**Discrepancy Model Discriminates**

**Here is a summary of what we found about legal cases and laws related to school districts using the “discrepancy formula / severe discrepancy” model to deny services or to deny recognizing a diagnosis on an IEP (or to deny eligibility under IDEA), along with some examples.**

**Legal Background: Discrepancy Model vs. RTI**

First, some context is important:

* The Individuals with Disabilities Education Act (IDEA), especially its 2004 reauthorization and subsequent regulations (2006), changed how states and school districts can identify students with Specific Learning Disabilities (SLD). One change was that **states are not required** to use the severe discrepancy model (i.e., comparing IQ vs achievement gap) to identify an SLD. Instead, RTI (Response to Intervention) or other research-based methods may be used.
* The federal regulations say that criteria for SLD *must not require* the use of a severe discrepancy between intellectual ability and achievement.
* But many states still allow the discrepancy model; some states require it, some allow either, some emphasize RTI.

**Cases / Decisions where Discrepancy Model Was At Issue**

Here are some examples where use (or misuse) of the discrepancy model or refusal to accept a diagnosis and/or evaluate services was litigated:

1. **New York State Review Office Decision, 22-003 (2022)**
	* In this decision, a student had a private neuropsychological evaluation report diagnosing dyslexia, but the school district/CSE (Committee on Special Education) challenged whether the discrepancy between intellectual ability and achievement could be used. The decision holds that *the severe discrepancy model cannot be relied upon alone* to determine SLD eligibility under New York State’s rules. Because of that, the CSE was required to reconvene, get appropriate evaluation data, and issue a new eligibility determination.
2. **California OAH (Office of Administrative Hearings) Case No. 2007070307**
	* In that case, the district used the severe discrepancy model exclusively, and the question was whether the student met eligibility under that model. The conclusion was that using that model is permissible, but the evidentiary threshold (degree of discrepancy, corroborating data, etc.) must be met, and that other data sources must be considered.
3. **General Legal/Policy Analysis**
	* Analyses and surveys show many cases in which school districts deny eligibility because they don’t find a sufficient discrepancy in IQ vs achievement, even when there is evidence from private evaluations or other data. In many of those, courts or hearing officers have found that denying based solely on non-meeting of a strict discrepancy is not lawful under states/federal law that allow RTI or other alternative models.

**Key Legal Principles You Might Bring Up**

If arguing against a school district that is denying services or refusing to recognize a diagnosis because the discrepancy formula wasn’t met, these are important legal principles:

* **IDEA Regulations**: The law says states *must not require* severe discrepancy, and *must permit* RTI or other research-based procedures. If a district is insisting on discrepancy as the only route, that can violate IDEA.
* **Use of Multiple Data Sources**: Even under discrepancy models, many decisions hold that one must use multiple sources of information (private evaluation, classroom performance, parent input, teacher input, observations, etc.), not just test scores.
* **Private Evaluations and Parent-Provided Information**: Courts often consider whether school districts properly evaluated or gave weight to reliable private evaluations when determining eligibility. If a private evaluation clearly shows disability or need for services, but the IEP team ignores or undervalues it solely because discrepancy wasn’t large enough, that can be challenged.
* **State Agency / Hearing Officer Decisions**: Many of the decisions about eligibility are made in state administrative or hearing officer contexts (i.e. due process hearings). These are important precedents in your jurisdiction.

Here are on-point authorities you can cite when a district leans on the **severe discrepancy formula** to deny eligibility/services or refuses to **recognize a diagnosis (e.g., dyslexia) on the IEP**:

**Wyoming — directly relevant**

* **WDE Due Process Decision H-021-21 (Mar. 2022).** Parent alleged the district made the **lack of a significant discrepancy** the *determinative* factor. The hearing officer found the parent didn’t prove discrepancy was the deciding factor, but the record shows the district’s *normal practice* was to use the severe discrepancy model and that either **severe discrepancy or RTI** may be used in Wyoming. \*\*Helpful language confirms eligibility decisions must be **comprehensive** and not hinge on a single metric. See Issue 5 and related findings.
* **Wyoming School Psychologists Association advisory** warns that inserting a **“discrepancy table”** in reevaluations can imply eligibility is being based on ability–achievement discrepancy, which is **“counter to IDEA regulations and WDE policy,”** and could put a district in a precarious legal position.
* **Wyoming SLD framework references** (training/handouts) reiterate IDEA regs: state criteria **must not require** severe discrepancy and must permit RTI/other research-based methods (34 C.F.R. § 300.307).
* Use these to argue: even if WY permits a discrepancy route, a district **can’t make it the sole gatekeeper** or ignore other data (private evals, patterns of strengths/weaknesses, RTI data, classroom data).

**Federal & other persuasive authorities (re: naming “dyslexia” vs. addressing needs)**

* **Crofts v. Issaquah Sch. Dist., 22 F.4th 1048 (9th Cir. 2022).** Ninth Circuit held the district did **not** violate IDEA by evaluating under **“Specific Learning Disability”** and **not using the word “dyslexia”** in the IEP, so long as the IEP appropriately addressed reading/writing needs; also, no obligation to use the parent’s preferred methodology. Useful when districts claim they “can’t” say dyslexia—or when you need to show that **services/needs control over labels**.
* **OSERS “Dear Colleague” Letter (Oct. 23, 2015).** Clarifies there is **nothing in IDEA that prohibits** using terms like **dyslexia, dyscalculia, dysgraphia** in evaluations, eligibility determinations, or IEPs. Great counter when a district refuses to name the diagnosis. [Ohio Department of Education](https://education.ohio.gov/getattachment/Topics/Special-Education/Federal-Resources/Office-of-Special-Education-Program-Letters/OSERS-Dyslexia-DCL-10-23-15.pdf.aspx?utm_source=chatgpt.com)

**Research/context on discrepancy model (useful in briefs)**

* Scholarly and journalistic summaries documenting why the **IQ–achievement discrepancy** model is outdated and prone to error (supports the argument that relying on it alone is improper).

**How to deploy these quickly**

* **If the district denies eligibility “no severe discrepancy”:** cite **34 C.F.R. § 300.307(a)** (via WY handout) + **WSPA advisory** to argue they can’t make discrepancy determinative, must use **multiple sources** and/or RTI/PSW. Then cite **H-021-21** to show WY due-process scrutiny looks for comprehensive evaluations rather than single-score gatekeeping.
* **If they refuse to write “dyslexia” on the IEP:** cite **OSERS 2015 DCL** (they *may* use the term) and **Crofts** (IEP can still be compliant if needs are addressed—even without the word), *then argue your case for naming it if it improves clarity and fidelity of services.*

**Key Wyoming Laws / Rules & Policy Documents**

These are not hearing-decisions (so no "case name + outcome") but legal/regulatory or policy sources that are very useful and sometimes cited in due-process situations.

1. **Wyoming Severe Discrepancy Formula — Chapter 7 Rules (206-7 Wyo. Code R. § 7-4)**
	* These rules explicitly allow two paths: either use of the *Wyoming Severe Discrepancy Formula* **or** a *Response to Intervention (RTI)* process when determining whether a student is not making sufficient progress
	* The rules set the threshold: a severe discrepancy is at least 22 standard score points (≥ 1.5 standard deviations).
2. **“RTI in Special Education Evaluations” (Wyoming Department of Education Presentation)**
	* Confirms that LEAs **may** use the discrepancy model but are not **required** to, and that RTI is permitted as an alternative path. [Wyoming Department Of Education](https://edu.wyoming.gov/downloads/special-ed/rti_sld_presentation.pdf?utm_source=chatgpt.com)
3. **“Discrepancy Table in SLD Reevaluations” (Wyoming School Psychologists Association commentary)**
	* Warns that using a discrepancy table in reevaluations could be taken as implying that eligibility/continuation is being determined by ability-achievement discrepancy alone, which is *against* what WDE and federal regulations permit/advocate.
4. **Wyoming Procedural Safeguards, etc.**
	* Various sections of WDE procedural safeguards ensure parents’ rights in evaluations, independent evaluations, etc. These help when the district refuses or delays evaluation/recognition of diagnosis.

**Appellate** authorities you can cite when a district leans on the **severe discrepancy formula** to deny SLD eligibility/services or balks at recognizing **dyslexia** on the IEP:

**1) Discrepancy can’t be the only gatekeeper**

* **Michael P. v. Hawaii Dept. of Educ., 656 F.3d 1057 (9th Cir. 2011).** The Ninth Circuit held Hawaii violated IDEA by **requiring exclusive reliance** on the severe-discrepancy model; states must also permit RTI/other research-based procedures under **34 C.F.R. § 300.307(a)**. Reversed and remanded.
* **M.M. v. Lafayette Sch. Dist., 767 F.3d 842 (9th Cir. 2014).** Court explained that if a district relied **solely** on the severe-discrepancy model, that **would violate IDEA**, and approved the district’s use of **multiple measures plus RTI data**.
* **Doe v. Cape Elizabeth Sch. Dist., 832 F.3d 69 (1st Cir. 2016).** Vacated and remanded where lower court relied on overall grades without adequately weighing **reading-fluency** data; reinforces that eligibility must rest on **relevant, domain-specific evidence**, not generic performance.
* Anchor these with the regulation: **States “must not require” severe discrepancy and must permit RTI**. (**34 C.F.R. § 300.307**). **2) It’s lawful to use discrepancy (where state allows), but not to ignore other data**
* **E.M. v. Pajaro Valley USD, 758 F.3d 1162 (9th Cir. 2014).** Upheld a district’s SLD determination under California’s then-permitted discrepancy framework on the record presented; illustrates courts allow discrepancy **as one route** when state rules permit—**not** as the **only** route.
* **3) “Dyslexia” on the IEP—labels vs. needs**
* **Crofts v. Issaquah Sch. Dist., 22 F.4th 1048 (9th Cir. 2022).** District didn’t have to perform a **separate, formal “dyslexia” evaluation** or name “dyslexia” on the IEP where it evaluated under **SLD** and addressed the student’s reading/writing needs; no duty to use the parent’s preferred methodology.
* **Pair with the federal rule above** to argue: districts **can** say “dyslexia,” but even if they don’t, they must still **evaluate in all suspected areas** and provide services aligned to the student’s needs.

**How to deploy these in your brief/letter**

* **When a district says “no severe discrepancy = no IEP**”:
* **cite Michael P. and 34 C.F.R. § 300.307** to show **exclusive reliance** is unlawful; add **M.M.** to stress use of **multiple measures/RTI**.
* **When they** **downplay reading-fluency** or other targeted deficits because overall grades look fine: use **Doe v. Cape Elizabeth** (must weigh domain-specific data).
* **When they refuse to say “dyslexia” or insist SLD is enough:** use **Crofts** (label not required if needs are addressed), while still pressing them to *use clear language for fidelity.*
* **If they argue discrepancy is fully lawful:** acknowledge **E.M.** shows it can be **one** permissible method where state rules allow—but not the **only** method, per **Michael P.** and **§ 300.307**.

**Discrepancy Model - How using it can discriminate against students with moderate to profound dyslexia:**

**1. \*\*Delays Identification (Wait-to-Fail Problem)**

* The discrepancy model requires a **large gap between IQ and achievement** before a student qualifies.
* A dyslexic child may have **average or above-average intelligence**, but their reading difficulties show up early (K–2). Because they haven’t “fallen far enough behind” yet, schools often **deny services until the gap widens**.
* For a child with moderate-to-profound dyslexia, that means **years of failure, anxiety, and stigma** before they can qualify—violating IDEA’s **Child Find** duty to evaluate at the first suspicion of disability (20 U.S.C. § 1412(a)(3)).

**2. \*\*Ignores Dyslexia’s Neurological Basis**

* Dyslexia is not about intelligence; it’s a brain-based difficulty with phonological processing.
* The discrepancy model **equates intelligence with potential**, so if a student’s IQ score is not far enough above their achievement, the district may say “no disability.”
* That ignores the **medical/psychological diagnosis** and discriminates by denying that dyslexia itself is a legitimate condition that warrants intervention—contrary to the **2015 OSERS “Dear Colleague” Letter** clarifying that dyslexia *can and should* be named in IDEA evaluations/IEPs.

**3. \*\*Denial of Evidence-Based Services**

* When a district insists “you don’t qualify without a discrepancy,” it withholds access to structured literacy programs (e.g., Wilson, Orton-Gillingham).
* That means a child with profound dyslexia, who objectively needs the **most intensive, explicit instruction**, may be **excluded from specialized services** until they’ve already failed in general education.
* That unequal access is a form of **disparate impact discrimination** under **Section 504 of the Rehabilitation Act** and the **ADA** (29 U.S.C. § 794; 42 U.S.C. § 12132).

**4. \*\*Creates Inequities Across Populations**

* Students from supportive families who can afford private testing/tutoring may eventually prove eligibility despite the discrepancy barrier.
* But students from lower-income backgrounds, English learners, or those without access to private evaluations are left out—leading to systemic inequities.
* Courts have recognized this problem: e.g., **Michael P. v. Hawaii DOE, 656 F.3d 1057 (9th Cir. 2011)** (holding exclusive reliance on the severe discrepancy model violates IDEA because it unfairly blocks services).

**5. \*\*Emotional & Academic Harm = Discrimination**

* For a child with dyslexia, the longer they go without intervention, the more they suffer **irreparable harm**: low self-esteem, school avoidance, mental health struggles.
* Denying them services because they don’t meet an arbitrary formula is discriminatory because it **treats them worse than nondisabled peers** who can access grade-level reading without intervention.
* Under **Endrew F. v. Douglas Cty. Sch. Dist., 580 U.S. 386 (2017)**, schools must provide an IEP “reasonably calculated to enable progress appropriate in light of the child’s circumstances.” A rigid discrepancy cutoff denies that individualized analysis.

**\*\*Summary:** The discrepancy model discriminates against dyslexic students because it **delays identification, disregards scientific understanding of dyslexia, blocks evidence-based services, perpetuates inequities, and causes avoidable harm**—all contrary to IDEA, Section 504, and the ADA.

**A legal Advocacy - (With Citations)**

**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**.

**Summary:** 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.

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