

CHILD FIND

HOW TO FIND THE CHILDREN BEFORE THE PARENTS FIND YOU

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WHAT IS CHILD FIND?

The Individuals With Disabilities Education Act (“IDEA”) places an affirmative, ongoing duty on the state and school districts to identify, locate, and assess all children with disabilities residing in the state who are in need of special education and related services. It is the cornerstone of the IDEA to seek out and find children. If you can’t find the children, you cannot provide them with a Free Appropriate Public Education. This duty is commonly referred to as "Child Find."

A. School District’s Duty to Find

Suspicion: Is there a reason to suspect that a student has exceptional needs? If so, a school district's appropriate inquiry is whether the student should be referred for an assessment; not whether the student actually qualifies for special education services. This threshold is very low – it is about referral, not eligibility. The duty to assess for exceptional needs is broader than the duty to provide special education, and more easily triggered. It is triggered when the district “knows” or “should know” that the child **may** have a disability. The obligation is **not** on the parent to request an assessment. A “wait and see” approach can be seen as an active and willful refusal to take action

B. California Law

Each school district must "actively and systematically seek out" children with exceptional needs (with disabilities) from birth to age 21. This includes children in all schools – not just public schools. Also included are all children in private schools (the district where the private school is located is responsible for the Child Find and referral for assessment). However, if the child is determined to be disabled, the district of residence is responsible for special education services.

The children can reside in the district or be part of a SELPA, COE or charter school. The United States Department of Education’s opinion is that children who are housed with their families for up to 90 days at United States Immigration and Customs Enforcement (“ICE”) facilities while they are waiting removal from the United States are not covered by Child Find. The Department of Education has opined that the IDEA makes no specific provisions for funding Child

Find or educational services for individuals with disabilities through ICE or through the Department of Homeland Security in those residential facilities. There is no list of activities that a district must engage in to seek out and find these children. The SELPA must establish Child Find responsibilities and procedures for use in a district. Development of a 504 plan does not “absolve” a school district from its Child Find responsibilities.

C. United States Department of Education Guidance

Child Find generally includes:

- ▶ Widely distributing informational brochures
- ▶ Providing regular public service announcements
- ▶ Staffing exhibits at community events and health fairs
- ▶ Interacting with private schools

Notice: There is a responsibility to inform and educate the public about the need to find and locate and identify all children with disabilities

D. Section 504 of the Rehabilitation Act of 1972 Requirements

Section 504 requirements are similar to IDEA "Child Find" requirements. The question is whether a 504 assessment and plan is sufficient for IDEA "Child Find." Public schools must take steps to identify and locate students with disabilities and to publicize a student’s procedural rights under Section 504. There are no specifics in the law about Child Find responsibilities under Section 504. The biggest components for notification are public notices, awareness, news releases, and publication of Section 504 procedural rules. Unlike the IDEA, Child Find and assessment for Section 504 are the responsibility of the district of residence, not the district where a student is placed in a private school. A student’s health plan may not be considered when a district is deciding whether to offer a Section 504 assessment.

E. Legal Obligations and Recommended Procedures

Steps You Must Take:

- ▶ You have an affirmative duty to find these children.
- ▶ It is not the parent/guardian's job to recognize a potential disability – it is your job
- ▶ You are seen as the expert.
- ▶ Many parents, guardians and foster parents are unable to recognize the signs of a potential disability in a child.

Why do LEAs have this obligation? When a LEA accepts federal funds, along with those funds come legal requirements. The reason for Child Find is that children with potential disabilities are recognized, assessed, and if eligible, provided with specialized education and related services to provide a free appropriate public education to the child.

F. Child Find vs. Special Education Eligibility

Child Find is about seeking and locating those children with "suspected" disabilities, assessing them and then determining whether to offer assessment to the child. The threshold is low. If referred for assessment, it is far better to offer assessment than deny it. The process of locating the child is the rule. Once a child is located, then the LEA has to decide whether to offer assessment or not offer assessment to the child's parent/guardian.

After a child is located through Child Find, and if an assessment is offered and the parent/guardian consents, then the LEA can assess to determine if the child is eligible under any of the following categories:

- ▶ Intellectual disability
- ▶ Hearing impairment
- ▶ Speech or language impairment
- ▶ Visual impairment
- ▶ Severe emotional disturbance
- ▶ Orthopedic impairment
- ▶ Autism
- ▶ Traumatic brain injury
- ▶ Other health impairment
- ▶ Specific learning disability

What Children Must be Found?

- ▶ Highly mobile children
- ▶ Children from migrant families
- ▶ Homeless children
- ▶ Children in Juvenile Hall
- ▶ Children in private schools
- ▶ Children in charter schools
- ▶ Children in hospitals
- ▶ Children from other countries (all children are entitled to an education)

When to Recognize Issues:

If the children are already being educated in your school district, look for these signs:

- ▶ Children with ADHD (engaging in attention-seeking behavior)
- ▶ Children with poor interaction skills
- ▶ Children with disciplinary issues
- ▶ Intelligent children only making passing grades
- ▶ Children whose GPA drops significantly - more than one point in a year.
- ▶ Children who are kept home or are ill for two weeks or more
- ▶ Children in non-special education related counseling
- ▶ Removal of privileges due to behavior
- ▶ Student unable to control their behaviors (hard to recognize)
- ▶ Children in hospital for medical needs
- ▶ Children in psychiatric hospitals.

Other Signs:

- ▶ Falling asleep in class.
- ▶ Child crying or uncommonly sad.
- ▶ Disruptive behavior
- ▶ Disrespectful behavior
- ▶ Inappropriate touching
- ▶ Spitting
- ▶ Using profanity
- ▶ Fighting
- ▶ Unable to work with other children
- ▶ Missed class affecting school work, tests and ultimately grades

Violations of Child Find and the obligation to assess a student, are procedural violations of the IDEA and the Education Code. A procedural violation results in liability to the district for denial of a FAPE only if the violation:

- (1) Impeded the child's right to a FAPE;
- (2) Significantly impeded the parent's opportunity to participate in the decision-making process;
or
- (3) Caused a deprivation of educational benefits.

These situations do not excuse a district from the responsibility of Child Find:

- ▶ English Language Learners
- ▶ Response to Intervention (“RTI”) – if a child is in RTI and other pre-referral interventions and a potential disability is suspected, it is best to make a special education referral.
- ▶ You still must refer if you suspect a disability.

G. Judge's Analysis of Child Find

The actions of a school district with respect to whether it had knowledge of, or reason to suspect, the existence of a special need in a child must be evaluated in light of information that the district knew, or had reason to know, at the relevant time. It is not based upon hindsight. This is the “Snap-Shot Rule.”

H. Duty to Assess

When a district's duty to assess a student is triggered, the assessment process begins with a written referral for assessment by the student's parent, teacher, school personnel, or other appropriate agency or person. If the parent asks for assessment or is illiterate, it is the district's obligation to assist the parent to document their request and the district must explain the assessment process, and the procedural safeguards to the parent.

Within 15 calendar days of referral, the district must give the parent a written assessment plan which explains, in language easily understood by the parent, the types of assessments to be conducted. If the parent is illiterate, the district must explain the assessment plan and procedural rights to the parent verbally. The parent then has at least 15 days to consent in writing to the proposed assessment.

I. The *Rowley* Standard:

In *Rowley*, the Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley*, 458 U.S. 176 at pp. 205-06.) However, a procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in liability for denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415 (f)(3)(E)(ii); Ed. Code, § 56505, subd. (F)(2); see *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F. 2d 1479, 1484.)

Where a procedural violation is found to have significantly impeded the parents' opportunity to participate in the IEP process, the analysis does not include consideration of whether the student ultimately received a FAPE, but instead focuses on the remedy available to the parents

(*Amanda J. Ex rel. Annette J. V. Clark County School District* (9th Cir. 2001) 267 F.3d 877). In the *Amanda J.* case, a school failed to timely provide parents with assessment results that indicated a suspicion of autism. That lack of information significantly impeded the parents' right to participate in the IEP process fully, effectively, and in an informed manner, and the student was entitled to reimbursement for assessment costs and an in-home program, as well as compensatory education.

Because *Rowley* requires a district to provide a "basic floor of opportunity" through specialized instruction and related services that are individually designed -- that is, provided pursuant to an IEP -- a district that fails to provide an eligible student with an IEP cannot avoid liability for its procedural violations of the IDEA by claiming that the student nonetheless obtained educational benefit under the *Rowley* standard. (*Cari Rae S., supra* 158 F. Supp 2d at p. 1196 [No IEP; no FAPE under the *Rowley* standard "] citing *Target Range, supra*, 960 F. 2d 1479 at p. 1485.)

J. Parent/Guardian Consent for Assessment

A district has 60 days from the date it receives the parent/guardian's written consent for assessment (excluding vacation and days when school is not in session) to complete the assessment and develop an IEP unless the parent agrees in writing to an extension.

RECENT CASE LAW

- ▶ *L.S. v. Tustin Unified School District*: The district met Child Find obligations since it published an articles in the newspaper about Child Find and provided special education contact information:
 - If the District provided pamphlets to hospitals, businesses, and day care providers.
 - Because the District had a website.
 - Because the District conducted regular meetings with local health care providers.
- ▶ *7th grade student*: Student had been disruptive and displayed disrespectful behaviors for years. There was a meeting with teachers about it, but no district referral or assessment. OAH found that district failed in Child Find by not recognizing at the time of the meeting that the district should have made a referral for assessment.
- ▶ *8-year old girl in second grade*: Student's mother met with Student's teacher three times regarding poor academic performance. By the third meeting, district knew that Student performed well below average in standardized tests and improved little after six months of RTI. Student's report card confirmed that Student needed improvement, was not meeting grade level standards, and the RTI teacher's weekly reports showed that Student progressed little in reading. Student had already undergone two levels of RTI with limited success for six months.

At that point, the Student's performance should have triggered a suspicion that Student had a disability that was affecting her educational performance and needed an immediate assessment for special education. District did not refer for assessment, but had a "data team meeting." The Team still wanted to "wait and see" how Student responded to further general education intervention instead of assessing her for special education. OAH found that the district should not have relied on a "wait and see" response to determine if Student responded to its interventions fast enough.

- ▶ *Incoming 7th grader from another school district:* Enrollment forms filled out by parent indicated "sexual battery" by Student. Parent gave district a Section 504 plan with "ADHD" as the disability on it. Four days after the first day of school, Student was referred for picking a fight and being combative in class. On the eighth day of school, student threatened to injure another student, engaged in profanity, and bullied/harassed other students. A 504 meeting was held on the eighth day of school and teachers reported defiance of authority by Student, antagonism toward other students, and his distraction in class. Student's absences from class affected his grades. The school psychologist did not make a referral after receiving information during the 504 meeting. Student's behaviors continued and three weeks into the school year, Student grabbed another student's buttocks. Student's mother requested assessment under the IDEA. The district then offered assessment. OAH found that district violated Child Find from Student's first day of school.
- ▶ *Student v. Santa Barbara USD:* OAH found that the district failed to meet its Child Find obligation in regard to Student for one year. Although the district and SELPA provided families with notices to encourage parents to refer children for assessment, many education professionals at the high school who had contact with the Student ignored significant signs that he was struggling both academically and behaviorally. The district was on notice that Student's struggles may have been related to one or more disabilities.

Instead of making a referral for a special education assessment, the district relied on general education interventions, even though it was soon obvious that those interventions were not working. Instead of referring Student for a special education assessment, as it was clear that Student was in serious trouble, the district placed Student in two classes for the highest level of academics. The district then waited to see what would happen rather than making a referral for assessment. District never referred Student for assessment, but waited until parent made a written request for assessment. OAH found that the district failed to timely refer for assessment. Student continued to flounder and fail in school without assessment and special education and related services.

RECOMMENDATIONS

We recommend that yearly training be conducted which includes all relevant staff to educate them about Child Find. Employees must learn to recognize when to refer a child for a special education assessment.