

SPECIAL EDUCATION: CHILD FIND CHALLENGES

Under the IDEA, USD 501 staff have "Child Find" obligations. The IDEA's Child Find provision requires a school district to have policies and procedures in place to ensure that it identifies, locates, and evaluates children with disabilities to determine whether they need special education and related services. See 20 U.S.C. §§ 1401(3)(A), 1412(a)(3)(A).

Pursuant to this requirement, USD 501 staff must evaluate all children "who are suspected of being a child with a disability" who is "in need of special education." 34 C.F.R. § 300.111(c) (2021).

USD 501, Topeka Public Schools' policies and procedures are as follows:

Policy 6200 Special Programs

Reg. 6200-01 Special Programs Due Process Hearing and Procedures

Reg. 6200-02 Contact for Special Education Interventions

Reg. 6200-03 Comprehensive Evaluation

Reg. 6200-03 Implementation of Individual Education Program (IEP)

Doing It Right

Following are two recent cases demonstrating the **RIGHT STEPS** to implement "Child Find" at the building level.

1. Student Success with Reading Supports Makes IDEA Evaluation Unnecessary
Case name: G.S. v. West Chester Area Sch. Dist. (U.S. Court of Appeals, 3d Cir. 2022).

The progress an elementary school student made after receiving general education reading interventions helped a Pennsylvania district overcome allegations it violated the IDEA's child find requirement.

Because the elementary student made appropriate progress in the general education curriculum with 30 minutes of daily reading supports four times a week, a Pennsylvania district did not violate the IDEA by waiting until the student's fourth-grade year to evaluate her need for special education. The 3d Circuit upheld a District Court ruling that the district complied with its child find obligation.

A district has no obligation to evaluate a student for a potential disability at the first sign of any academic struggle. However, a district must monitor the student's progress with **general education interventions** to determine whether an evaluation is necessary. In this case, the student met grade-level standards in reading and writing and was successful in the general education curriculum despite some ongoing weaknesses. Her progress justified the district's decision to hold off on an IDEA evaluation until her parents requested one.

2. ADHD Student's 504 plan ADHD refutes Parent's Claim for IDEA Evaluation
Case name: E.H. v. McKnight (U.S. Dist. Court. Md. 2022).

The parents claimed the district should have evaluated the student under the IDEA.

Testimony and the district's documentation showing that the ninth-grader's 504 accommodations addressed his difficulties completing schoolwork and raised his grades convinced the District Court that the district did not err by failing to evaluate the student sooner.

DOCUMENTATION is the **KEY!** The district's thorough documentation of the ninth grader's progress on his 504 Accommodation Plan convinced the court the district did not err in not evaluating him under the IDEA. The court ruled in favor of the district holding the district had no reason to suspect the student had a disability-related need for specialized instruction.

LEARNING from Others' MISTAKES

1. A Tenth Grade Student's Aggression and Distractibility Trigger District's Child Find Duty
Case name: Raytown C-2 Sch. Dist. (SEA MO 08/01/22).

The parent alleged the district failed in its "child find" obligation by refusing her requests to have her daughter evaluated for special education services.

While the student was on a 504 Plan, the Education Commissioner found the Raytown school district erred in denying the parent's repeated requests for an IDEA evaluation based on the student's history of behavioral problems and signs of an emotional disturbance and other health impairment.

The district was found to have violated the IDEA when it failed to evaluate the student after the parent made three requests to determine if their daughter was a child with a disability and whether she required special education and related services.

"[A]s the ED classification notes, students who are socially maladjusted may also have an emotional disturbance," the commission wrote. Because the student's in-school behaviors were **"extreme, unusual, and clearly interfered with her successful functioning in the academic environment,"** the commission found the district erred in failing to evaluate her. The commission also found that the district had reason to suspect OHI based on her restlessness and distractibility in the classroom environment.

Student discipline may trigger a legal challenge-In this case the district suspended the student for 180 days following multiple acts of verbal and physical aggression against school staff, but it had also received two private evaluations indicating the student's need for an IEP.

The lesson in this case is that a district may need to look beyond a student's satisfactory grades when determining whether to evaluate a student for IDEA services. A district's child find obligations may be triggered by the student's disciplinary removals, poor relationships with peers, and an inability to attend school.

2. Failing Grades, ADHD, Panic Attacks Equal Need to Evaluate Student
Case name: Anthony Wayne Local Sch. Dist., (SEA OH 2022).

In this case, a parent filed a state complaint, alleging the district violated child find by not evaluating their son after the mother had orally requested an evaluation in various meetings with district staff.

The Ohio Education Department concluded the district violated its child find duties by continuing to monitor the 10th-grader's interventions, rather than evaluating him for special education and related services.

The Education Department reaffirmed a **district must evaluate a student if it has reason to suspect the student has a disability for which the student needs special education and related services**. In this case, the student showed various signs of needing an evaluation, regardless of whether the parent requested an evaluation. In finding the district had reason to suspect and should have evaluated the student, the state relied on the following facts:

- The student failed most of his classes during three school years,
- He avoided assignments and school,
- He had a medical history of ADHD and panic attacks.
- He failed to respond to the district's pre-referral interventions, which included an at-risk plan and goals. and
- There was a history of parental, teacher, and counselor concern about the student's lack of progress.

If you have any questions, please feel free to call Donna Whiteman, General Counsel, 295-3006.