

## Child Find Traps



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Rob Dietzel  
517-484-8000



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## IDEA Child Find

IDEA requires all school districts to have procedures to identify, locate and evaluate all children with disabilities, *regardless of the severity of their disabilities*, who are in need of special education and related services

## What Children are Included?

- Children who are homeless
- Children who are wards of the state
- Children who attend private schools
- Children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade
- Children who are highly mobile, including migrant children

## Letter to Siegel (OSEP, 2018)

*"[A]s part of a State's child find responsibilities, a State must carry out activities to determine whether a child is a child suspected of having a disability who should be referred for an evaluation to determine eligibility for special education and related services."*

## But...

*"[T]here are no specific provisions under IDEA that require LEAs to provide information about IDEA to all parents, regardless of whether their child is suspected of having a disability."*

### **IDEA Definition of Disability**

*"[A] child evaluated in accordance with [IDEA procedures] as having [one of the 13 eligibility categories] and who, by reason thereof, needs special education and related services."*

### **504 Child Find**

- Must have policies to identify and locate students with disabilities
- Must evaluate students who because of their disability need, or are believed to need, spec. ed. or related services
- Must evaluate even if the student only exhibits behavioral challenges

### **504 Definition of Disability**

- A physical or mental impairment that substantially limits one or more major life activities;
- A record of impairment;
- or
- Being regarded as having an impairment

### **ADAAA of 2008 (Eff. 1/1/09)**

*"It is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, . . . the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis."*

### **ADA Amendments of 2008**

- Passed to supersede Supreme Court decisions which Congress believed too narrowly construed ADA's definition of "disability"
- Included a conforming 504 amendment
- ADAAA: the definition of disability should be interpreted to allow for "broad" coverage

### **When to Evaluate**

- OCR: "Decision to conduct an evaluation is governed by the individual circumstances of each case."
- OCR examples:
  - When a teacher, based on observation of student or work with the student, believes evaluation is needed
  - When a parent requests an evaluation

## Legal Standard

*“To establish a violation of the [IDEA] child-find requirement, a plaintiff must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate.”*

*Williamson Cty. Schs.  
(CA 6, 2018)*

## Parent Request Not Required

- Child find is an affirmative duty
- Parent is not required to request evaluation to trigger district's obligation

## State Complaint 13-00410

*“[B]y asking the guardian to seek the evaluation, the district placed the burden for the evaluation on the part of the guardian. A student's entitlement to special education does not depend upon the vigilance of parents or guardians. According to the IDEA, the district has an affirmative duty to act on the student's behalf and seek consent for an initial evaluation. By failing to do so, the district is noncompliant with 34 CFR § 300.111.”*

## Special Sch Dist. No. 1 (D Minn, 2012)

- Student had significant behavioral and academic problems for several years
- Psychologist diagnosed student with ADHD but school deemed diagnosis insufficient because it wasn't from a physician
- Parent obtained written medical diagnosis and school evaluated; found student EI, LD, and OHI eligible

## “The law requires the District to act.”

*“It is understandable that the District was frustrated by Martin's failure to provide a physician's diagnosis. But when a child like M.J.C. is so obviously failing, and his disability and need for special education are known, the law requires the District to act.”*

## Court Ruling

- School may not shift assessment responsibilities to parents
- School must ensure medical evaluations are conducted if necessary to determine eligibility
- School violated child find responsibility, denied student FAPE

## Possible Red Flags

- Poor/declining grades
- Excessive absences/truancy
- Request for homebound services
- Doctor's note/medical diagnosis
- Frequent or increased disciplinary referrals
- Gen. ed. interventions required (e.g. RTI)
- Health plan required due to medical condition (e.g., diabetes, allergies, asthma)
- Medical conditions noted on enrollment card

## Possible Red Flags – cont'd

- IDEA ineligibility
- Report card comments
- Student has suicidal thoughts
- Student is hospitalized
- Student referred for outside support
- Student exhibits restlessness, inattention, disorganization, communication, or social skills deficits to greater extent than expected for age and grade\*
- Not an exhaustive list

\*See Dear Colleague Letter on ADHD (7/26/16)

## OCR on ADHD

- ADHD diagnosis is evidence student may have a disability
- OCR will *“presume, unless there's evidence to the contrary, that a student with an ADHD diagnosis is substantially limited in one or more major life activities.”*

Dear Colleague Letter (7/26/16)

## Jefferson County Board of Educ (N.D. Ala. 2019)

- Parents repeatedly told school officials that student had ADHD
- Multiple suspensions and detentions
- Grades declined from 6<sup>th</sup> to 8<sup>th</sup> grade
- 8<sup>th</sup> grade math teacher referred student to “problem solving team (PST)” for possible general education supports
- After PST failed, district referred student for special education evaluation; found eligible for SLD and OHI (ADHD)

## Jefferson County Board of Educ (N.D. Ala. 2019)

*“[T]hroughout M.N.'s middle school years, Board personnel had notice of [the Student's] ADHD diagnosis, but there is no evidence indicating that any teacher or school administrator considered whether, in light of that diagnosis, [the Student's] academic and behavioral issues could have been attributed to her disability rather than typical middle school problems.”*

## Caution: RTI

- Evaluation cannot be delayed to try general education interventions
- Initiate evaluation process if you have reason to suspect student is a student with a disability

## OSEP on RTI

*“OSEP supports State and local implementation of RTI strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner.”*

## But...

*“[I]t would be inconsistent with the [IDEA] for an LEA to reject a referral and delay provision of an initial evaluation on the basis that a [school] has not implemented an RTI process with a child.... If a parent believes a needed evaluation is being delayed based on an LEA’s refusal to conduct an initial evaluation until the [school] implements an RTI approach with the child, the parent may file a due process complaint ... or a State complaint....”*

Memo to State Directors, 2016

## Williamson Cty Schs (CA 6, 2018)

- Student evaluated in preschool; not eligible
- Outside doctors diagnosed student with neurological deficits; information not shared with school
- Student had academic, speech, motor delays
- School used RTI strategies
- School developed 504 plan
- When student continued to fall behind, school evaluated again – three years later

## Williamson Cty Schs (CA 6, 2018)

*“[The school] neither overlooked clear signs of disability nor lacked rational justification in deciding not to re-evaluate [the student].... [The school] effectively utilized general education intervention strategies, such as RTI and GEIT, and later an individualized Section 504 plan, to ensure that [the Student] was making adequate progress.”*

## Clarkstown Central Sch. Dist. (S.D. N.Y. 2018)

*“[The Student] received RTI services, proceeding all the way through Tier 3 intervention, for approximately seven months in kindergarten as well as nine months in first grade, before he was referred to an evaluation....[T]he duty to evaluate, at the very least, was triggered 8 weeks after [the Student] started Tier 3 services in first grade.... Indeed, it was not until [the parent] requested the evaluation that the District sought her consent and performed it.”*

## Caution: Good Grades

### OCR Example:

- ADHD student is achieving good grades.
- Do not assume that academic success means student is not substantially limited in a major life activity

### **Indep Sch Dist No. 283 (Minn, 2019)**

- High school student dx with depression and anxiety; frequent hospitalizations
- Frequent absences/school refusal
- District had knowledge for two years but did not evaluate because student capable of earning good grades
- District considered other interventions and offered a 504 plan
- Evaluated only after parents requested
- Found not eligible

### **Indep Sch Dist No. 283 (D. Minn, 2019)**

- *“The District admirably and appropriately engaged with the Parents concerning the Student’s absences in eighth grade, including seeking information from the Student’s therapists and other mental health providers. This involvement, however, is precisely what gave the District the reason to identify the Student as a possible child with a disability. By not acting on that information...the District failed to fulfill its child find obligations...”*

### **Caution: Self Harm/Mental Health**

- Teachers had sudden, concern that 11<sup>th</sup> grade student would harm self
- District required assessment of student’s current emotional state before student could return to school
- Student allowed to return after 9 school days, without assessment

Michigan District (OCR, 2015)

### **Violation of Section 504**

*“OCR...finds that the principal viewed the Student as having a mental impairment due to his emotional state and that the principal excluded him from the District’s educational program based on unfounded fears, prejudices, and stereotypes associated with her perception of his perceived mental impairment.”*

### **OCR Findings**

- District’s actions violated Section 504
- District should have initiated 504 evaluation and kept student in school
- Resolution agreement:
  - revision of policies
  - reimbursement for evaluation
  - compensatory “musical experience”

### **Wappingers Cent Sch Dist (SD NY, 2017)**

- Student expelled from private school after engaging in self-injurious behavior and posting suicidal thoughts on social media
- Parents told resident district about situation; school said they’d “look into it”
- 6 months passed before District evaluated
- Court: School failed to evaluate student in a timely fashion

### **Horne v Potomac Prep Charter School (D DC, 2016)**

*“There is no dispute...that Potomac was aware of R.P.’s suicide attempt. In fact, [his mother] was required to submit a letter to the school confirming that R.P. did not pose an immediate threat to himself. ...**Because R.P.’s suicide attempt put Potomac on notice that he was potentially suffering from a disability** that would qualify him for services under the IDEA, Potomac’s failure to reevaluate R.P. at that time violated the Child Find provision of the IDEA.”*

### **Childhood Trauma**

Plaintiffs relate “each student Plaintiffs’ unique exposure to complex trauma and adverse childhood experiences to their ability to read, think, and concentrate -- i.e. how their brains’ physical response to trauma substantially limits their ability to learn. Thus, the Court finds that Plaintiffs have adequately alleged that complex trauma and adversity can result in physiological effects constituting a physical impairment that substantially limits major life activities within the meaning of Section 504....”

*Stephen C v BIE (DC AZ, 2018)*

### **Final Thoughts**

- Watch for red flags
- Address internal and external referrals
- Respond to parent evaluation requests
- Don’t forget Section 504 child find
- Avoid false “rule outs”
  - Trauma
  - Need for medical dx/records
  - Poor attendance/truancy
  - Good grades

### **Final Thoughts**

- Use general education interventions carefully
  - Monitor and document progress
  - Don’t allow MTSS/RTI “purgatory”
  - Don’t use MTSS/RTI as reason to delay or deny evaluation
- Pay special attention to referrals or demands that parents obtain outside evaluations/treatment/counseling
- When in doubt, evaluate!

