CHILD FIND

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I. Overview

A. General Outline of IDEA’s Child Find Provisions

a. The law:

i. 34 C.F.R. § 300.111 [Child find]

(a) General.

(1) The State must have in effect policies and procedures to ensure that—

(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are 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

(c) Other children in child find. Child find also must include—

(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

b. What it means:
Overall, IDEA has been described as “an ambitious federal effort” to ensure that all children are given access to a public education regardless of any disabilities they may suffer. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982). Although IDEA is indeed federal legislation, the responsibility to carry out its mandates rests wholly with the individual states. Therefore, there are often two parallel bodies of law school districts must consider: the overarching federal laws and regulations and the corresponding state statutes.

Pursuant to IDEA, local education agencies (often cited throughout this presentation as “school districts” for ease of reference purposes) that receive federal funding have certain “Child Find” obligations, which will be the focus of this presentation. These Child Find provisions charge school districts with a duty to identify, locate, and evaluate children who have a disability or who are suspected to have a disability. Otherwise stated, IDEA requires school districts to have a comprehensive Child Find system or plan to ensure that all children who are in need of special education services are located, identified, and referred appropriately.

A school district’s Child Find duties are triggered if the district has reason to suspect a disability, and to suspect that special education services may be needed. When these suspicions exist, the district must conduct an evaluation of the student within a reasonable time to determine whether the student qualifies for special education services.

School districts face liability for their failure to identify, locate, or evaluate a potentially disabled child, as it essentially constitutes a denial of FAPE. However, IDEA is not an absolute liability statute and the “Child Find” provision does not ensure that every child with a disability will be found. Instead, IDEA merely requires that school districts develop policies and procedures that are reasonably calculated to identify children with disabilities and provide them the requisite level of special education.

In reviewing a school district’s compliance with IDEA, some courts have separated the analysis into a succinct two-part inquiry: (1) did the school district have reason to suspect that a student had a disability, and did the district have reason to suspect that special education services might be needed to address that disability? (2) did the school district evaluate the student within a reasonable time after having notice of the behavior likely to indicate a disability? *See, e.g., El Paso Independent School Dist. v. Richard R.*, 567 F.Supp.2d 918, 236 Ed. Law Rep. 679 (W.D. Tex. 2008).

**B. General Outline of Section 504 of the Rehabilitation Act**

a. The law:

   i. 29 U.S.C. § 794 [Nondiscrimination under Federal grants and programs]
(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

ii. 34 C.F.R. § 104.33 [Free appropriate public education]

(a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of [disabled] persons as adequately as the needs of [non-disabled] persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

b. What it means:

Section 504 of the Rehabilitation Act, codified as 29 U.S.C. § 794, prohibits all programs that receive federal funds from discriminating on the basis of disability. Pursuant to the statute, recipients of federal funds must provide a free appropriate public education to each qualified handicapped person in its jurisdiction, regardless of the nature or severity of the person’s handicap.

The specific elements a plaintiff-student must set forth in a Section 504 discrimination claim are: (1) a qualifying disability; (2) qualification to participate in school activities; (3) receipt of federal financial assistance; and (4) exclusion from participation in, or denial of the benefits of, the school program.

As can be seen by the elements set forth above as well as the requirement of all fund recipients to provide a FAPE, several similarities exist between Section 504 and IDEA. As aptly explained by one court:

 The IDEA and § 504 of the Rehabilitation Act do similar statutory work. The IDEA protects the rights of disabled children by mandating that public
educational institutions identify and effectively educate those children, or pay for their education elsewhere if they require specialized services that the public institution cannot provide. Section 504 of the Rehabilitation Act is parallel to the IDEA in its protection of disabled students: it protects the rights of disabled children by prohibiting discrimination against students on the basis of disability, and it has child find, evaluation, and FAPE requirements, like the IDEA.

\[P.P. \text{ ex rel. Michael P. v. West Chester Area School Dist.}, \text{ 585 F.3d 727, 250 Ed. Law Rep. 517 (2009).} \text{ Thus, although similar, the provisions are not identical. Further, as will be discussed in more detail in Section E, compliance with one statute does not necessarily always result in compliance with the other. Thus, while this presentation will focus predominantly on IDEA and its Child Find provisions, it is also important for school districts to understand the interplay between the two statutes and how it affects the identification and evaluation of students with disabilities.}\]

C. State law provisions that mirror/supplement federal law

  a. Although federal law provides the general over-arching mandate, the ultimate responsibility for ensuring that Child Find obligations are met rests with individual state education agencies. Both IDEA and its corresponding regulations mandate that in order to meet that responsibility, states must establish policies and procedures to ensure compliance IDEA’s dictates.

  i. 20 U.S.C. § 1412(a)(11) [State educational agency responsible for general supervision]: “(A) In general The State educational agency is responsible for ensuring that— the requirements of this subchapter are met. . . .”

  ii. 34 C.F.R. § 300.111(a)(1) [Child Find]: “The State must have in effect policies and procedures to ensure. . . .”

  iii. 34 C.F.R. § 300.530 [General]: “Each SEA shall ensure that each public agency establishes and implements procedures that meet the requirements of §§ 300.531–300.536.”


  b. Many state laws mirror very closely, or expressly adopt, the language of IDEA itself.

  i. Example: Ohio: R.C. 3301-51-03 [Child find]

    1. (A) Each school district shall adopt and implement written policies and procedures approved by the Ohio department of education,
office for exceptional children, that ensure all children with disabilities residing within the district, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending nonpublic schools, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated as required by the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA) and federal regulations at 34 C.F.R. Part 300 (October 13, 2006) pertaining to child find, including the regulations at 34 C.F.R. 300.111 and 34 C.F.R. 300.646 (October 13, 2006) and as required by the provisions of this rule.

(B) Child find

(1) General: The child find policies and procedures that each school district adopts and implements under this rule shall ensure that:

(a) All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending nonpublic 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

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


1. (a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:

(1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1482) and to ensure that:

(i) Children with disabilities have available to them a free appropriate public education which is designed to enable the
student to participate fully and independently in the community, including preparation for employment or higher education.

(v) The rights of children with disabilities and parents of these children are protected.

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 71 FR 46540—46845 (August 14, 2006); and amended at 73 FR 73006—73029 (December 1, 2008).

(b) To provide services and programs effectively, the Commonwealth will delegate operational responsibility for school aged students to its school districts to include the provision of child find duties prescribed by 34 CFR 300.111 (relating to child find).

c. To the extent that state laws conflict with, or are silent on, a certain aspect of IDEA, many states have expressly provided that federal law will prevail. Another important thing to note is that IDEA sets the baseline, i.e. the minimum standards, a State must implement. Many states have also codified their right to implement higher standards and protections than those set forth in federal law.

i. Example: North Carolina: § 115C-106.2. [Purposes]

1. (b) In addition to the purposes listed in subsection (a) of this section, the purpose of this Article is to enable the State Board of Education and local educational agencies to implement IDEA in this State. If this Article is silent or conflicts with IDEA, and if IDEA has specific language that is mandatory, then IDEA controls.

(c) Notwithstanding any other section of this Article, the State Board of Education may set standards for the education of children with disabilities that are higher than those required by IDEA.

II. Child Find Standards

A. What does a school district’s “duty to identify" encompass?

a. General Standard:
i. As set forth above, any local education agency that receives federal funding under the IDEA has a duty to identify, locate, and evaluate children who have a disability or who are suspected to have a disability pursuant to its “Child Find” obligations. However, in determining whether school districts have met their duty to identify, courts have been reluctant to set out a “black letter” all-encompassing rule; rather, their analyses are extremely fact dependent, especially as regards (1) who falls under the school's duty to identify and (2) what circumstances trigger the duty to identify.

b. Factual Circumstances Affecting Duty to Identify

i. At what age does the duty to identify begin?

1. Federal Statutes and Regulations

   a. 20 U.S.C. §1412(a)(1)(A): “A free appropriate public education is available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

       BUT note the interplay with state law below:

   b. 34 CFR § 300.102 [Limitation-exception to FAPE for certain ages]:

       (a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

       (1) Children aged 3, 4, 5, 18, 19, 20, or 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

2. Case Law Example


      i. Student’s parents argued that the school district’s failure to identify and evaluate the student as early as kindergarten constituted a violation of the IDEA child-find requirement.
ii. Court noted in its opinion how difficult it is to assess students that young with ungraded primary school benchmarks. Also noted that school personnel testified that the student's behavioral and learning problems were not atypical of immature young boys.

iii. Hearing Officer found that the school’s duty to identify was not triggered until the end of the student’s second grade year.

iv. In reaching its decision, Hearing Officer emphasized that “it would be inappropriate to rush to identify a child that young [kindergarten] as disabled.”

v. Court affirmed Hearing Officer’s decision, noting that the school did not completely ignore the student’s problems in kindergarten, but still implemented special tutoring, despite not being formally evaluated.

3. Conclusion that can be drawn:

   a. Federal law states that IDEA applies to children as young as age 3, as long as this application is not in direct contradiction with state law as it pertains to public education for children ages 3, 4, and 5. However, courts may express leniency and understanding—and be less inclined to find a violation—with schools that have failed to identify very young children due to (1) the difficulty in separating students with disabilities from students who are merely immature, as is expected for that age and (2) the dangers of over classifying and over labeling that early in a child's life.

   ii. Does the duty to identify apply to students enrolled in private schools in the district? If so, how is the duty met?

      1. Federal Statutes and Regulations

         a. 34 C.F.R. § 300.125(a)(1)(i)

            i. The State must have in effect policies and procedures to ensure that [a]ll children with
disabilities residing in the State, including 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.

2. Case Law Examples


      i. Court held that in some situations, duty to identify may even apply to out-of-state private placements. Specifically, the Court found that the District of Columbia’s IDEA obligations extended to a student attending a “residential therapeutic private school in Madison, Connecticut,” because the student maintained his D.C. residency.


      i. Court found no Child Find violation when school district routinely posted child find notices in the local paper, made the information available on its website, and sent residents the information in their tax bills. Targeted posters and pamphlets were also placed in private schools.

3. Conclusion that can be drawn:

   a. IDEA applies not only to public school children, but to children enrolled in private schools who are residing within the school district. At least one circuit has found that IDEA’s reach extends even to children attending an out-of-state private school. Thus, it can be said that generally, the main factor courts consider is the student's place of residence, not place of enrollment. If a student maintains residency within the school district, the school district maintains its responsibility to identify, locate, and evaluate the student pursuant to its Child Find obligations.

   iii. Does a student’s display of behavior issues and/or emotional disturbances trigger the duty to identify?

   a. Hearing Officer found that student’s problems at school were behavioral as the basis for his determination that DCPS did not violate IDEA by declining to identify or evaluate the student.

   b. Court overruled Hearing Officer’s determination by stating: “[W]hen a student’s behavioral problems affects his ability to learn, IDEA still applies.”

   c. The Court held: “Thus, even where a student presents issues which may be characterized as “behavioral,” IDEA requires the intervention of an IEP team if the student—after the appropriate evaluations—is found eligible for special education or related services.”


   a. The Court found that school should have identified and evaluated student when (1) the school guidance counselor documented several behavioral incidents involving the student, including making threats against, becoming physical with, and harassing other classmates; (2) student was suspended on three occasions prior to the student’s placement in a behavioral program.

   b. Held that the school district had “overlooked clear signs of disability” and failed to identify and evaluate the student in violation of IDEA.


   a. Student was diagnosed with depression, attempted suicide which resulted in extended hospitalization, and showed signs of deteriorating academic performance, e.g. failing four of seven of her classes

   b. School district argued that depression is not one of the enumerated disabilities recognized by IDEA, and therefore it was not required to identify or evaluate her.
c. Court found that student's diagnosis of clinical depression and history of suicidality should have put the school district on notice, as these emotional issues classify her as "emotionally disturbed" under the implementing regulations. Thus, the school failed to identify and evaluate student pursuant to IDEA.

4. Conclusion that can be drawn:

a. While a diagnosis of depression alone or the occurrence of sporadic disciplinary problems does not necessarily trigger a school district's duty to identify, a combination of circumstances related to behavior issues and serious emotional problems may put a school district on notice that the student may have a "disability" as defined by IDEA. As is a common trend, the question of when a student's bad behavior or emotional outbursts rise to the level of "suspected disability" as to trigger a school's Child Find duty is extremely fact-dependent and varies from case to case.

iv. Does a school's knowledge of a student's diagnosis (i.e. ADHD) require the school to "identify" the student under IDEA?


a. When parent enrolled student, informed school of student's ADHD diagnosis, but told school student did not require special education and had always been in regular classes.

b. Court determined that the mere existence of an ADHD condition does not demand special education" "Children having ADHD who graduate with no special education or any § 504 accommodation are commonplace."

c. Court found that school provided student with a FAPE and was not liable for failing to identify student just because he had an ADHD diagnosis, and especially in light of (1) the student's general lack of motivation to turn in his homework; (2) his passing, and at times, higher performance on tests; and (3) his average scores on the Minnesota Basic Standards tests.

a. Court held school district was not liable for failing to identify and evaluate student, despite the school being on notice that student was "at risk" for ADD.

b. Court considered the following factors: student responded well to the assistance he was provided; student was performing at grade level and made progress throughout the year; student was not merely “advancing from grade to grade,” he was making significant progress; school acted conscientiously, communicating regularly with the parents and utilizing special strategies to help the student succeed.

c. Court emphasized that question is not just whether student has a disability, but also whether he was suspected of a disability AND in need of special education and related services.

3. Conclusion that can be drawn:

a. That school district is on notice of a student's ADD or ADHD diagnosis does not per se require the school to identify or evaluate the student. Courts seem to require something more than just a diagnosis, e.g. lack of progress, poor grades, behavioral issues. Also, courts seem to be more reluctant to find an IDEA violation when a school takes preemptive, albeit informal, actions to assist the student, e.g. special accommodations, tutoring, and open communication with parents.

Also note the interplay between the issue of ADD/ADHD diagnoses and the question presented below re: the importance of achievement/ability discrepancy.

v. Can a school defend its failure to identify by relying on the student's progress/achievement/grade benchmarks?

1. Federal Law and Regulations

a. 34 C.F.R. § 300.309 [Determining the existence of a specific learning disability]

i. (a) The group described in § 300.306 may determine that a child has a specific learning disability, as defined in § 300.8(c)(10), if—
(1) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards.

(2)(i) The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in paragraph (a)(1) of this section when using a process based on the child's response to scientific, research-based intervention; or

(ii) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, to age, State-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with §§ 300.304 and 300.305; and

2. Case Law Examples


i. Student was diagnosed with ADHD. But, the school district found no discrepancy between the student's ability and achievement, and did not place him in special education. The student earned good grades until the seventh and eighth grades, when his academic performance declined. This decline was accompanied by frequent absences and the student’s failure to turn in assignments.

ii. Parents argued that school district (and the district court) erred by focusing only an ability/achievement analysis to determine that there was no evidence of a learning disability at the relevant time, without considering potential emotional disturbances or an “other health impairment,” i.e. ADHD, which also would have necessitated special education.

iii. Court held that school district did not violate its Child Find duties. The Court noted "extensive
evidence" in the record that, in the seventh and eighth grades, the student was perceived by his teachers to be "an average student" who was making "meaningful progress," but whose increasing difficulty in school was attributable to low motivation, frequent absences, and a failure to complete homework.


i. Court found that although the school district was permitted to consider grade level benchmarks in determining whether to identify and evaluate a student, it could not rely solely on them.

ii. Court (and Hearing Officer) held school district violated its Child Find obligations in failing to identify and evaluate student as school district "had relied too heavily on those benchmarks to the exclusion of other circumstances that indicated the presence of a disability." Rather, the school was required to use a variety of assessment tools in considering whether the student might have a learning disability.

3. Conclusion that can be drawn:

a. Schools can look to a student's progress and achievement in relation to age and state standards as a significant factor in determining whether to identify and evaluate a student under IDEA. However, a school cannot rest solely on compliance with these grade-level benchmarks: they must also consider other factors, circumstances, and assessment tools in reaching its determination.

B. What does a school district’s “duty to locate" encompass?

a. General Standard

i. As stated above, school districts are under an obligation to identify, locate, and evaluate all students residing in its geographic boundaries. As an underlying universal rule, school districts must locate all students identified as possibly having a disability who are enrolled within the district. However, much like the duty to identify, the devil is in the details. Courts often undergo a fact-heavy analysis to determine in what
circumstances, and to what extent, a school must comply with its Child Find duty-to-locate obligations.

b. Factual Circumstances Affecting Duty to Locate

i. What efforts must a school district make to locate students enrolled in private schools?


   a. School District's child find plan included the following: (1) the dissemination of informational material to all schools in the area, including private schools; (2) provision of materials to day care centers, nursery schools, hospitals, and medical personnel, such as psychologists and pediatricians, who would be likely to encounter children with special educational requirements; (3) the making of public service announcements through the local media; (4) sending personnel to PTA meetings; and (5) the implementation of an outreach program to low income communities.

   b. Parents contended that the district's child find plan was insufficient. They argued that the district was required to obtain an address list from their son’s private school to enable an individualized mailing to all students.

   c. Court held that the district's child find plan was sufficient and that it did not violate its duty to locate.

   d. “It would not be practical to require the school system to pursue individually private-school parents who have declined to act upon the information available to them from publicity campaigns done in compliance with the IDEA.”

2. Conclusion that can be drawn:

   a. School district does not have to exhaust *every* means of attempting to locate students enrolled in private schools, but must undertake certain efforts reasonably calculated to inform students and parents of the resources available to them. Exactly what level of outreach is required depends on the factual circumstances of the case, and therefore necessarily differs on a case-by-case basis.
ii. **Is a school district under the obligation to locate homeless, truant, or unenrolled students?**


   a. Court recognized that the D.C. Circuit has found that a district's duty to locate apply to homeless, migrant, unenrolled, and private school students.

   b. Ultimately held that school was liable for failing to locate and evaluate student. The excuse that she often skipped classes and "was not available for learning" because of this lacked merit.


   a. Court rejected school district's "unsubstantiated assertions" that it was unable to locate the student.

   b. Court found that locating the student "should not have been a difficult task" because his address (which had not changed) was located on numerous documents within the administrative record. Further, the Court noted that the school district could have contacted plaintiff’s counsel at any time during the pending lawsuit to try to resolve and evaluate the problem. The school district declined to do so.

   c. Court recognized two circumstances that may have exempted the school district from its obligation to locate: (1) if it actively sought to locate the student and documented its efforts to do so or (2) if a student’s parents refused to cooperate with school authorities. However, neither of these exceptions was present in the case here.

   d. Court noted that the school district would have been in violation of its Child Find obligations even if the student had not been enrolled at the school: "In fact, the IDEA seems to contemplate the possibility that a student may not be enrolled in school at all prior to an initial evaluation since a FAPE is guaranteed to children as young as three years old.

   e. Court found that in the end, the inquiry was simple: was the student (a) a resident of the area and (b) suspected of
having a disability? If so, school district had duty to locate. "It is undisputed that [the student] is a resident of the District of Columbia, and hence, DCPS must fulfill its IDEA obligations for this student."

3. Conclusion that can be drawn:
   a. Just because a student may be "untraditional" or difficult to locate does not relieve a school district of its Child Find duties. A school's duty to locate extends to homeless, migrant, truant, private, and even unenrolled students. Reasonable diligence in obtaining the student's address or location appears to be required—although exactly what constitutes "reasonable efforts" will vary from case to case and circuit to circuit.

iii. Does a school district's duty to locate extend past state lines?

   a. Court found that school district was liable under IDEA for failing to locate and evaluate a student attending an out-of-state residential therapeutic private school, as the student maintained her D.C. residency despite being enrolled in a different state.

2. Conclusion that can be drawn:
   a. Fact patterns of out-of-state students maintaining residency are rare, so what weight this specific holding has may be minor. However, it seems to emphasize a broader framework: In evaluating compliance with the Child Find provisions, school districts should focus on the baseline inquiry: does the student maintain residency within the district? If so, it is likely the burden of locating the student remains on the district. However! Note the section below concerning uncooperative parents, and how that fact may affect this analysis.

iv. How do a student's apathetic or uncooperative parents affect its duty to locate?

a. That a parent has not requested the school identify, locate, or evaluate the student does not relieve the school from its obligation to do so. The school district's Child Find duties are triggered “as soon as a child is identified as a potential candidate for services,” regardless of a written or oral request by the student's parents.


   a. Student's parents did not immediately consent to the school's evaluation. Further, even after they signed the consent form, they “declined further communication with the team.” Shortly thereafter, without providing any notice to the school board (and before an evaluation was conducted) the parents unilaterally removed the student and enrolled her in an out-of-state program.

   b. The Court found that the school district was not responsible for locating the student and performing an evaluation out of state. The school district was effectively precluded from evaluating the student for possible special education because of the uncooperative and evasive actions of the student's parents, and could not be liable for any delay in the evaluation.

3. Conclusion that can be drawn:

   a. A parent's lack of proactive behavior does not relieve a school of its duty to locate and evaluate a student suspected of having a disability. However, if a parent is actively hindering the school district's reasonable efforts in attempting to locate or evaluate a student, the district is not expected to expend every possible resource in finding the child. Therefore, courts will likely consider the cooperation (or lack thereof) a factor in determining the reasonableness of the school's efforts in attempting to meet its Child Find obligations.

C. What does a school district’s “duty to evaluate" encompass?

   a. General Standard

      i. After a school district has identified and located a student suspected of having a disability, the final step in the Child Find trifecta of obligations is to evaluate the student using a variety of assessments to determine the
extent to which the student qualifies for special education. How specific the assessment/diagnosis must be is a question of fact often decided on a case-by-case basis. This evaluation must be conducted within a "reasonable time" after the student has been identified—a vague mandate that often results in litigation.

b. Factual Circumstances Affecting Duty to Evaluate

i. What constitutes a "reasonable time" to conduct an evaluation?


   a. Court emphasized that this was an issue of first impression in the Fifth Circuit and that "other federal courts faced with this issue have developed varying standards.

   i. Time frames among circuits ranged from ten months (violation) to six months (violation) to three months (triable issue of fact as to whether "reasonable") to twelve months (triable issue of fact as to whether "reasonable").

   ii. Triggers among circuits differed as well: some courts started running time from when a parent contacted the school about the child's suspected disability to when the school had reason to suspect child had disability to when the school observed certain "behavior" or "emotional difficulties in school" that might indicate a disability.

   iii. In this case, the Court found that a delay of 13 months after the parents' request for evaluation was not reasonable and violated the school district's Child Find obligations.


   a. The Court notes that "neither the IDEA, its implementing regulations, nor the applicable Pennsylvania regulations, establish a deadline by which children who are suspected of having a qualifying disability must be identified and evaluated."

   b. The Court listed a number of factors courts should consider
in determining what constitutes a "reasonable" time such as "budgetary constraints and staffing pressures facing school officials" and "the information and resources possessed" by the school district at the time. The Court also emphasized that in determining reasonableness, courts must "employ a case-by-case approach."

c. Court held that delay of over a year was not unreasonable in light of these factors.

3. Conclusion that can be drawn:

   a. What constitutes a "reasonable" time will vary dramatically from court to court and situation to situation. As a general rule, school districts should attempt to evaluate students identified as having a potential disability as soon as practicable. If a lengthy delay between identification and evaluation does occur, school districts should be able to point to some legitimate reason for the delay.

ii. Are school districts required to assess and diagnose every specific disability of a student to meet its duty to evaluate?

   1. Federal statutes and regulations


         i. "Nothing in this chapter requires that children be classified by their disability so long as each child who has a disability listed in section 1401 of this title and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this subchapter."

   2. Case Law Examples


         i. Parents of student argued that school district was required to specifically identify and recognize their child as a student with an other health impairment ("OHI") on the basis of his ADHD. Parents also argued that the school district failed to assess their child in all areas of disability.
ii. The Court noted that several circuits have held that "school districts are not required to classify a student into a particular category, or affix that student with a particular label." Rather, the Court found that IDEA only requires that the school district provide an appropriate education.

iii. The Court rejected the parents' claim that because the school district failed to label the student with ADHD, the district failed to address the student's inattention needs and failed to provide appropriate services. The Court reviewed the record of the administrative hearing and found "ample evidence" that not only was the school district well aware of the student's difficulties staying on task and paying attention, they addressed these needs (albeit not by explicit diagnosis) by the student's IEPs. (The IEP recommended a seat close to instruction, a low staff-to-student ratio during instruction and reteaching, frequent redirecting and reminders to stay on task, and many other accommodations.)

iv. Court ultimately found no violation of Child Find occurred on the basis of failing to specifically diagnose the student. The school district created an IEP that was tailored to meet the student's individual educational needs, and the plaintiffs failed to show how his evaluation would have been different if the school had labeled him with a specific disorder.

v. The Court also held that the school district was not liable for failing to evaluate or diagnose every possible disability; as long as the district took measures and made accommodations to address the student's issues, it did not matter whether the student was formally labeled or evaluated on all bases.

3. Conclusion that can be drawn:

a. A school district is not required to diagnose students with specific disabilities, nor are they required to evaluate students for every possible disability on the spectrum. Instead, courts tend to take a practical results-oriented approach: in the end, did the school district make
accommodations and tailor the student’s IEP to ensure appropriate special education services were provided? As the law makes clear, the purpose of IDEA is not to provide specific diagnoses of all children residing within the school district. Rather, IDEA aims to provide every child with a free appropriate public education. Thus, courts will be reluctant to impose liability on a school for failing to diagnose a specific disability if the school district developed a tailored IEP and appropriately addressed the student’s needs.

iii. Must a school district re-evaluate students every year to meet its Child Find duty?

1. Federal Law & Regulations

   a. 20 U.S.C. § 1414(a)(2)

      (2) Reevaluations

      (A) In general

      A local educational agency shall ensure that a reevaluation of each child with a disability is conducted . . .

      (i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

      (ii) if the child’s parents or teacher requests a reevaluation.

      (B) Limitation

      A reevaluation conducted under subparagraph (A) shall occur—

      (i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

      (ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.
2. Case Law Examples


i. Once a student is identified as IDEA-eligible, federal law requires a reevaluation to occur not more frequently than once a year, unless the parents and the school district agree otherwise, but at least every three years. (See statute set forth above.)

ii. Facts: School district offered to evaluate student pursuant to IDEA. Parents rejected the offer and instead enrolled the student in a private school for a year. Parents then re-enrolled the student in public school the following year.

iii. Court held that school district was required to evaluate the student upon her re-enrollment. Essentially, the Court found that the student retained eligibility in public school after returning from a year of attendance at private school.


i. Court addressed the issue of when schools must re-evaluate a student after the student's initial evaluation found the student did not have a disability under IDEA.

ii. The parents of the student argued that IDEA placed the burden of conducting updated evaluations on the school system, and that a prior determination of non-eligibility plays no role in a subsequent eligibility determination.

iii. Court found that to limit a school district's duty to conduct only one initial evaluation would be at odds with IDEA and its regulations: "Nothing in the federal or local regulations limits the District's obligation to conduct an 'initial evaluation' to a single occurrence that forever fulfills its 'child find' obligations as to that child, and, indeed, such an interpretation would be at odds with the child find
iv. The Court also noted the lack of direction regarding this specific issue, finding the "case law on the relationship between prior ineligibility determinations and subsequent requests for special education services is sparse."

v. The Court ultimately concluded that a non-eligibility determination for a prior school year does not relieve the District of conducting a subsequent "initial evaluation" for a later school year… but its duty to re-evaluate was only triggered when and if the student’s parent submits a request in compliance with the regulations: "Where the absence of [a reevaluation] by a child study team is caused by the failure of the parents to initiate that process, there is no basis for holding the absence of such evaluation against the DCPS."

3. Conclusion that can be drawn:

   a. Generally, according to the plain language of the federal statute, once a student is identified as IDEA-eligible, the school district must reevaluate him/her at least every three years, but not more than once a year. An initial determination of ineligibility does not absolutely relieve a school of its duty to monitor and reevaluate the student if he/she shows future signs of a disability. However, courts generally require some affirmative action by the student’s parents to trigger the school’s duty to reevaluate in these circumstances.

D. Systemic Violations

   a. General Standard

      i. In addition to facing potential liability for individual Child Find violations, some courts have found that school districts can also be liable for systemic violations. In other words, although a school district’s Child Find plan may appear sufficient on paper or in the abstract, if there is evidence that in reality children with disabilities are consistently getting overlooked—schools can be found liable under IDEA.

   b. Case Law Illustration
1. Parents of students argued that the school district’s “Child Find plan” was structurally deficient and continually resulted in IDEA violations. Parents presented expert testimony setting forth qualitative analyses which showed system-wide patterns and trends of failing to identify and evaluate children with disabilities.

2. The Court found that school district’s dissemination of substantial material to alert parents of special education services via various means was insufficient to meet its Child Find obligations: “Even though MPS tries to get the word out about its special education programs, it is still missing too many children with needs. The dissemination of information is obviously required to comply with the IDEA, and it no doubt triggers a number of requests for referral. However, under the law, the obligation of MPS goes beyond a self-identification process, which is all that the dissemination of these materials does.” The Court also criticized the school district for engaging in a pattern of suspending students as a way of coping with discipline and behavioral problems.

3. The Court distinguished such a “systemic” violation from an “individual” one, emphasizing that the deficiencies in the district’s Child Find plan “were structural in nature.” The Court explained: “In other words, whether or not one agrees or disagrees with the professional judgment exercised by an MPS professional in any individual case, and despite policies and procedures that look adequate on paper, during the period under challenge, MPS continually failed to comply with its Child Find obligations.”

4. The Court ultimately held that the school district violated IDEA because of the following system-wide issues: (1) failure to refer children with suspected disabilities in a timely fashion, (2) improper extension of the initial evaluation of children with suspected disabilities, and (3) inappropriate use of suspensions in a manner that adversely affected both the identification and evaluation of children with suspected disabilities.

c. Disproportionality

There is a high proportion of students with disabilities from certain disadvantaged groups – particularly Black and Hispanic students from low-income families residing in urban environments – and the problems of misidentification and misclassification. Misidentification occurs when teachers inappropriately identify minority students as students with disabilities; misclassification occurs when students, who have already been identified as disabled, are then incorrectly labeled as having a
disability that they do not have.

i. The Law

(a) 34 C.F.R. § 200.13 (2013)

Separate data tracking is required to monitor trends, especially for economically disadvantaged students, students from different racial and ethnic groups, students with disabilities, and students with limited English proficiency.

(b) O.A.C. § 3301-51(C) (2013)

(1) General

The Ohio department of education and each school district must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the school districts of the state with respect to:

(a) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in the definition of "child with a disability" in paragraph (B)(10) of rule 3301-51-01 of the Administrative Code;

(b) The placement in particular educational settings of these children; and

(c) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) Review and revision of policies, practices, and procedures

In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (C)(1) of this rule, the Ohio department of education must:

(a) Provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or
placement to ensure that the policies, procedures, and practices comply with the requirements of the IDEA.

(b) Require any school district identified under paragraph (C)(1) of this rule to reserve the maximum amount of funds under Section 613(f) of the IDEA to provide comprehensive coordinated early intervening services to serve children in the school district, particularly, but not exclusively, children in those groups that were significantly over-identified under paragraph (C)(1) of this rule; a

(c) Require the school district to publicly report on the revision of policies, practices, and procedures described under paragraph (C)(2)(a) of this rule.

d. Conclusion that can be drawn:

ii. Even though all school districts should have a Child Find plan in place, the existence of such a plan does not automatically immunize itself from liability. School districts must make sure the implementation of its Child Find plan does not have any unintended system-wide or structural deficiencies such as failing to identify or evaluate several children with disabilities. This also means that school districts must have procedures and practices in place that prevent over-identification or misidentification of students based on race, language or other minority status. As importantly, this information must be especially documented and publicly reported.

E. Interplay between Section 504 of the Rehabilitation Act and IDEA

a. Does a school district’s compliance with the Rehabilitation Act necessarily result in compliance with IDEA (and vice versa)?

i. Several courts have expressly said “no”:


   a. Held: Modifications to a student’s “504 plan,” while they may have satisfied Sec. 504, was not sufficient to meet school district’s IDEA obligations and did not provide student with a FAPE. School district should have identified and formally evaluated the student pursuant to its Child Find duties.
2. *Andrew M. v. Delaware Cnty. Office of Mental Health & Mental Retardation*, 490 F.3d 337 (3d Cir. 2007)

a. Court explained that while a party may use the same conduct as the basis for claims under both the IDEA and Sec. 504, it does not follow that a violation of the IDEA is a per se violation of Sec. 504. Plaintiffs are still required to set forth facts that meet the requirements of Sec. 504 even in cases also brought under the IDEA.

b. However, Court also noted that violations of Part B of the IDEA are almost always violations of Sec. 504. Specifically, the Court illustrated that “when a state fails to provide a disabled child with a free and appropriate education, it violates the IDEA. However, it also violates the RA because it is denying a disabled child a guaranteed education merely because of the child's disability. It is the denial of an education that is guaranteed to all children that forms the basis of the claim.”


a. Court noted that while an IEP evaluation pursuant to IDEA will often satisfy a school district’s 504 obligations, the reverse is not generally true. In other words, “a section 504 plan typically is not an adequate substitute for an IEP.”

b. Held: School district violated IDEA by not identifying and properly evaluating the student in accordance with its Child Find obligations, despite providing the student with adequate 504 accommodations. The Court found the school district liable despite the fact that the student’s parents acquiesced in the provision of a 504 plan in lieu of a formal IEP.

b. Conclusion that can be drawn:

i. While most courts have found that a violation of IDEA does not result in a per se violation of Sec. 504, there appears to be a very close correlation between the two statutes. It appears that when school districts meet their Child Find and FAPE obligations, courts almost never find that the district nevertheless violated Section 504. (Refer back to the text of 34 C.F.R. § 104.33(b)(2) which states that the implementation of an IEP developed in accordance with the Education of the Handicapped Act is one means of meeting the Section 504 standard.) However, courts have stressed that a
504 plan is not an adequate substitute for a Child Find plan or an IEP. Thus, compliance with Sec. 504 does not necessarily insulate school districts from liability under IDEA.

III. Roadmap to Compliance

In determining whether school districts have met their Child Find obligations pursuant to IDEA, courts have been hesitant to set forth clear-cut standards. Instead, courts tend to cite the general principles underlying IDEA, and then decide each case on an individual basis, undergoing a very fact-dependent analysis. Further complicating the lack of clear direction, the Supreme Court has not addressed several of the factual nuances set forth above, leaving Courts of Appeals and state legislatures to create their own, sometimes varying, interpretations of how compliance should be achieved within their circuit or state.

Some basic general principles seem to apply across circuits:

a. School districts have a duty to identify all students between the ages of six and seventeen residing within their geographic district.
   i. Federal law actually expressly encompasses all children between the ages of three and twenty-one, but only to the extent it does not conflict with varying state laws.

b. School districts have a duty to identify students residing within their district who are attending private schools.

c. It is not required for parents of a student to request an initial evaluation. As soon as the school suspects or has reason to know the child may suffer from a disability and is in need of special education, the district must identify, locate, and evaluate the student.

d. A school district must locate students identified as having a disability including those who are homeless, migrant, and attending private schools.

e. Once a child has been identified, the school district must evaluate the student for possible special education accommodations within a reasonable time.
   i. Some state statutes prescribe an exact time frame, i.e. 90 days.

Also, all courts seem to consider (1) what schools know or should know and (2) what schools do in evaluating a school district's compliance or lack thereof:

a. **What school districts should know**
   ii. *Home Life*: Courts seem to realize that school districts cannot know everything that is going on in a student's life outside of school. Therefore, courts have generally only considered facts that a school knew
or should have suspected in determining whether a student had a disability and was in need of special education. For example, as the cases above illustrate, if a student has had severe emotional problems, such as suicidal tendencies, that surface only at home, a court will consider this behavior in evaluating the school district's actions. If, however, the student's parents notified the school district of his/her emotional disturbance, or if the student has missed several days of school because of hospitalization for such, courts will likely find these circumstances should have raised a red flag for the school district.

iii. *Diagnoses*: Case law above demonstrates that the existence of a diagnosis does not per se require a school to identify or evaluate a student. However, if a school district has notice of a student's diagnosis, such as ADHD, it should be attentive to the student's special needs, even if the accommodations fall below conducting a "formal" IEP. Courts have often found that a school district's informal efforts in response to receiving notice of certain diagnoses such as depression or ADHD are sufficient in the absence of any other factors indicating a disability.

iv. *Grade-level benchmarks*: That a student is progressing on schedule and performing at or near age-appropriate standards is not an absolute defense, but it is a factor that often weighs in favor of the school district.

v. *Recurring Disciplinary Problems*: Although a behavior problem does not always reflect a disability, courts have considered a school district's knowledge of perpetual disciplinary issues to be a factor in analyzing whether the district should have suspected a disability. Courts also readily criticize schools for engaging in a pattern of en masse suspensions instead of considering possible underlying causes, i.e. the existence of a disability and the need for special education accommodations.

b. What school districts should do

vi. *Reasonable efforts to identify*: School districts are not strictly liable for failing to comply with its Child Find mandates. Rather, some level of negligence or oversight must be found. Courts do not expect school districts to expend and exhaust every means in every situation. As was illustrated by the case law above, courts have considered the following actions, when employed as part of a comprehensive plan, to be commendable: (1) routinely posting child find notices in the local paper and/or website, (2) sending residents information about special education services in their tax bills, (3) placing targeted posters and pamphlets in private schools, (4) distributing a parent/guardian handbook with a section dedicated to Child Find services, (5) employing special education liaisons who are responsible for outreach and training to private schools,
and (6) disseminating substantial amounts of informational material to parents throughout the year.

1. It is extremely important, however, that school districts routinely analyze and evaluate the actual implementation of their “Child Find plan.” Merely having policies in place does not insulate the school district from liability. If, in spite of their efforts, the school district is still overlooking and failing to identify large numbers of students, the district could face liability for a systemic violation of IDEA.

vii. *Reasonable efforts to locate:* Reasonableness again appears to be the standard by which courts judge a school district’s efforts in attempting to locate a hard-to-find student. If the location of a student suspected of having a disability is readily available, e.g. the address or a contact number for the student’s parents is on file, the district will likely be charged with locating the student—even if the student often skips classes, is no longer enrolled at the school, or is homeless. However, if the school district’s inability to locate or evaluate the student stems from the parents’ evasiveness or total lack of cooperation, courts will be reluctant to impose liability.

viii. *Reasonable efforts to evaluate:* School districts should review their respective state law provisions to determine whether state regulations impose a specific time frame in which to evaluate an identified student. If no such provision exists, school districts will again be judged by a reasonableness standard. Generally, districts should evaluate a student as soon as practicable. Courts have evaluated delays of anywhere from three to thirteen months, with varied results. If a significant delay has occurred, school districts should be able to point to specific reasons for this delay such as uncooperative parents, the absence or unavailability of the student, or budgetary/staffing deficiencies. If the school district can rely on something other than pure oversight or negligence, a court will be more inclined to find in their favor.

### IV. Overall Conclusion

Because the lack of (1) the lack of clear direction by courts (2) differing state laws and (3) the necessarily fact-dependent nature of Child Find issues, there is unfortunately no clear-cut formula of how a school district can guarantee compliance with IDEA. School districts should have a Child Find plan in place, aimed at identifying, locating, and evaluating all children—including homeless, migrant, truant, and private or unenrolled students—residing within their geographic boundaries. Districts should expend reasonable efforts in attempting to identify these students, including various outreach initiatives and the dissemination of informational materials by means reasonably calculated to reach their target audience. In attempting to locate identified students, schools should utilize all practical and reasonable avenues to do so, e.g. keeping thorough
administrative records of addresses and contact numbers of students. School districts must then complete the third step, evaluation, within a reasonable time, i.e. as soon as practicable, pending unforeseeable, adverse or uncontrollable circumstances.

In enacting or reviewing their Child Find plans, school districts should always keep in mind the bigger picture and overall purpose of IDEA: to ensure that all children are given access to education regardless of any disabilities they may suffer. Further, if a school district is unsure of what course of action to take in light of the vague and nuanced legal standards, it should always refer back to the overarching goal of IDEA and the corresponding Child Find provisions: to guarantee all eligible children access to special education.