

# Child Find: Whether to Suspect a Disability Post-Pandemic

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## AGENDA

- ◆ Requirements of Child Find under IDEA
- ◆ Examples of Triggering Events in Case Law
- ◆ Practical Tips from the Trenches

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## Requirements of Child Find under IDEA



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## Child Find: IDEA

- ◆ In general,
  - ◆ School districts have an obligation to identify, locate, and evaluate all children reasonably suspected of a disability, commonly referred to as “child find.” IDEA, 34 C.F.R. § 300.111; 20 U.S.C. § 1412(a)(3).

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## Suspecting a Disability under the IDEA

- ◆ Districts have an affirmative obligation to timely evaluate any student within their jurisdiction suspected of having a disability. 34 C.F.R. § 300.111(a)(1)(i).
  - ◆ Regardless of whether a parent (or teacher) makes a referral for special education.
- ◆ Failure to timely evaluate can result in a child find violation.

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## Suspecting a Disability under the IDEA

- ◆ Eligibility Questions for the IDEA:
  - ◆ Does the student have a disability in an IDEA eligibility category?
  - ◆ Does the student require special education and related services to benefit from education?

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## Disability under the IDEA

- ◆ **The IDEA identifies 13 different disability categories:**

- ◆ Autism
- ◆ Deaf-Blindness
- ◆ Emotional Disturbance
- ◆ Hearing Impairment (Deafness)
- ◆ Intellectual Disability
- ◆ Multiple Disabilities
- ◆ Orthopedic Impairment
- ◆ Other Health Impairment
- ◆ Specific Learning Disability
- ◆ Speech or Language Impairment
- ◆ Traumatic Brain Injury
- ◆ Visual Impairment (Blindness)
- ◆ Developmental Delay (for students Ages 3-9)

34 CFR 300.8

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## Disability under the IDEA

- ◆ Additionally, the IDEA requires that a student “need special education and related services” to meet the second prong of eligibility for a disability under IDEA. 20 USC 1412(a)(3)(A).
- ◆ The First and Seventh Circuit Court of Appeals have held that a student is in need of special education and related services if the student requires those services in order to receive an educational benefit. *Marshall Joint Sch. Dist. No. 2 v. C.D.*, 54 IDELR 307 (7th Cir. 2010); *Mr. I. v. Maine Sch. Admin. Dist. No. 55*, 47 IDELR 121 (1st Cir. 2007).

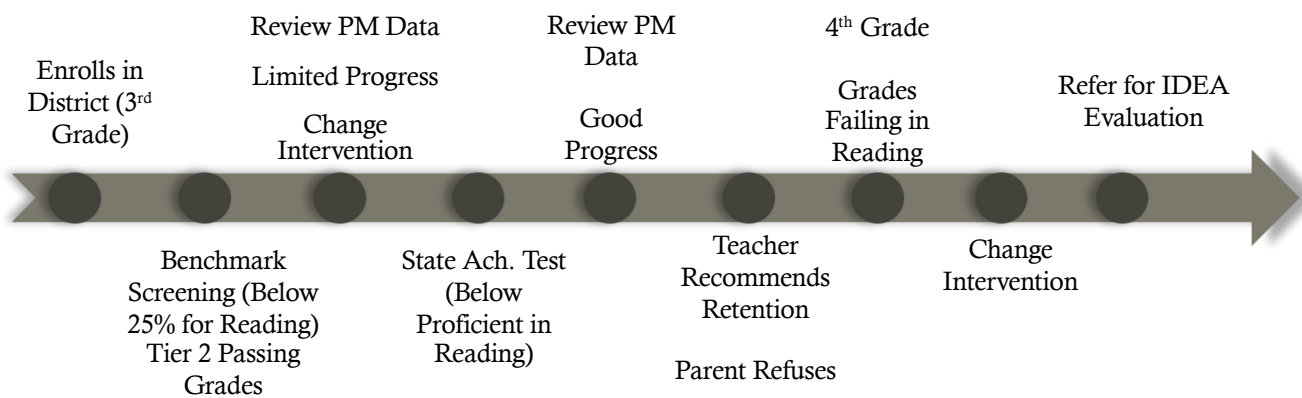
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## Suspecting a Disability under the IDEA

- ◆ Failing to evaluate a student suspected of a disability can result in a denial of FAPE and can entitle parents to remedies of compensatory education and/or private school tuition reimbursement.
- ◆ Such remedies are assessed from the point in time the district should have suspected a disability. T.B. v. Prince George’s County Bd. of Educ., 72 IDELR 171 (4th Cir. 2018); Lakin v. Birmingham Pub. Schs., 39 IDELR 152 (6th Cir. 2003).

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## What is the triggering event for child find?



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## Triggering Event for Child Find?

- ◆ While a child find analysis is very fact sensitive, the triggering event for child find is always the point in time that district suspects or should have suspected a disability.
- ◆ So, what facts support a “suspected disability”?

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## Pre-referral Interventions & RTI

- ◆ Nothing in the IDEA prevents a district from implementing pre-referral general education interventions or RTI interventions prior to evaluating a student for a disability.
- ◆ However,...

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## Pre-referral Interventions & RTI

- ◆ A district cannot unnecessarily delay an evaluation for special education due to an RTI model. Letter to Brekken, 56 IDELR 80 (OSEP 2010).
  - ◆ If the district suspects a disability, the district must evaluate. Memorandum to State Directors of Special Educ., 116 LRP 21359 (OSEP Apr. 29, 2016).
- ◆ A parent can request an evaluation during the RTI process.
  - ◆ If the district suspects a disability, the district must evaluate. Letter to Morath, 121 LRP 7391 (OSERS 2018); 34 CFR §§300.309(e); 300.311(a)(7).

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## No Disability Suspected

- ◆ The IDEA does not require that a district evaluate every student in which a parent requests an evaluation.
- ◆ If a district has no reasonable basis for suspecting a disability, it may refuse an evaluation.
- ◆ If the district does deny an evaluation, must provide the parent with a prior written notice explaining why it is refusing the evaluation and the information used as a basis for that decision and provide the parent with a copy of their procedural safeguards. Letter to Morath, 121 LRP 7391 (OSERS 2018); 34 CFR §300.503(a) and (b).

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## Referral for Evaluation

- ◆ Referral for Evaluation due to lack of progress with RTI/MTSS interventions.
  - ◆ “A child does not need to advance through each tier of the RTI system before a referral for special education is made.”
  - ◆ “Once it is apparent that general education interventions are not sufficient, school personnel should suspect that the child has a disability and should initiate a referral.”

Letter to Morath, 121 LRP 7391 (OSERS 2018).

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## Referral for Evaluation

- ◆ The IDEA requires that a district “promptly” request parental consent for an evaluation “[i]f, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction.” 34 CFR 300.309(c) (emphasis added).
  - ◆ IDEA does not define “adequate progress” or “an appropriate period of time.”
  - ◆ Instead these decisions have been left to the states and local districts. 71 Fed. Reg. 46,658 (2006).

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## Referral for Evaluation

- ◆ Reasonableness Standard:
  - ◆ Specific timeframes to initiate a referral/request consent for an evaluation may be identified in state law.
  - ◆ Some courts have employed the reasonableness standard.
    - ◆ Ridley Sch. Dist. v. M.R., 680 F.3d 260, 271 (3d Cir. 2012);
    - ◆ Spring Branch Indep. Sch. Dist. v. O.W. by Hannah W., 961 F.3d 781, 793 (5th Cir. 2020).
  - ◆ A reasonableness standard means a school district obtained consent for an evaluation within a “reasonable time” after the district is on notice of a suspected disability.

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## Referral for Evaluation

- ◆ The Dept. of Ed. indicated that it would typically not be considered acceptable for a district to “wait several months to conduct an evaluation or to seek parental consent for an evaluation if the public agency suspects the child to be a child with a disability.” Questions and Answers on Response to Intervention (RTI) and Early Intervening Servs. (EIS), 47 IDELR 196 (OSERS 2007).

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## Examples of Triggering Events in Case Law



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## Case Law: Child Find

**Daniel P. v. Downingtown Area Sch. Dist., 57 IDELR 224 (E.D. Pa. 2011).**

- ◆ A district's close eye on an elementary school student's progress with RTI helped it overcome a claim that it should have evaluated the student earlier.
  - ◆ In first grade, the district evaluated the student and found him eligible as a student with an SLD but determined he was not in need of special education services because he was progressing through an RTI model.
  - ◆ The student's report cards showed progress through first and second grade; however, by the end of second grade, the student began experiencing anxiety related to academic struggles.
  - ◆ The district evaluated the student again, found him eligible under IDEA, and developed an IEP for him.

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## Case Law: Child Find

**M.G. v. Williamson County Schs., 71 IDELR 102 (6th Cir. 2018, unpublished).**

- ◆ District was justified in continuing to provide general education interventions to a KG with speech and motor difficulties.
- ◆ Student had been evaluated as a pre-K student and found ineligible as a student with a disability under IDEA.
- ◆ She made tremendous gains during KG year but was recommended to repeat to “catch up.”
- ◆ She had behavior issues the second year of KG, and district identified her under Section 504
- ◆ When district proposed another IDEA evaluation, parents withdrew her.

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## Case Law: Child Find

**Greenwich Bd. of Educ. v. G.M. and J.M., 116 LRP 27276 (D. Conn. 2016).**

- ◆ A federal court held that the school district’s use of RTI to address a grade school student’s reading deficits rather than referring the child for an IDEA eligibility evaluation constituted a child find violation.
- ◆ In individual evaluation opining that the student may have a specific reading disorder should have prompted an IDEA evaluation.

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## Case Law: Child Find

**Jackson v. Northwest Local Sch. Dist., 55 IDELR 71 (S.D. Ohio Aug. 3, 2010).**

- ◆ Interventions and behavioral strategies were implemented and the school personnel were given time to determine their effectiveness.
  - ◆ These additional services provided a basic floor of educational opportunity.
- ◆ Due to increased behavioral concerns, the team referred the student to an outside mental health agency.
  - ◆ The behavior requiring a mental health referral should have caused the district to suspect a disability.

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## Case Law: Child Find

**L.J. v. Pittsburg Unified Sch. Dist., 117 LRP 6572 (9th Cir. 2017).**

- ◆ A district could not justify that a fourth-grade student with OHI, SLD, and ED did not require special education services by classifying his supports and services as general education interventions.
- ◆ Although the student was making satisfactory progress with the district's supports and interventions, the Court held that the services were specially designed instruction, not general education interventions.
- ◆ The Court pointed out that the mental health services, 1:1 behavioral aide, and accommodations (such as the ability to leave the classroom at will) were not interventions available to the student's nondisabled peers.
- ◆ Furthermore, the student's psychiatric hospitalizations and suicide attempts interfered with his school attendance.

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## Case Law: Child Find

### **Oakland Unified Sch. Dist. v. N.S., 66 IDELR 221 (N.D. Cal. 2015).**

- ◆ The court held that the school district violated the IDEA by ignoring signs that the student suffered from an emotional disturbance and required special education services.
  - ◆ The court cited the boy's suicidal statements, and his "clinically significant" difficulties with anxiety, attention, and social skills as indicators that the student should have been evaluated by the district.
- ◆ The court rejected the district's argument that the boy's behaviors (which included drug use, association with a negative peer group, chronic truancy, lack of effort/motivation at school, and flat affect) were caused by his matriculation to high school and peer pressure.

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## Case Law: Child Find

### **D.C. by J.C. and K.C. v. Klein Indep. Sch. Dist., 121 LRP 20347 (5th Cir., June 17, 2021).**

- ◆ In D.C.'s first-grade year, his teacher noticed he struggled with reading comprehension and fluency, and by the end of his second-grade year the district acknowledged he "was in need of intensive intervention due to his reading deficiencies."
- ◆ The district provided D.C. with increasing accommodations under Section 504 with little success.
- ◆ In his fifth-grade year the district evaluated him and found him eligible for special education services as a student with an SLD in reading comprehension.

(Cont.)

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## Case Law: Child Find

### **D.C. by J.C. and K.C. v. Klein Indep. Sch. Dist., 121 LRP 20347 (5th Cir., June 17, 2021), Cont.**

- ◆ The 5<sup>th</sup> Circuit affirmed the district court’s decision that the district’s delay in evaluating the child was unreasonable. The Court reasoned that there was extensive evidence that the district should have been aware of a suspected disability by April 27, 2017 (4<sup>th</sup> grade school year), the “trigger date.”
- ◆ **The Court identified the following data that put the district on notice:**
  - ◆ Third grade 504 plan stated he had substantial impairment;
  - ◆ Fourth grade 504 plan noted characteristics of dyslexia;
  - ◆ His performance improved with oral administration; and
  - ◆ Despite accommodations, his reading did not improve from the start of fourth grade and his assessment scores ranged from the second percentile to the forty percentile.

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## Case Law: Child Find

### **Zamora ex rel. S.Z. v. Hays Consol. Indep. Sch. Dist., 121 LRP 21739 (W.D. Tex. June 20, 2021).**

- ◆ S.Z. was diagnosed with ADHD in first grade and diagnosed with depression and anxiety at age 13, while in middle school in 2017. Parents claim the district violated the "Child Find" provisions of the IDEA by failing to timely identify S.Z. as a student needing special education and related services.
- ◆ In Oct. 2017, Parents emailed one of his teachers regarding retaking a test and informed the teacher of the ADHD diagnosis.
- ◆ On March 8, 2018, Parent emailed the principal explaining that S.Z. was struggling in 8th grade but has done ok in the past with managing his ADHD. The principal immediately responded and offered to schedule a 504 meeting.
- ◆ The Court held that the district did not violate child find because a district does not violate child find “merely because it pursues § 504 accommodations before pursuing a special education evaluation.”
  - ◆ The “504 accommodations were sufficient to address S.Z.’s educational needs while he was in middle school.”

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## Case Law: Child Find

**El Paso Indep. Sch. Dist. v. Richard R., 50 IDELR 256 (W.D. Tex. 2008), aff'd in part, rev'd in part, 53 IDELR 175 (5th Cir. 2009).**

- ◆ A district violated its child find duties when it repeatedly provided a student with ADHD with interventions recommended by its pre-referral intervention team instead of referring the child for an IDEA evaluation.
- ◆ The interventions, including Section 504 accommodations and tutoring, did not improve the student's performance.
- ◆ The Court stated it was baffled that the team would keep recommending the same interventions that had not previously helped the student achieve passing achievement scores.

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## Case Law: Child Find

**Northfield City Board of Education v. K.S. on behalf of L.S., 76 IDELR 255 (D.C. New Jersey, June 3, 2020).**

- ◆ Once the student "displayed suicide ideation and engaged in self-harm, the district took steps to evaluate her mental health and provided her counseling services but did not immediately evaluate her for special education eligibility."
- ◆ The parent filed a due process complaint asserting that the district violated its Child Find obligation by delaying an evaluation.
- ◆ The District Court held that the school district did not violate its Child Find obligations because it took continuous and "meaningful steps" to address a student's needs prior to evaluating her for special education services.

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## Case Law: Child Find

**Knox ex rel. J.D. v. St. Louis City School District, 76 IDELR 286 (E.D. Missouri, June 30, 2020).**

- ◆ KG student engaged in disruptive behaviors and suspended numerous times.
  - ◆ Throwing chairs, punching students in face, throwing rocks, urinated in stairwell.
- ◆ Student was diagnosed w/ ADHD and started medications, but the district waited to see response to meds before evaluating.
- ◆ District held eligibility meeting a month later regarding SLD, ID, or ED. The district claimed to address OHI but failed to create any record of such.
- ◆ The Court held that the district violated IDEA because it failed to evaluate for OHI.

(Cont.)

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## Case Law: Child Find

**Knox ex rel. J.D. v. St. Louis City School District, 76 IDELR 286 (E.D. Missouri, June 30, 2020), Cont.**

- ◆ The Court held that where a student has a history of disruptive behavior and poor academic performance, the district should have evaluated him once it received an IEE echoing those concerns.
- ◆ The Court held that the district violated the IDEA's child find requirement by waiting months to reconsider the student's eligibility for special education and related services.
- ◆ The Court explained that districts should have a process for ensuring they promptly review an IEE report provided by a parent to determine whether the IEE triggers the need to evaluate or to revise an IEP.

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## Case Law: Child Find

**J.N. ex rel. M.N. v. Jefferson County Bd. of Educ., 119 LRP 43184 (N.D. Ala. Nov. 6, 2019).**

- ◆ Due to the student's need for additional support in math, evidenced by earning D's in math for an entire year and standardized test scores despite being allowed to retake the tests, the decision in "the case turned on the duration and intensity of the student's academic and behavioral difficulties."
- ◆ The Court found that the evidence and parent's repeated notification of student's ADHD diagnosis "gave the district sufficient reason to suspect an IDEA-eligible disability" and reason to evaluate the student.
- ◆ The Court "upheld the administrative decision that the district violated its child find obligation" but held that "student was not entitled to compensatory education" because she "could not show the supports she received from teachers were inadequate."

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## Case Law: Child Find

**D.T. by Yasiris T. v. Cherry Creek Sch. Dist. No. 5, 121 LRP 26001 (D.C. Col. June 23, 2021).**

- ◆ Parent filed suit seeking comp. ed. alleging that the district violated child find when it failed to timely evaluate the student under the IDEA.
  - ◆ She alleged the district knew that he was suffering with a serious emotional disorder that was impacting his ability to access his education "as early as April 2017."
- ◆ The Court found there was no IDEA violation because the district immediately referred the student for evaluation after he made the threats to "shoot up the school"
- ◆ The Court explained that "although the District was aware of the general struggles...including his problems at home as reported by his mother, his rough social transition to his new school, and a documented welfare check in his Freshman year - those issues did not adversely affect Plaintiff's educational performance in his Freshman year when he earned high grades.
- ◆ The 10<sup>th</sup> Circuit upheld this decision at 82 IDELR 78,, reasoning that there was not enough evidence to trigger the district's child find duties until the teen's ED manifested in the school environment.

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## Case Law: Child Find

### **M.W. v. Rankin County Pub. Sch. Dist., 80 IDELR 136 (S.D. Miss. Jan. 5, 2022).**

- ◆ M.W. was enrolled in the Rankin County School District from Kindergarten through 2<sup>nd</sup> grade.
- ◆ In 2015, M.W.'s Kindergarten year, the district administered a dyslexia screener.
  - ◆ M.W. failed the screener, however, no further evaluation or follow-up was done during his kindergarten year and M.W.'s mother was never notified of this screening nor of its results.
- ◆ In 1<sup>st</sup> grade, the District conducted another dyslexia screener which M.W. passed.
  - ◆ District states no record is required to be kept of passed screenings, therefore there is no record of this screening, or any other testing related to dyslexia.
- ◆ M.W. continued to struggle academically, consistently receiving "Unsatisfactory" in all of his subjects.
- ◆ During 2<sup>nd</sup> grade, M.W.'s mother arranged for an IEE where he received a diagnosis of mild dyslexia and ADHD.
- ◆ M.W. was then provided with a 504 plan.
  - ◆ No services or accommodations made regarding dyslexia.

(Cont.)

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## Case Law: Child Find

### **M.W. v. Rankin County Pub. Sch. Dist., 80 IDELR 136 (S.D. Miss. Jan. 5, 2022), Cont.**

- ◆ The District Court held that the district violated Child Find and denied M.W. a FAPE based on a series of omissions and things the district "did wrong":
  - ◆ When M.W. failed the dyslexia screener the district did not conduct any follow up evals;
  - ◆ Failed to inform parents of screener and results;
  - ◆ Determining that M.W. did not need further evaluation related to dyslexia in second grade, the district relied partly upon a screening from first grade, but there is no documentation of that test;
  - ◆ Failed to recognize the child's ADHD and failed to provide services related to that condition until the Mississippi Dyslexia Center uncovered that condition;
  - ◆ M.W.'s second grade teacher knew he had failed the dyslexia screener and was aware that he was struggling with reading, but did not recommend any follow-up assessment or treatment relative to dyslexia;
  - ◆ The district did not take the required steps to identify what was needed to provide FAPE.
  - ◆ The district ignored the failed dyslexia screener in M.W.'s kindergarten year and ignored again it in his second-grade year, although he was struggling academically.
- ◆ However, the Court did note that the district "did several things right to identify the child in need" such as providing the dyslexia screener in kindergarten; provided a Language/Speech: Articulation ruling and provided services to him in that category in second grade; and the district also utilized Tier 2 interventions and later Tier 3 interventions.

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## Case Law: Child Find

### **C.B. v. North East Indep. Sch. Dist., 80 IDELR 162 (W.D. Tex. Feb. 16, 2022).**

- ◆ 12<sup>th</sup> grade gifted student, diagnosed with ADHD in 2<sup>nd</sup> grade, but performed well through her elementary education.
- ◆ While attending middle school she was diagnosed with GAD, which increased during her 9<sup>th</sup> grade year (2018-2019). C.B. was medicated, which the school nurse assisted with.
- ◆ During 10<sup>th</sup> grade (2019-2020), C.B. was placed in an outpatient center due to suicidal ideation and returned to school late September. Her grades began to slip and was then placed in a residential treatment facility due to depression and anxiety in November. C.B. withdrew from school on December 2, 2019.
- ◆ The district argues it never had reason to suspect C.B. should be evaluated for eligibility for special education services because she was designated as a gifted and talented student and achieved high academic performance throughout the time at issue.
- ◆ The district further argues that its Child Find obligation to C.B. ceased when she withdrew from school and entered private placement out of state.

(Cont.)

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## Case Law: Child Find

### **C.B. v. North East Indep. Sch. Dist., 80 IDELR 162 (W.D. Tex. Feb. 16, 2022), Cont.**

- ◆ The District Court held the district failed to see signs of disability due to C.B.'s history of success and the district had reason to suspect C.B. may have a disability and should be evaluated for eligibility for special education services by December 2019.
- ◆ The Court explained that while the district had knowledge of C.B.'s ADHD and anxiety prior to December 2019, the holistic view and culmination of information did not present reason to suspect a need for evaluation.
- ◆ However, in December 2019, the district's knowledge of C.B.'s ADHD, increasing anxiety and depression which required outpatient treatment for an extended time, and her eventual withdrawal from school to attend a full-time treatment facility presented sufficient reason to suspect C.B. may have a disability and should be evaluated.

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## Case Law: Child Find

**Ashley G. ex rel M.G. v. Copperas Cove Indep. Sch. Dist., 80 IDELR 179 (5<sup>th</sup> Cir. March 15, 2022).**

- ◆ Eighth-grade male student with autism, depression, and ODD received accommodations under a Section 504 plan.
- ◆ Parent alleged that the district failed to timely provide a comprehensive evaluation of M.G. for sped.
- ◆ M.G. did not have any significant academic or behavioral issues at the start of 2018-19 SY.
  - ◆ He was performing grade-level work and earning passing marks in all but one of his classes.
  - ◆ He had behaviors (running in the hall and horseplay) that prompted two disciplinary referrals early in the year.
  - ◆ His behaviors increased and eventually led to the admin. filing felony charges against M.G. and seeking to place him in an alternative school.
- ◆ On November 29, 2018, the district agreed to conduct an evaluations and requested parent consent.
  - ◆ In response, parents requested the documents be emailed to her. The district refused to email them and offered to send someone to M.G.'s home, but parents refused.
  - ◆ On December 18, 2018, the district provided M.G.'s parents with the consent forms at the mandatory resolution session .
- ◆ While on winter break, on Jan. 4, 2019, the consent form was completed, and the district began the evaluation four days later.
- ◆ District determined M.G. was eligible for sped due SLD in Reading Comprehension. (Cont.)

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## Case Law: Child Find

**Ashley G. ex rel M.G. v. Copperas Cove Indep. Sch. Dist., 80 IDELR 179 (5<sup>th</sup> Cir. March 15, 2022), Cont.**

- ◆ The Circuit Court found that the Student's passing marks and typical behaviors justified the district's evaluation timeline.
- ◆ The 5th Circuit Court affirmed a District Court ruling for the district on the parents' IDEA, Section 504, and ADA claims because:
  - ◆ the district did not violate the IDEA, Section 504, or the ADA by waiting until the middle of SY 2018-19 to evaluate;
  - ◆ the district had no reason to suspect the student had a disability-related need for specialized instruction before his parents requested an IDEA evaluation;
  - ◆ the district began the evaluation process four days after receiving the signed consent forms;
  - ◆ the evaluation correctly identified the student's SLD in reading comprehension;
  - ◆ parents were responsible for any delay in determining the student's eligibility for IDEA services.

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## Case Law: Child Find

### **Malloy v. District of Columbia, 80 IDELR 242 (D.D.C. Mar. 30, 2022).**

- ◆ Student had significant absences
  - ◆ 10th Grade- Between 43-64 unexcused absences (depending on the class period)
    - ◆ Resulted in a truancy referral to court
  - ◆ 11th Grade- 99 absences
- ◆ Student had poor grades
  - ◆ 9th Grade- 5 C's, 2 B's, 3- D's, and 1 F
  - ◆ 10th Grade- Failed 7 of 9 classes
- ◆ Student had poor state test scores
  - ◆ 8th Grade- 1 out of 5 on ELA and Math assessments
  - ◆ 9th Grade- 1 out of 5 on the ELA, Math, and Algebra assessments
- ◆ Teachers expressed concerns:
  - ◆ Performing poorly academically and not improving over time
  - ◆ Disinterested in class, lacked focus and ability to complete work successfully
  - ◆ Refused to work, would get up and walk around class, banged on classroom door and cursed after late to class

(Cont.)

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## Case Law: Child Find

### **Malloy v. District of Columbia, 80 IDELR 242 (D.D.C. Mar. 30, 2022), Cont.**

- ◆ Reversed Hearing Officer's ruling that, factually, truancy was the only possible indication of a suspected disability.
- ◆ Held that the parent met her burden in "showing that school officials overlooked clear signs of a disability and were negligent in failing to order testing. (6<sup>th</sup> Cir. standard for evaluating child find claims)
- ◆ HO ignored substantial evidence of a suspected learning or behavioral disability in the form of poor test scores, grades, teacher comments, classroom behavior, and attendance.

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## Case Law: Child Find

**Heather H. ex rel. P.H. v. Northwest Indep. Sch. Dist., 81 IDELR 32 (5<sup>th</sup> Cir. 2022).**

- ◆ Prior to enrolling in KG, parents provided the district with a private psych eval. diagnosing P.H. with Autism Spectrum Disorder, General Anxiety Disorder, and separation anxiety.
- ◆ Parents requested an evaluation for special education. Team found the student ineligible for an IEP. He was eventually found eligible for a Section 504 plan for anxiety.
- ◆ Parents disputed the evaluation, asserting that the district failed to evaluate for emotional disturbance (instead only evaluating for OHI)
  - ◆ District argued: (1) ED was not suspected because he did not display anxiety at school and (2) evaluation did cover “emotional and behavioral functioning” which captures anxiety.
- ◆ District filed due process to defend evaluation instead of paying for Independent Educational Evaluation (IEE) requested by the parent

(Cont.)

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## Case Law: Child Find

**Heather H. ex rel. P.H. v. Northwest Indep. Sch. Dist., 81 IDELR 32 (5<sup>th</sup> Cir. 2022), Cont.**

- ◆ Court held that Plaintiffs’ evidence of a private diagnosis of separation anxiety and one teacher’s comment that is could sometimes be “overly emotional” did not rise to the level of a suspected disability; thus, there was no failure to “assess in all areas of suspected disability.”
  - ◆ There were no observations of anxiety in school setting. Educational performance was not suffering. Teachers observed that he had a relatively normal transition to KG.
- ◆ Court held that district did evaluate, at least in part, student’s anxiety by administering the BASC-3, so it did not overlook the student’s anxiety.

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# Practical Tips from the Trenches



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## Practical Tip #1

- ◆ Do not wait too long between review periods to determine success of pre-referral/RTI interventions.
- ◆ Remember—Reasonable timeframes based on the severity and circumstances of the student.

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## Practical Tip #2

- ◆ Make meaningful steps to move student toward improved academic or behavioral skills.
- ◆ Examples:
  - ◆ Increasing intensity of the intervention
  - ◆ Changing the intervention being used
  - ◆ Thoroughly analyzing data to determine skill deficit
  - ◆ Conducting more detailed screenings/assessments to determine skill deficit

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## Practical Tip #3

- ◆ Consider all the information about the child, not just intervention data.
- ◆ All information about the child is relevant to a child find analysis.
- ◆ Other sources of data may include the following:
  - ◆ State assessment results, Grades, Private Evaluations, Classroom-based data, Classroom observations, Absences/Tardies, Knowledge of medical/mental health diagnoses

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## Practical Tip #4

- ◆ Refer for IDEA Evaluation within a Reasonable Period of Time after Suspect Disability
- ◆ Keep in mind the following factors:
  - ◆ Total period of time student has struggled academically or behaviorally.
  - ◆ Severity of difficulties.
  - ◆ Knowledge of other factors that might cause district to suspect disability, such as medical or mental health diagnoses or absences related to medical condition

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## Practical Tip #5

- ◆ Plan to have certifying specialists available over the summer to conduct evaluations.
- ◆ Summer break is not an excuse to wait on an evaluation if the district suspects a disability.

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## Practical Tip #6

- ◆ Bring school nurses and attendance personnel into your pre-referral process.
- ◆ Your attendance personnel and nurses have lots of knowledge that implicated to the district.
- ◆ It is critical that you have a system in place to ensure such information is shared with pre-referral teams.

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## Practical Tip #7

- ◆ Develop a process to ensure that critical information provided by parents are reviewed by pre-referral teams and classroom teachers.
  - ◆ Student information is now frequently digitalized. While this has many benefits and can make information more accessible, it can also be a black hole for information. It is important to ensure that critical information is available to the teachers and staff working with the students.

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# Thank you!

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