

# Why every adult in your school district should know this term: 'Child Find'

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By the New York State Association of School Attorneys

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A high-achieving student - let's call her Sara - begins to show signs of social difficulties. Her attendance begins to decline, as do her grades. Staff members suspect she is involved in substance abuse, and Sara tells a school counselor that she has been "cutting" herself, ritually making small incisions in her skin with a razor blade. The student's parents subsequently advise the school counselor that Sara has been seeing a private therapist.

The school counselor communicates with the private therapist, as well as with district staff, to ensure that missing work is made up. He is surprised when he learns from the school principal that Sara is no longer enrolled. Her parents have informed the district that they have placed Sara in a 10-week therapeutic wilderness program.

Now, the district has a legal dispute on its hands. An attorney hired by Sara's parents notifies the district that the family intends to seek reimbursement for the cost of the private wilderness program and a therapeutic boarding school, with total annual costs approaching six figures. The parents claim the district failed to recognize that Sara should have been classified as a special education student and should have been provided with appropriate services and supports.

What could have prevented this situation? The answer involves "Child Find" obligations under state and federal laws. Child Find is a district's legal duty "to identify and evaluate all students who are reasonably suspected of having a disability."

This article will focus on districts' Child Find obligations under the federal Individuals with Disabilities in Education Act (IDEA), as it generally involves greater contingent liability than violations of another federal provision, Section 504 of the Rehabilitation Act.

Child Find duties extend to all students who are suspected of having a disability, even if they are passing their courses and advancing from grade to grade. These duties extend

to all students attending the district's schools, as well as to students attending private schools located within the district and resident students being home-schooled.

A district must have policies and procedures in place describing steps that will be taken to discharge its Child Find obligations. Ultimately, a district discharges its Child Find obligation by referring the student with a suspected disability to the Committee on Special Education (CSE) or to the Section 504 Team. Those bodies authorize evaluations and determine whether the student is eligible for classification as a special education student and what programs, services and/or accommodations are appropriate.

Child Find does not demand that schools conduct a formal evaluation of every struggling student. Rather, a district's Child Find obligations under IDEA are triggered when "it has reason to suspect a disability, and reason to suspect that special education services may be needed to address the disability." Factors giving rise to such a suspicion may include, but are not limited to:

- Academic struggles.
- Declining grades.
- Substance abuse.
- Self-injurious behaviors.
- Attendance issues.
- Private therapies or supports.
- Other behavioral concerns and other social/emotional concerns, diagnosed or not.

A referral to the CSE or to the district's Section 504 team is not essential to defend against a claim of a Child Find violation, however. The purpose of the law is to ensure students get the supports they need. If the district has a plan in place that is reasonably calculated to appropriately address the area(s) in which the student is struggling through provision of general education supports, the district will likely have a successful defense against the type of Child Find claim described above. It is only when the district fails to act in the face of clear evidence that the student may have a disability or fails to adjust its actions in the face of continuing struggles that the district exposes itself to significant contingent liability for a Child Find violation.

Child Find disputes are adjudicated by impartial hearing officers, and appeals are generally heard by federal courts. In the above example, the district's ultimate responsibility for the cost of the wilderness program and boarding school tuition will likely be determined by the reasonableness of the district's actions in responding to the struggles that the student exhibited prior to her removal from the district's schools. If the district's actions are deemed not to have been reasonable, the district may be ordered to pay the residential tuition, as well as hearing costs and the parents' attorney's fees.

How does a district maximize the likelihood that its Child Find actions will be found to have been reasonable? The answer involves the totality of effort the school district can demonstrate regarding planning, training and specific actions relevant to the child.

Making sure all the adults in the school district are familiar with the words "Child Find" is a good place to start, as the law presumes that adults in schools will recognize and take action to address students' disabilities. School districts should have a district-wide plan designed to identify students who may be in need of special education programs and services. The plan should have hard tripwires that trigger discussions of possible referral of students to the CSE for evaluation.

The district must enlist many eyes and ears to ensure troubled students' needs are not being overlooked. For instance, if school officials become aware that a student is being seen by private therapist, it may be appropriate to ask the therapist whether he or she believes the school should evaluate the student for special education services - and get the response in writing.

Building-level staff working directly with students must be trained about the warning signs, both academic and social-emotional, that indicate a student may be in need of special education supports. A properly functioning building-level child study team can serve as an effective clearinghouse for the planning and implementation of these supports.

In addition, a district can address its Child Find duties by effectively communicating with parents and advising them of their right to initiate a referral to the CSE.

Finally, the district must maintain records documenting its efforts, including identification of the child's needs, the development of the general education supports to address such needs (i.e. : academic intervention services or response to intervention services), and the ongoing review of the efficacy of the plan.

However, the key element is being attentive to the student's needs and deliberate in addressing those needs. In other words: if not special education, what is the plan?

The successful plan provides valuable information to staff members about resources that may be available to support a student, short of IDEA classification, as well as guidance on when it is time to consider special education supports.

What about students who are being educated in private schools? School districts must develop effective information- sharing, communication and consultation procedures for use with non-public school administrators to ensure that students attending non-public schools within their school district are identified, referred to the CSE and evaluated when appropriate.

Being attentive to students' needs and acting appropriately to address those needs is perhaps the best goal on which to focus, regardless of whether the student is classified

as a general education student or a special education student. The district's Child Find plan should include classroom measures designed to support students having academic or other difficulties, as well as building-level supports that are available to students regardless of their classification under IDEA.

Ensuring that adults are focused on the district's Child Find obligations should have benefits far beyond protecting the district from legal claims. It aligns with the mission of the school district by providing student-centered support to children who, while perhaps not needing special education, may nonetheless be in need of additional supports in order to be successful in school.

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