SOME RECENT CASES INVOLVING "CHILD FIND"

N.M. v. Wyoming Valley West School District, 67 IDELR 235 (M.D. Pa. 2016)

This is an ADA/504 case, but the underlying issue is child find. The court refused to dismiss the case at this stage, noting that the parents had sufficiently plead a case of deliberate indifference based on the fact that the student was in a hospital that is located within district boundaries and the received no services during the 70-day stay. The court cited testimony from the director of special education that she was aware of the student's presence at the hospital prior to discharge.

D.L. v. District of Columbia, 67 IDELR 238 (D.C.D.C. 2016)

This is a class action alleging violations of IDEA and 504 pertaining to students transitioning from Part C to Part B services. The court held that the district had failed to timely evaluate and serve a significant number of students and imposed a court order with specific targets. The court noted that children who were eligible under IDEA must be actually receiving services at age three—just having an IEP prepared and ready was not sufficient.

Comment: Three is three.

OSEP Memo to State Directors, 67 IDELR 272 (2016)

This memo tells us that OSEP supports RTI efforts, but that the law does not "require, or encourage an LEA or preschool program to use an RTI approach prior to a referral for evaluation or as part of determining whether a 3, 4 or 5-year old is eligible for special education and related services." Here's more:

> Therefore, it would be inconsistent with the evaluation provisions [in the regulations] for an LEA to reject a referral on the basis that a preschool program has not implemented an RTI process with a child and reported the results of that process to the LEA.

However, the memo also notes that the LEA can deny the request for an evaluation with a PWN if it "does not suspect that the child has a disability."

Comment: Clear as mud. This is a good illustration of why there is so much confusion about how RTI and "child find" obligations fit together.

Greenwich Board of Education v. G.M., 68 IDELR 8 (D.C. Conn. 2016)

The court held that the district violated IDEA by determining that a child was not eligible without conducting an FIE. The district primarily relied on RTI data to show that the student was making progress, and therefore, could not meet criteria as learning disabled. The court emphasized that the district is required to evaluate a child when it "suspects" a disability. There was ample reason for such suspicion here, including an independent evaluation and some data showing that the

student was falling farther behind. The court also emphasized that the standard for progress with RTI is not "some" progress" but rather, "sufficient" progress. Key Quote:

> The Board's argument that K.M.'s purported progress through SRBI [Scientific Research-Based Intervention] obviated the need for a comprehensive disability evaluation does not conform to the requirements of the IDEA.

Comment: here is another case illustrating the natural tension that exists between the Child Find mandate and the use of RTI. The school would have been in a stronger position if it had conducted an FIE and then based its decision on both the RTI data and the FIE.

Horne v. Potomac Preparatory Public Charter School, 68 IDELR 38 (D.D.C. 2016)

The court held that the charter school failed in its Child Find responsibility by failing to re-evaluate the student after his attempted suicide (which happened at the school) and numerous disciplinary incidents.

Comment: The school had evaluated the student before the suicide attempt. The evaluation concluded that he was not eligible, but also noted that "if his behaviors increase in frequency and severity" a re-evaluation might be warranted.

Mr. and Mrs. P. v. West Hartford Board of Education, 68 IDELR 188 (D.C. Conn. 2016)

The court ruled in favor of the school on a child find claim, noting that the district held six meetings with the parents, and conducted two psychological evaluations between the time of the student's first hospitalization and the decision that he was eligible for special education. The court held that this "sequence of events" established "that the Board attentively monitored Student's developing special needs."

Letter to Morath, 68 IDELR 231 (OSERS 2016)

OSERS here responds to a story in the Houston Chronicle accusing the Texas Education Agency of systematically denying eligibility and services to students who need them. The target of the story was the 8.5% standard in the Texas monitoring document. Districts that served more than 8.5% of its students in special education were classified as at a higher level of concern. OSERS demanded a written explanation from the agency, and ordered a discontinuation of the 8.5% indicator unless T.E.A. could demonstrate that this indicator has not resulted in practices that led to districts not referring and/or evaluating students.

Comment: T.E.A. has dropped the 8.5 indicator after much criticism from the Department of Education, Texas legislators and many parents.

Artichoker v. Todd County School District, 69 IDELR 58 (D.C.S.D. 2016)

You will rarely find a case more directly illustrating how "child find" intersects with RTI. Here, the parent verbally requested an evaluation. The district responded by initiating RTI procedures. The court found this inadequate:

> A full review of the administrative rules and guidance from the state of South Dakota, along with the relevant case law, establish that while the RTI process can occur before, or in conjunction with, an initial evaluation under the IDEA, if a parent makes a request for an initial evaluation of her child for special education services, the RTI proves cannot be used to delay, in any way, that evaluation.

The court thus held that the district violated Child Find.

DOE State of Hawaii v. Leo W., 69 IDELR 59 (D.C. Hawaii 2016)

The court held that the hearing officer erred by ruling on a Child Find issue when the complaint did not raise that issue. But the court also went further than that, noting that even if the claim had been raised, it should have been denied. The court held that once a district has evaluated and identified a student as eligible, there is no Child Find obligation to evaluate or identify other disabilities:

> The student has already been identified and evaluated as a special education student, however, and neither Section 1412 nor [a prior case from Hawaii] requires anything more from the DOE.

Krawietz v. Galveston ISD, 69 IDELR 207 (S.D. Tex. 2017)

The court held that the district failed to evaluate and identify the student in a timely fashion. The student was in the district's special education program until 2008 when the family took her out of public school. She returned to GISD four years later, never having been dismissed from special education. But GISD did not find the student's records. The district served her under 504, but did not offer to do a FIIE until after the due process hearing was requested.

T.B. Jr. v. Prince George's County Board of Education, 70 IDELR 47 (D.C. Md. 2016)

The school failed to evaluate the student despite numerous requests from the parents amidst truancy concerns and failing grades. The court affirmed the hearing officer's view of this—that it was a procedural error but caused no harm. This was based on consistent testimony from teachers that the student was capable of performing well academically but simply refused to do so. The court cited several teachers saying much the same thing—that the student simply would not come to school and would not do the work. The hearing officer came to the same conclusion in a 46-page decision.

Comment: This comes under the "don't try this at home" category. This is a common problem—the bright but unmotivated student. When the school refuses to investigate the source of the

problem by conducting an evaluation, many hearing officers would rule against the district. Even more would rule against the district when the evidence shows that the parents had requested help on numerous occasions. For the teachers to conclude that there is no need for special education based on their own observations, without even conducting any formal testing, the district took a big chance. Here, it worked, but still…..don't try this at home.

Lauren C. v. Lewisville ISD, 70 IDELR 63 (E.D. Tex. 2017)

The court held that the district fulfilled its Child Find responsibility by evaluating the student in a timely fashion. The fact that the district refused to identify the student as having autism was not a Child Find violation:

> That the LISD did not diagnose Plaintiff with autism disorder after multiple evaluations testing for autism does not mean that LISD failed to comply with its Child Find procedural obligations. On the contrary, the multiple evaluations demonstrate that the LISD complied with these obligations.

The court noted that IDEA does not require the students be classified by a specific disability label:

> A specific classification or label is not required as part of the Child Find obligations or as part of the IDEA itself.

Comment: The parents acknowledged that they were happy with the IEP and services, but wanted the autism label "in order to ensure optimal services from [the DARS], [Supplemental Security Income], and other agencies in the future."

Shane T. v. Carbondale Area School District, 70 IDELR 259 (M.D. Pa. 2017)

The court held that the district violated the child find provision by failing to offer FAPE when the mother sought enrollment in the district. The district believed that the mother intended to keep the student in the private school he was attending, but the court held that this was erroneous. Key Quotes:

> The case law is clear that enrollment of the student or a parent's request for evaluation would normally trigger the District's obligation to provide a FAPE.
>
> …it is not the parent's obligation to clearly request an IEP or FAPE; instead, is the school's obligation to offer a FAPE unless the parent makes clear his or her intent to keep the student enrolled in the private school.