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CHILD-FIND FOR CHILDREN WITH DISABILITIES: POLICY AND PRACTICE IMPLICATIONS

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What is child-find?

Child-find refers to the obligation of states to identify, locate, and evaluate all children suspected of having disabilities who are within their jurisdiction. States work with school districts in meeting the obligation, and the school districts have the obligation to identify, locate, and evaluate all children in their boundaries, whether they attend the district's schools or not. Children are to be identified from birth, even if the state does not make them eligible for services under Part B of the Individuals with Disabilities Education Act (IDEA) until they are older. (Part B contains the provisions of the federal special education law applicable to school-age children.) Under Part C of IDEA, which provides funding for services for children with disabilities from birth through two, state lead agencies (typically, state departments of education but sometimes other agencies, such as a department of mental health) have to coordinate child-find activities for all younger children.

Child-find began as a component of the Education of the Handicapped Act and actually predates the landmark Education for All Handicapped Children Act of 1975. Congress had the idea that gathering information about the numbers and needs of children with disabilities would enable the federal government and states to plan for the time when education would be provided to all children, including those with disabilities. Some advocates also felt that when parents became aware of their children's needs and the public learned of the magnitude of the gaps in educational services, momentum would build for a special education law that would cover every child with a disability. That event occurred with the 1975 law, which continues in force to this day as the Individuals with Disabilities Education Act.

Why does child-find matter?

Child-find is not just a concern of special education, and not just a job of those who specialize in educating children with disabilities. Teachers and administrators who work in general education need to be on the alert for children who may have disabilities that prevent them from learning as effectively as they could. When there is a basis to suspect that the child has a disability that may require specialized services, the duty to identify, locate, and evaluate arises. Regular classroom teachers and other general education personnel are usually the people in the best position to observe children's successes and challenges in school and initiate the identification and evaluation process when a basis to suspect a disability exists.

Finding and evaluating individual children at the earliest possible time enables school districts and parents to deliver services to the children when the services can have the biggest impact on the future course of the children's lives. Accurate collective information about children's needs enables state educational agencies, agencies such as mental health departments, and school districts to plan for providing services as the children grow. Finally, states and school districts may incur liability for failing to meet child-find requirements, and may be required to provide payments or remedial services, causing disruption and large, unplanned outlays that could be prevented by helping children when their needs first appear.

Basic legal requirements

Child-find has both collective and individual aspects. The state and its school districts have to have policies and procedures in effect to be sure that all children with disabilities who reside in their borders are identified, located, and evaluated; the list of children includes homeless children, those who

are wards of the state, those attending private schools, and those with less severe as well as more severe disabling conditions. States meet the obligation to the population of potential children with disabilities at large by public service announcements, communications with medical service and child-care providers, advertisements in the news media, and the like. In *Matthew M. v. William Penn School District*, a federal district court denied a motion to dismiss a case claiming violation of child-find based on an alleged failure to provide any greater public notice than a single small-print notice during the summer in a tabloid newspaper.

Under IDEA Part C, the lead agency for infant and toddler services must coordinate with a number of programs, including IDEA Part B, Maternal and Child Health, Early Periodic Screening, Diagnosis, and Treatment under the Medicaid law, Developmental Disabilities Assistance, Head Start, Supplemental Security Income (SSI), child protection and welfare, child care agencies, Family Violence Prevention and Services Act services, Early Hearing Detection and Intervention, and Children's Health Insurance. Referral of a child to the Part C program is to take place as soon as possible but no more than seven days after a child has been identified; primary referral sources include hospitals, physicians, parents, child care and early learning programs, school districts and schools, public health facilities, public health and social service agencies, clinics and other health providers, public child welfare agencies and staff, homeless family shelters, and domestic violence shelters and agencies.

The Rehabilitation Act also comes into play with regard to child-find. Under regulations enforcing section 504 of the Rehabilitation Act of 1973, recipients of federal funds that operate public elementary or secondary education programs have to undertake each year to identify and locate every qualified child with a disability who resides in the entity's jurisdiction who is not receiving a public education and notify the child and parents of the entity's duty to offer free, appropriate public education to the child.

Individual children have an enforceable right to be identified, located, and evaluated in accordance with IDEA's requirements. If there is ground to suspect that a student is a child with a disability under IDEA standards, the child-find duty applies, and that is so even if the student is advancing from grade to grade. However, if the parent of a child refuses to provide consent for initial evaluation or does not respond to the request for consent, a school district is not in violation of the child-find requirements if it declines to pursue evaluation of the child.

Recent legal developments

Although child-find has been around for more than forty years and, like the Individuals with Disabilities Education Act as a whole, has been a notable public policy success, legal controversies about its implementation continue. Recent legal developments concerning child-find include individual cases as well as major class action litigation.

The individual cases represent situations in which courts have taken school authorities to task for failing to identify and evaluate children who act in ways that give ground to suspect disability as well as situations in which courts say there was no good ground to suspect the child had a disability. For example, in *Compton Unified School District v. Addison*, the federal court of appeals for the area that includes the Western United States affirmed an award of compensatory education and attorneys' fees for a high schooler who scored in the first percentile on standardized tests, turned in classwork that was

nonsensical, colored with crayons and played with dolls in class, and exhibited other problem behaviors, but was never identified and evaluated for special education throughout her academic career. The court upheld the claim for failure to identify, holding that ignoring the child's needs over a long period of time violated the law.

The duty to identify and evaluate may be triggered by situations far less extreme. The federal district court in *C.C. Jr. v. Beaumont Independent School District* allowed a case to go forward when the notice to the school district that the child should have been suspected to have a disability was the mother's playing of a recording of the child's speech to a district speech pathologist, but the school delayed from January to April in evaluating the child. Failing grades and expressions of concern by a parent triggered the duty to evaluate in a federal district court case, *A.W. v. Middletown Area School District*, though the failure to identify was excused for a short period before the grades were available and the mother made contact with the school. Evidence of bullying, persistently poor peer relationships, many trips to the school nurse, and a decline in grades were found to be ground for suspicion of disability in another district court case, *Jana K. v. Annville-Cleona School District.*

On the other hand, in *D.K. v. Abington School District*, the federal court of appeals for the area that includes Pennsylvania, New Jersey, and Delaware ruled that a school district did not violate child-find by failing to identify a child whose behavior, though troublesome, was not unusual for an early primary school student, and whose report cards and other records showed progress and academic success in several areas. One federal court in Illinois said that a school district must overlook clear signs of disability to be liable for failure to evaluate a child (*Demarcus L. v. Board of Education*).

Groups of parents claiming large-scale, systemic failures to evaluate children have brought class action cases seeking court orders to change school district procedures and impose other corrective action. In one case, *Jamie S. v. Milwaukee Public Schools*, the federal court of appeals for the area that includes Wisconsin, Illinois, and Indiana ruled that claims of failure to evaluate and make timely eligibility determinations for children and provide efficient transition from infant and toddler to IDEA Part B services were not suitable for class action treatment under federal procedural law. By contrast, the federal courts have permitted plaintiffs to go forward in *DL v. District of Columbia*, a class action based on similar allegations against the District of Columbia schools, and the district court there recently issued an opinion finding extensive violations of the child-find provision. A federal district court in California recently approved a settlement in a *G.F. v. Contra Costa County*, a class action case brought to remedy alleged failures to identify and provide appropriate services to children in juvenile detention who had not previously been classified as children with disabilities by their school districts.

The future of child-find and the role of the courts

The growth of response-to-intervention approaches for dealing with learning problems offers both an opportunity to resolve educational difficulties early in a child's academic career and a risk of delaying the child's identification and full evaluation when there exists ground to suspect the child has a disability. Though some courts have upheld decisions by school districts to try interventions for children before initiating full-fledged IDEA evaluation, the United States Department of Education has repeatedly declared that response-to-intervention may not be used to delay evaluation for eligibility under IDEA (*e.g., State Directors of Special Education*), and various courts have echoed that conclusion. Although class action litigation over school district failure to meet child-find obligations has

had mixed success, advocates in many places are likely to continue to view it as a promising way to make sure that all children served by a given school district or other public agency obtain the services they need.

Policy and practice implications

One clear lesson of the cases seems to be that the standard for triggering the duty to identify and evaluate is suspicion of disability. A wait-and-see attitude on the part of school districts is a recipe for future lawsuits. Delaying evaluation for months, much less years, violates the law and will lead to compensatory remedies. Alerting all school personnel of the need to refer children for evaluation, combined with adequate notice efforts directed to parents and the public at large, will go a long way in keeping districts out of court and guaranteeing services for children who need them.

References

20 U.S.C. §§ 1400-1482 (Individuals with Disabilities Education Act)

29 U.S.C. § 794 (Section 504 of the Rehabilitation Act)

34 C.F.R. § 300.111 (child-find)

34 C.F.R. § 300.300 (parental consent)

34 C.F.R. § 303.115 (IDEA Part C child-find)

34 C.F.R. § 104.32 (Section 504 duty to identify, locate, and notify)

A.W. v. Middletown Area Sch. Dist., No. 1:13–CV–2379, 2015 WL 390864 (M.D. Pa. Jan. 28, 2015)

C.C. Jr. v. Beaumont Indep. Sch. Dist., No. 1:13-cv-685, 65 IDELR 109 (E.D. Tex. Mar. 23, 2015)

Compton Unified Sch. Dist. v. Addison, 598 F.3d 1181 (9th Cir. 2010)

D.K. v. Abington Sch. Dist., 696 F.3d 233 (3d Cir. 2012)

Demarcus L. v. Board of Educ., No. 13 C 5331, 2014 WL 948883 (N.D. Ill. Mar. 11, 2014)

DL v. District of Columbia, 713 F.3d 120 (D.C. Cir. 2013), *on remand*, No. 05–1437 , 2015 WL 3630688 (D.D.C. June 10, 2015)

G.F. v. Contra Costa Cnty., No. 13–cv–03667, 2015 WL 4606078 (N.D. Cal. July 30, 2015)

Jana K. v. Annville-Cleona Sch. Dist., 39 F. Supp. 3d 584 (M.D. Pa. Aug. 18, 2014)

Matthew M. v. William Penn Sch. Dist., No. CIV.A.01–7177, 2002 WL 1286910 (E.D. Pa. 2002)

State Directors of Special Education, 56 IDELR 50 (OSEP 2011)

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Note: The views expressed in this commentary are those of the author.