

CHILD FIND: THE LEGAL DUTY

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Is This New?

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- “Child find” has been a component of IDEA from the beginning—1975.
- The idea assumes that teachers are able to identify the typical symptoms of a possible disability.
- The goal is to get services to kids who need them sooner rather than too late. Don’t “wait to fail.”

What About the Parents?

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- The law has always authorized parents to seek special education services, whether the teachers see a need or not.
- But not all parents have the knowledge or the resources necessary to seek assistance when needed.
- “Child find” is designed to level the playing field.

What Do the Regulations Say?

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- Child find has its own federal regulation: 34 CFR 300.111. Let's review it in detail.

It's the State's Responsibility

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- GENERAL: The State must have in effect policies and procedures to ensure that—
- 34 CFR 300.111(a)(1).

To “Ensure” What?

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All children with disabilities residing in the State, including children with disabilities who are homeless children or wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated, and...

34 CFR 300.111(a)(1)(i).

And What?

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A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

34 CFR 300.111(a)(1)(ii).

What About “Developmental Delay”?

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A State that adopts a definition of developmental delay under Section 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).

A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.

34 CFR 300.111(b)(1) and (2).

More on Developmental Delay

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If an LEA uses the term *developmental delay* for children described in Section 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State. If a State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part. 34 CFR 300.111(b)(3) and (4).

What About.....????

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- Child find also must include children who are suspected of being a child with a disability under Section 300.8 and in need of special education, even though they are advancing from grade to grade; and
- Highly mobile children, including migrant children.
- 34 CFR 300.111(c).

One More Thing

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- Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in Section 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.
- 34 CFR 300.111(d).

What Disabilities Are Listed?

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- Thirteen of them.
- Autistic. Deaf-blind. Deaf. Emotionally disturbed. Hearing impaired. Intellectual disability. Multiple disabilities. Orthopedic impairment. Other Health Impaired. Specific Learning Disability. Speech or language impaired. Traumatic brain injury. Visual impairment.

Let's Point Out a Few Things....

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- Do they "reside" in your state? How long do you have to be here to "reside" here?
- Notice there is nothing here about citizenship status. All children are covered.
- Note: kids in home schools and private schools are covered. All of them should be "found."

Private School Kids

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- Students attending private school are supposed to be “found” but they are not eligible to receive FAPE until they enroll in a public school.
- So the duty of the public school is to locate, evaluate, determine eligibility, and then (if eligible) offer to provide FAPE. If parents keep the child in private school, they are waiving the right to FAPE.

Which Public School?

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- Your district must “child find” the kids attending private schools that are located in your district, even if the family resides in another district. 34 CFR 300.131(a).
- Keep in mind, the district of residence has a “child find” responsibility also.
- So some kids are eligible to be “found” by two districts. Example: family lives in District A; child attends private school in District B.

A Few More Details About Private Schools

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- Your child find process must be designed to ensure “equitable participation” of private school students.
- You must carry out child find activities for the private school students similar to what you do for public school students.
- The cost of “finding” private school kids does not count toward the “proportionate share” that you must spend on those students.
- 34 CFR 300.131.

Some Things Not to Say.....

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- We will evaluate your child as soon as you enroll.
- We don't evaluate children who attend private schools.
- He can't possibly be eligible—he's on the Honor Roll.
- She's not been here long enough for us to determine eligibility.

Let's Introduce RtI

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- Child Find pulls you toward special education. If a child is doing poorly, the staff should always consider the possibility that a disability is the cause.
- RTI pulls in the opposite direction. RTI encourages staff to examine other causes for the problem, and to explore non-special ed interventions first.

It's a Tug of War

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- This natural tension between Child Find and RTI has caused a lot of confusion.
- Let me tell you what happened in Texas....

Where the Tug of War Stands

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- Child Find is the stronger pull.
- This is particularly true when the “suspicion” of disability comes from the parent.
- When the parent asks for a special education evaluation there are only two proper responses.
- SEE NEXT SLIDE!

The Two Proper Responses

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1. Here is our consent form. Please sign. And here is the Procedural Safeguards document. Please sign a receipt.
2. Here is a form that we call "Prior Written Notice" explaining why we are not going to grant your request for an evaluation at this time. And here is the Procedural Safeguards document. Please sign a receipt.

No other response is legally defensible.

Some More Things Not To Say....

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- We can't evaluate just yet—we have to do RTI activities first.
- We don't accept referrals for a learning disability until the child is in 2nd grade.
- We think it's because she is an English Language Learner. Let's see how she responds to our ELL services before we look for a disability.

Legal Concerns

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- There is a lot of litigation over alleged “child find” failures. Some of it involves children who have never received special education services. Parents claim that the student should have been “found.”
- Other cases involve children who are currently receiving special education services—parents claim the child should have been found earlier.
- Let’s look at some cases.

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