**Why the Discrepancy Model Discriminates Against Students with Dyslexia**

 **The “Wait to Fail” Problem**

• The discrepancy model requires a large IQ–achievement gap before services are provided.

• Students with moderate-to-profound dyslexia show difficulties early (K–2), but districts often refuse to act until they have failed enough to create a 'big enough gap.'

• This violates IDEA’s Child Find duty (20 U.S.C. § 1412(a)(3)) to evaluate when a disability is suspected—not years later.

 **Ignores Dyslexia’s Neurological Basis**

• Dyslexia is a brain-based disorder in phonological processing, not tied to IQ.

• Denying services because the 'gap isn’t big enough' disregards medical and psychological evidence.

• The 2015 OSERS Dear Colleague Letter confirms that 'dyslexia' can and should be used in evaluations and IEPs.

 **Blocks Access to Evidence-Based Instruction**

• Students with dyslexia need structured literacy (e.g., Wilson, Orton-Gillingham).

• If eligibility is denied until a gap appears, students are excluded from the very programs that can prevent failure.

• This is a form of disparate treatment/disparate impact under Section 504 of the Rehabilitation Act and the ADA.

 **Creates Systemic Inequities**

• Families who can pay for private testing/tutoring can often force recognition.

• Families without resources cannot—leading to discrimination based on wealth, background, and language.

• Courts have acknowledged this: Michael P. v. Hawai‘i DOE, 656 F.3d 1057 (9th Cir. 2011) held that exclusive reliance on discrepancy violates IDEA.

 **Harms Students Emotionally & Academically**

• Without intervention, students face academic failure, anxiety, low self-esteem, and depression.

• Denying help because of a rigid formula treats them worse than nondisabled peers, even though IDEA requires individualized programming.

• Endrew F. v. Douglas Cty. Sch. Dist., 580 U.S. 386 (2017): IEPs must be 'reasonably calculated to enable progress appropriate in light of the child’s circumstances.'

 **The Legal Bottom Line**

• IDEA regulations: States must not require use of severe discrepancy (34 C.F.R. § 300.307).

• Districts must consider multiple data sources—not just IQ/achievement gaps.

• Failure to do so is not only educational malpractice—it is discrimination.

 **Key Message for Teams:**

A rigid discrepancy formula denies early, appropriate services and discriminates against children with dyslexia. Federal law requires schools to evaluate based on needs, not arbitrary gaps.