Child Find

One of the legal issues associated with special education that arises within general education is "child find." The primary source of this legal obligation is the Individuals with Disabilities Education Act (IDEA). In the several cases that have arisen under IDEA, the courts have established that the primary modern meaning of child find is the duty to evaluate a child for possible special education eligibility when the district has reason to suspect that the child may qualify under IDEA. To qualify, the child must meet the criteria for one or more of the recognized classifications under IDEA, such as a specific learning disability, and have a resulting adverse effect on educational performance that necessitates special education services.

The following case illustrates the application of this "reason to suspect" trigger for child find. The accompanying question-and-answer discussion extends the scope of this overview to highlight other applications of this reasonable-suspicion element and the addition of the second basic component of child find.

The Case

In September 2009, D.L.'s mother enrolled him for kindergarten in the Chicago Public Schools. In January 2010, the school provided him with a Section 504 plan to accommodate his severe asthma.

By the middle of first grade, D.L.'s behavior reached the point that the counselor at his elementary school referred him to a cooperating community agency for counseling services. The referral form, issued in January 2011, stated: "Per teacher's report, [D.L.] … can be disruptive during class activity ... behaviors have included fighting with [other] students and yelling out when [he] does not get his way."

Approximately two weeks later, the principal suspended him for a day for rude and discourteous behavior in the classroom. The school also initiated response to intervention (RTI) support services for him. Yet, according to his first-grade teacher, D.L. had a positive side: "He was a teacher pleaser. He would always want to do things in the classroom … He also would help other students do things."

When D.L. was in second grade, his disruptive classroom behaviors persisted despite the continuation of both academic and behavioral RTI services. As a result of these disruptive incidents, he received two additional suspensions in November 2011. Again, however, he exhibited strengths.

In December 2011, his mother requested a special education evaluation and, soon thereafter, D.L was hospitalized with a diagnosis of intermittent explosive disorder. The district subsequently conducted a multidisciplinary evaluation that determined that D.L. was eligible under IDEA, which resulted in specialized services as specified in an individualized education plan (IEP).

Dissatisfied, D.L.'s mother filed for a due process hearing under IDEA. In addition to challenging the appropriateness of the IEP, she claimed that the district violated its child find obligation by not evaluating him sooner. More specifically, she argued that his persisting behavioral problems, as evidenced by his documented disruptive incidents culminating in his first suspension, and the additional interventions, such as the counseling referral and the RTI services, amounted to reasonable suspicion well before the suspensions in November 2011, presumably by or before the end of grade 1. At the hearing, she proffered the expert testimony of a private psychologist who opined that the referral for community counseling should have triggered the district's child find duty. Although finding that the IEP did not meet the substantive standard of IDEA, the hearing officer rejected the parent's child find claim. D.L.'s mother filed an appeal in federal court.

What do you think was the judicial outcome of the appeal?

In *Demarcus L. v. Board of Education* (2014), the federal district court upheld the hearing officer's child find ruling. The court explained that the

obligation to evaluate students "reasonably suspected" of being eligible under IDEA "does not demand that schools conduct a formal evaluation of every struggling student," and that the standard is whether "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."

Applying this guidance, the court deferred to the hearing officer's credibility determination that the school's personnel rationally believed that the community counseling and RTI services would sufficiently ameliorate D.L.'s learning-impeding behaviors, until his hospitalization and diagnosis in December 2011. Moreover, observing that the outside expert was not as familiar with D.L.'s performance in the classroom context as his first- and second-grade teachers, the court did not find the psychologist's testimony to have countervailing weight with regard to child find.

Is this case representative of the IDEA case law concerning the reasonable-suspicion trigger of child find?

The appellate guidance that the court used is generalizable, but the particular outcome of this case represents the applicable case law only to the extent that it illustrates an "it depends" answer. The factors are multiple, including the child's educational performance, as evidenced by behaviors, grades, and test scores; the opinions of school personnel and other, outside experts; the use and effectiveness of general education interventions, including but not limited to RTI and 504 plans; and private diagnoses and treatment, including therapeutic hospitalization.

In a recent systematic analysis of the judicial case law, I found approximately 40 court decisions specific to child find under IDEA, with the ratio of reasonable-suspicion rulings being almost 2:1 in favor of school districts. No single factor alone sufficed as a red flag that automatically triggered child find, although therapeutic hospitalization came the closest. Also, whether RTI or a 504 plan was a significant contributing factor depended on how long it had been in place and whether it had been effective in promoting sufficient success in the general education context.

Is a parental request for evaluation a controlling factor for child find?

Not necessarily. The key, again, is reasonable suspicion. The U.S. Department of Education's Office of Special Education Programs has repeatedly made clear that if the district has no reason to suspect that the child is eligible at the time of the parental request, the district may decline to conduct the evaluation, provided that it gives the parents written notice that includes the basis for the refusal and notification of their procedural safeguards. The rare exception would be a state law that automatically requires evaluation upon formal request.

What is the second basic ingredient of child find under IDEA beyond reasonable suspicion?

Once reasonable suspicion triggers child find, the second dimension is whether the district initiates the evaluation, typically by obtaining parental consent, within a reasonable period of time. Once again, there is no single, bright-line answer, with the individualized determination based on the circumstances of the case. However, an examination of the much less frequent case law specific to this issue seems to suggest an outer limit of approximately seven to eight weeks.

Do schools also have a child find obligation under Section 504?

Yes. Section 504's broader definition of disability—as D.L.'s severe asthma illustrates—provides a residual child find obligation for evaluation when there is reason to suspect a mental or physical impairment that substantially limits a major life activity, such as breathing or concentration, even if there is no reasonably suspected need for special education.

Conclusion

Child find is an oft-misunderstood legal obligation. First, its impact under IDEA is on students in general education. Yet, it does not equate to either an automatic duty to evaluate or, upon evaluation, a necessary answer that the student is eligible. Rather, it initially requires relatively careful and objective attention to various relevant factors—including but not at all limited to behavior and grades—to determine whether there is reason to suspect eligibility, meaning not only a recognized classification but also the need for special education. And next, it requires initiating the evaluation within a reasonable period of time.

When child find is not triggered under IDEA, consider whether there is corresponding reason to suspect that the child may meet the three criteria for eligibility under Section 504—mental or physical impairment that substantially limits one or more major life activities.

Developing useful procedures and forms under both IDEA and Section 504 along with effective coordination and collaboration between general and special educators will help avoid problems with the child find requirements. Regular training, with the principal playing a central role in the planning and implementation, is the corresponding key. The extent to which the district focuses its training on preventive best practice is discretionary depending on its resources, priorities, and community culture, but understanding and fulfilling the basic legal requirements for child find are essential. Certainly it's easy to say for reasonable suspicion that "when there's debate, evaluate" and "the sooner, the better," but the case law to date reminds us to differentiate the minimum from the optimum. P

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