole-language or balanced literacy approaches) despite clear evidence that they do not meet the needs of students with dyslexia.
  + Failing to provide **adequate teacher training** in dyslexia intervention methodologies, rendering the services meaningless.
* **Legal Precedent:**
  + *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260 (3d Cir. 2012): The court held that failing to implement appropriate interventions, despite knowing they were necessary, constituted deliberate indifference.
  + *Mark H. v. Lemahieu*, 513 F.3d 922 (9th Cir. 2008): Failure to provide FAPE under Section 504 with knowledge of the student’s needs supported a deliberate indifference claim.

**C. Systemic Failure to Train Staff or Implement Policies**

A school district’s **failure to train staff** on how to recognize and effectively instruct students with dyslexia, despite knowing of its prevalence, can meet the deliberate indifference threshold.

* **Application:**
  + A district is aware that teachers are untrained in Orton-Gillingham or other IDA-approved interventions but **refuses to provide training**, leaving students without access to appropriate services.
  + Systemic **failure to flag, screen, or intervene** for dyslexia, despite data showing widespread reading failure among dyslexic students.
  + Ignoring recommendations from **third-party experts** (e.g., neuropsychologists or private evaluators) and continuing ineffective practices.
* **Legal Precedent:**
  + *G.C. v. North Clackamas Sch. Dist.*, 654 F. Supp. 2d 1226 (D. Or. 2009): The school district's refusal to train staff in disability-related services and consistent failure to provide necessary accommodations constituted deliberate indifference.
  + *T.F. v. Fox Chapel Area Sch. Dist.*, No. 18-709 (W.D. Pa. 2019): The court held that systemic failure to train staff, despite knowledge of the disability, could support a claim of deliberate indifference under Section 504.

**4. Key Indicators of Deliberate Indifference in Dyslexia Cases**

When building a deliberate indifference case under Section 504, the following **patterns of conduct** strengthen the claim:

* **Repeatedly denying dyslexia evaluations or services**, despite parental advocacy and external diagnoses.
* **Providing ineffective, non-evidence-based interventions** or denying access to Orton-Gillingham-style instruction despite expert recommendations.
* **Failing to implement IEP or 504 Plan services** (e.g., not delivering reading interventions or accommodations as outlined).
* **Discriminatory use of the discrepancy model**, excluding dyslexic students from services due to high IQ or average standardized scores.
* **District-wide refusal to recognize dyslexia** or train teachers in evidence-based interventions, despite being aware of the systemic problem.

**5. Remedies and Damages**

Unlike IDEA, which only allows for **compensatory education and injunctive relief**, Section 504 allows for:

* **Monetary damages** if the school district’s conduct demonstrates deliberate indifference.
* **Attorney fees and costs** for successful claims.
* **Injunctive relief** to mandate appropriate interventions or systemic policy changes.

**6. Application to Wyoming School Districts**

In Wyoming, the **widespread failure to identify, evaluate, and support dyslexic students** could meet the deliberate indifference threshold. Key factors include:

* Systemic refusal to recognize dyslexia on IEPs, despite formal diagnoses.
* Failure to train teachers in **IDA-approved methodologies** despite knowledge that untrained teachers cannot deliver effective intervention.
* Denying or delaying evaluations, forcing parents to **privately fund assessments**.
* Relying on the discrepancy model, despite evidence that it discriminates against dyslexic students.

**7. Conclusion**

To establish a Deliberate Indifference claim under Section 504 for dyslexic students, the plaintiff must show that:

* The district knew of the dyslexia diagnosis and associated needs.
* The district failed to provide effective, evidence-based intervention or failed to identify the student.
* The failure was not mere negligence but a reckless or intentional disregard for the student’s rights.

**Key Takeaway:** Wyoming districts’ **failure to provide IDA-approved dyslexia interventions**, refusal to recognize dyslexia on IEPs, and systemic teacher training deficiencies could meet the deliberate indifference standard under Section 504. This opens the door for **monetary damages** and systemic corrective action.