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CHILD FIND

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- "The IDEA is not a panacea for all of life's ills." *Maricus W. v. Lanett City Bd. of Educ.*, 141 F. Supp. 2d 1064 (M.D. Ala. 2001)

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- “Child find” refers to an affirmative obligation that is imposed by federal law on states – and, in turn, imposed on school districts by state law – to identify, locate and evaluate all children with disabilities. 34 C.F.R. § 300.311

- A school district's child find responsibilities to identify, locate and evaluate children with disabilities extend to children who reside in the district, including children who are homeless and children who are wards of the state.
- The child find obligation extends to children who are between the ages of 3 and 21.
- In addition, a school district's child find responsibilities extend to children who attend private schools that are located within the boundaries of the school district.
- 34 C.F.R. § 300.311

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- Either a parent of a child or a public agency may initiate a request for an initial evaluation. 34 C.F.R. § 300.301

The IDEA definition of "child with a disability" encompasses children having a disability as defined by the IDEA and "who, by reason thereof, needs special education and related services." 34 C.F.R. § 300.8(a)(1)

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If a child has an IDEA disability, “but only needs a related service and not special education, the child is not a child with a disability under this part.” 34 C.F.R. § 300.8(a)(2)(i)

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- Criteria for most IDEA disabilities requires that the disability adversely affect educational performance.
- What is "educational performance?" What, if anything, does it include beyond academic performance?

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- For the IDEA, unlike for Section 504, the ameliorative effects of mitigating measures are taken into account when determining eligibility.
- *Brendan K. v. Easton Area Sch. Dist.*, 2007 WL 1160377 at *10 (E.D. Pennsylvania) - noting improvement in student after the student began taking medication for his ADHD.

Letter to Coe, 32 IDELR 204 (OSEP 1999) - noting that an individual's eligibility for mental health services, as found in the DSM-IV, is not synonymous with criteria for determining whether a child is eligible for services under the IDEA.

- “special education” means “specially designed instruction.”
- “specially designed instruction” means “adapting the content, methodology, or delivery of instruction.”
- *Hood v. Encinitas Union School Dist.,* 482 F.3d 1175 (9th Cir. 2007) – “Does not qualify for special education due to a “specific learning disability” because any existing severe discrepancy between ability and achievement appears correctable in the regular classroom. As the hearing officer noted, “[i]t [is] virtually undisputed in this case that Anna has been progressing in the general curriculum along with her peers.” She received nearly uniformly average or above average grades. *** Anna had problems with missing assignments, completing work in a timely fashion, and organizing tasks. The hearing officer had sufficient reason to conclude that the accommodations that the school district offered Anna via her Section 504 plan, particularly the provisions for daily teacher checks for homework assignments, one-step directions, and use of a graphic organizer, would assist with Anna's difficulties and allow her to excel in the regular classroom.”

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- *L.J. v. Pittsburg Unified Sch.* Dist., 850 F.3d 996 (9th Cir. 2017)
- "The problem with the district court's analysis is that many of the services the district court viewed as general education services were in fact special education services tailored to L.J.'s situation. The district court thus classified many of the services L.J. received as general education, when they were not."

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- Eligibility is not based on the student's past status or "what ifs."
- *Marshall Joint Sch. Dist. No. 2 v. C.D.*, 616 F.3d 632, 637-638 (7th Cir. 2010) - "It is not whether something, when considered in the abstract, *can* adversely affect a student's educational performance, but whether in reality it *does.*"

What triggers the affirmative child find obligation with respect to a particular student?

- *Strock v. Indep. Sch. Dist. No.* 281, 2008 WL 782346 (D. Minn.)
- "The duty is triggered if the District has reason to suspect a disability, and to suspect that special education services may be needed."

- *Knox v. St. Louis City School District* (SEA Missouri 2017) (citing *Todd by Todd v. Elkins Sch. Dist. No. 10*, 105 F.3d 663 (8th Cir. 1997)
- "However, there is an inferred requirement that schools identify disabled children within a reasonable time after notice of behavior that likely indicates a disability."
- "To establish a child find violation, Grandparent must show the District overlooked "clear signs" of Student's disability."

- *Board of Educ. of Fayette County v. L.M.*, 478 F.3d 307, 312 (6th Cir. 2007)
- Petitioner "must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate."

- *W.B. v. Matula*, 67 F.3d 484, 501 (3rd Cir. 1995)
- Child find requires identification and evaluation within a reasonable time after school officials are put on notice of behavior that is likely to indicate disability.

- *Board of Ed. of Fayette County v. L.M.,* 478 F.3d 307 (6th Cir. 2007)
- "What a claimant must show to establish a procedural violation is a matter of first impression in this circuit. We now adopt the standard first articulated in *Clay T. v. Walton County Sch. Dist.,* 952 F. Supp. 817, 823 (M.D. Ga. 1997), which provides that the claimant "must show that school officials overlooked clear signs of disability and were negligent in failing to order testing, or that there was no rational justification for not deciding to evaluate."''

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- *Strock v. Indep. Sch. Dist. No.* 281, 2008 WL 782346 (D. Minn.)
- "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."

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- *M.G. v. Williamson County Schools*, (6th Cir. 2018)
- "WCS neither overlooked clear signs of disability nor lacked rational justification in deciding not to re-evaluate M.G. until April 2013. WCS effectively utilized general intervention strategies, such as RtI and GEIT, and later an individualized Section 504 plan, to ensure that M.G. was making adequate progress."

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- *Mr. P v. West Hartford Bd. of Educ.,* 885 F.3d 735 (2nd Cir. 2017)
- "The parents first referred M.P. for special education in March 2012. A PPT meeting was convened on March 12, 2012. During that PPT meeting, school officials acknowledged that M.P. was experiencing severe anxiety, but the parents reported that M.P.'s medications were beginning to help. Because M.P. had not been experiencing problems "over a long period of time," the school officials determined that M.P. did not then meet the criteria for the disability of emotional disturbance. The district court found that this decision was reasonable, concluding that "[t]he Board's decision to continue monitoring [M.P.] from March 24 until April 23 to determine whether [M.P.'s] condition was long lasting as required for special education eligibility, and then to initiate the evaluation process, was supported by a preponderance of the evidence." We agree."
- "The determination by the Board to continue monitoring M.P. was reasonable because, under the IDEA, "Emotional disturbance means a condition exhibiting [certain] characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance." As of the March 12 meeting, M.P. had only recently stopped attending Hall and begun homebound tutoring. The District had no new evidence suggesting that M.P. had a disability of emotional disturbance, and the District continued to provide homebound tutoring for M.P. as part of its Section 504 accommodations. It was reasonable for the PPT to proceed deliberately when weighing whether a tenth grader, who had previously done well in school, should be enrolled in special education."

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- *Jackson v. Northwest Local Sch. Dist*., 2010 WL 3452333 (S.D. Ohio 2010)
- "It is clear that in the fall of 2007, however, circumstances changed. In the beginning of KJ's third grade year, KJ's teachers became increasingly concerned about the impact of KJ's behavioral issues on her academic performance. Her teachers began gathering data and found that in addition to a lack of attention and focus, KJ exhibited behaviors that were distracting to herself and others in the classroom, including speaking out, making noises, and giggling at inappropriate times. Id. Northwest reconvened the Intervention Assistance Team on October 23, 2007 to discuss KJ's progress and plans for further testing. The Intervention Team reported that in addition to continuation of current interventions and the addition of other strategies to help KJ with social skills, KJ should be referred "to an outside mental health agency.""
- "The SLRO determined that the Intervention Team's recommendation for a mental health referral was sufficient reason for Northwest to suspect that as of October 23, 2007, KJ might be a child with a disability thereby obligating Northwest to conduct a full and individualized evaluation to determine if KJ actually had a disability."

Knox v. St. Louis City School District (SEA Missouri 2017)

- Noting from State Plan that "Children who experience and demonstrate problems of everyday living and/or those who develop transient symptoms due to a specific crisis or stressful experience are not considered to have an emotional disturbance."

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Knox v. St. Louis City School District (SEA Missouri 2017)

- "The State Plan only excludes consideration of "transient" behaviors attributable to a "specific crisis or stressful experience." Student's behaviors are not transient, nor are his behaviors attributable to a specific crisis or experience. Throughout his time at Peabody, Student demonstrated poor behavior that escalated into violence. In each year of school, Peabody suspended or sent Student home early for his behavior multiple times. The absence of Student's father and his mother's problems are pervasive, ongoing realities for Student."

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Knox v. St. Louis City School District (SEA Missouri 2017)

- "Although the District would later find that Student had ED, its failure to diagnose a disability earlier does not constitute a FAPE violation per se – especially in the case of ailments that are difficult to diagnose. See D.K. v. Abington Sch. Dist., 696 F.3d 233, 249 (3d Cir. 2012). ED is such a case because the State Plan requires, in vague terms, that its characteristics present to "a marked degree and over an extended period of time." Making matters more confusing, the significance of duration varies depending on the student's age. By April 2015, Student had already shown significant signs of behavioral problems and issues with his peers. However, Student was only seven years old and had attended school for less than three full semesters. Therefore, we find that the District did not err by finding Student did not meet the criteria for ED."

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Knox v. St. Louis City School District (SEA Missouri 2017)

- "Through the first semester and into the early portion of first grade, Student demonstrated consistently awful behavior. He was frequently suspended and sent home from school. Some of his behaviors were extremely violent and disturbing."

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Knox v. St. Louis City School District (SEA Missouri 2017)

- "Student's most disturbing behavior (death threats, masturbating in classroom, etc) occurred prior to the April 2015 evaluation. Either as a result of changing classrooms and having a teacher more attuned to Student's behaviors, starting Abilify, seeing Liberati, or some combination thereof, Student showed signs of progress that could reasonably excuse the District's failure to reevaluate Student."

- *Clay T. v. Walton County School Dist.,* 952 F.Supp. 817 (M.D. Ga. 1997)
- "All testimony in the record indicates that Clay's poor marks resulted not from an inability to comprehend or understand classroom material, but rather from his failure or refusal to turn in his assignments, a behavior problem which seems more the result of an emotional disturbance than evidence of a disability. The regulatory definition of specific learning disability explicitly excludes learning problems that result from emotional disturbance. Because there is a rational justification for the teachers not to recommend evaluation, there is no evidence that the school violated its duty to identify students with disabilities."

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- *P.C. v. Oceanside Union Free Sch. Dist.*, 818 F. Supp.2d 516, 529 (E.D.N.Y. 2011)
- Noting that "aggression and anger" exhibited by student coincided "with intense family strain," and the failure of plaintiff's witness to explain "why these factors, which would traumatize any teenager, constituted inappropriate behaviors under normal circumstances"

- *R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 945 (9th Cir. 2007)
- Questioning whether circumstances were “normal circumstances” because student was adapting to life at a new school away from her family.

- *N.C. v. Bedford Cent. Sch. Dist.*, 473 F.Supp.2d 532, 546 (S.D.N.Y. 2007)
- "There is, of course, no denying that M.C. experienced a terrible trauma that had a substantial impact on his childhood, but that does not automatically equate to a finding that he experienced a generally pervasive mood of unhappiness or depression for a long period of time."

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- *Torrance Unified Sch. Dist.*, 107 LRP 6592 (SEA California 2007)
- Noting that behaviors student exhibited at school "generally coincided with the severe stressors and upheavals in Student's home and living situations, and the District reasonably could have assumed that they were related to those events."

- *Brendan K.*, 2007 WL 1160377 at *11
- Noting that student's inappropriate behaviors and depression, while at times adversely affecting his educational performance, were not consistent and did not manifest themselves over extended periods of time.

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- *R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932 (9th Cir. 2007)
- Student exhibited inappropriate behavior over two years, but to a marked degree only during one trimester.

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- *L.J. v. Pittsburg Unified Sch.* Dist., 850 F.3d 996 (9th Cir. 2017)
- "The district court concluded that L.J.'s psychiatric hospitalizations and suicide attempts were not relevant to his eligibility for specialized instruction because they occurred outside the school environment. Yet, the issue is whether his disabilities interfered with his education and necessitated special services. It is hard to imagine how an emotional disturbance so severe that it resulted in repeated suicide attempts would not interfere with school performance. That he attempted suicide outside the school environment is immaterial. His emotional disturbance adversely affected his attendance and his teachers all reported that L.J.'s classroom absences, due to psychiatric hospitalizations, hurt his academic performance. To distinguish between where a student attempted suicide—between home and school—misses the point. The point being that whether having a suicidal ideation and attempting suicide interfered with L.J.'s education."

- *T.B. v. Prince George's County Bd. of* Educ., 2016 WL 7235661 (D. Md. 2016)
- "Additionally. Leatriz Covington, principal at Gourdine Middle School, testified that the rigors of middle school are much greater than those in elementary school. Hrg. Tr. vol. 1, 147—148. Ms Covington testified that it is not at all unusual for a student who is successful with As and Bs in elementary school to come to middle school and wind up with Ds and Es."
- "In sum, the Court cannot say that the school overlooked clear signs of either a learning disability or an emotional disability, particularly in light of T.B.'s frequent absences, conflicting explanations by the Parents, and the increased rigor of middle school and high school."

- *Austin v. Independent Sch. Dist. v. Robert M.,* 168 F. Supp. 2d 635 (W. D. Tex. 2001)
- The court noted that “[w]hat Robert needed was to commit to doing homework” and that “[w]hat Robert definitely did need was an understanding that the responsibility for Robert’s actions lies with Robert and the knowledge that good choices usually open good doors and bad choices usually open, and often compel entry through bad doors.”

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- *Sylvie M. v. Bd. of Educ. of Dripping Springs*, 48 F. Supp.2d 681, 690, 697-698 (W.D. Texas 1999)
- Noting undisputed evidence that it is very common for ninth graders to have trouble adjusting to high school, that students' grades and adjustment generally improve noticeably as they advance grades during their high school years, that ninth grade is a traumatic, transitional year for many students, and that students receive failing grades during their ninth grade year but few do by their senior year.

- *Bd. of Educ. v. Garcia,* 520 F.3d 1116, 1127 (10th Cir. 2008)
- "After all, a student's lack of enthusiasm, at least in some cases, may be related to his or her disability."
- *Hawaii v. Z.B.,* 52 IDELR 213 (D. Hawaii 2009)
- "school district's attribution of lack of progress to lack of motivation is a fundamental misunderstanding of ADHD."

- *Letter to Parker* 18 IDELR 963 (OCR 1992)
- "If a public agency believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD meets the eligibility criteria of the OHI category, the school district must ensure that this evaluation is conducted and is at no cost to the parents."

- *Letter to Anonymous*, (OSEP 2000)
- "If a public agency believes that a medical evaluation by a licensed physician is needed as part of the evaluation to determine whether a child suspected of having ADD/ADHD meets the eligibility criteria of the other health impairment (OHI) category, or any other disability category under Part B, the school district must ensure that this evaluation is conducted at no cost to the parents."

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- *Cheyenne Mountain School District 12,* (Colorado SEA 2013)
- “The fact that [Mother] did not initially provide a written ADHD diagnosis from [Student]'s physician does not excuse the School District from its Child Find obligation. A school district may not evade its Child Find responsibility by a parent's failure to obtain a medical diagnosis. *M.J.C. v. Special Sch. Dist. No. 1,*58 IDELR 288 (D.Minn. 2012) ("school districts cannot shift their assessment responsibilities to parents.")”

- The child find obligation is ongoing.
- *Cheyenne Mountain School District 12*, (Colorado SEA 2013)
- “Having been refused consent, a school district should not be required to continually pester parents with additional requests unless new information is available. If, however, a body of data collected over time shows that a disabled child continues to struggle despite RTI, the school district should not be allowed to stand by while the child fails. *See Kruvant v. Dist. of Columbia,* 44 IDELR 242 (D.D.C. 2005) ("Nothing in the federal 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 provision of the Act.")”

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- *M.G. v. Williamson County Schools*, (6th Cir. 2018)
- "When a school district has conducted a comprehensive evaluation and concluded that a student does not qualify as disabled under the IDEA, the school district must be afforded a reasonable time to monitor the student's progress before exploring whether further evaluation is required."

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