

Child Find In Minnesota

A Fact Sheet from the Minnesota Disability Law Center

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Introduction

The beginning of the school year presents new students, challenges, and responsibilities. One of these responsibilities is to locate, identify and evaluate children who may need special education services. This responsibility, called "Child Find," not only exists at the beginning of the school year, but also is an ongoing one.

In the years 2000 and 2003, there have been over 20 complaints filed with the Minnesota Department of Education concerning issues related to child find.¹ Because this appears to be a relatively common problem, and one that has potentially substantial and costly consequences, this report provides:

- a step-by-step guide about how to comply with state and federal laws (including examples of how and when districts have been found in violation);
- recurring pitfalls and consequences for schools; and
- strategies and tips on how to avoid child find problems.

Summary

A review of the Child Find laws, Department policy letters, complaint decisions and hearing decisions reveals the following main lessons:

- ★ Most complaints and hearings involve students in grades 6-12 and who are eventually determined eligible for special education services in emotional behavioral disorders.
- ★ Districts found in violation most often fail to appropriately respond to sudden or continual declines in student academic performance and there are accompanying issues with student behavior, discipline, medical condition, or attendance. A student's actual or suspected chemical issue does not remove a district's child find obligation when other factors are present.

- ★ Districts also have faced problems in meeting timelines for evaluation, responding to parent requests, providing formal notice to parents, and developing appropriate pre-referral interventions.
- ★ Districts that were found not to be in violation have carefully and continually monitored and responded to student issues, respond in a timely fashion to parent requests, meet timelines, and have appropriately monitored student performance.
- ★ Districts found in violation may face substantial and costly corrective action orders in the form of compensatory education for students, training of staff, additional meetings and planning, and reimbursement of parental expenses, in addition to others.

A comprehensive understanding of child find includes knowledge of: the three main initial triggers to child find responsibilities; development and review of pre-referral interventions; initial evaluation procedures; and IEP development steps, of which are reviewed in this report.

Child Find from Start to Finish:
Main Triggers, Pre-Referral Activities, Evaluation and IEP Development

Child find is a shorthand description of a public school's obligation to locate, identify and evaluate children who might need special education services. Schools have a responsibility to develop systems and processes to find children who reside within the district, attend private schools within the district (regardless of their district of residence), and who are homeless or migrants.² A school district must, in its Total Special Education System plan (TSES) have some type of communication with parents, physicians, private and public programs, and health and human services agencies in the district to fulfill this obligation.³

Importantly, if a student, who may be eligible for special education services, attends a non-public school within the boundaries of a public school district, but lives in another district, both public school districts have some responsibilities to identify and locate the student.⁴ Even though the student is attending a non-public school, federal and state law require the public school district to at least offer special education services to the student.⁵ The district in which the student attends the non-public school has the child find responsibilities, but the district in which the student lives is responsible for excess program costs.⁶ Charter schools, which do not have "boundaries" are responsible to monitor students within the charter school.⁷

There are three ways: school district suspicion, parent request, and placement in a care and treatment facility within the district.

School District Suspicion

First, school districts have an independent obligation to locate students who may be eligible for special education. While child find obligations are prominent at the beginning of the year when students enter the district, the child find obligation is an

ongoing one in order to ensure that students who enter the district or who demonstrate academic and performance changes during the school year are located and evaluated. The child find obligation exists when a district suspects a child has a disability; but what does this mean?

Although there was a Minnesota Rule that required districts to conduct an evaluation “when a student’s “academic, behavioral, emotional, social, physical, communication, or functional skill acquisition in the present educational placement warranted,” this rule was repealed in 2001.⁸ Current federal and state laws do not specifically state when suspicion exists. However, state complaint and hearing decisions do show when districts have been found to violate their child find responsibilities.

Typically, complaint decisions, seemingly operating under the same general standards of the repealed rule, will examine a student’s progress reports, report cards, medical and health reports, behavior reports, evaluations from any source, district documents, and attendance. Similarly, Minnesota hearing officers use a “notice” or “knowledge” standard.⁹

Complaint and hearing decisions have noted a number of times that faltering student grades alone do not compel the conclusion that a special education evaluation is warranted.¹⁰ But, when there are sudden changes, demonstration of pre-referral efforts not succeeding, medical reports, a continual decline in behavior and academics, or other similar warning signs, the Department is likely to find a violation.¹¹

There are certain events that appear to trigger parent concerns and district child find obligations. These include: sudden changes at school in grades, behavior, and attendance; a new doctor’s diagnosis; a major behavioral incident; a student entering a new district; and a student failing statewide tests, thus calling graduation into question. It is also important to keep comprehensive records for a student. Failing to keep or maintain records (such as grades, attendance history, report cards, etc.) can be evidence the district did not adequately monitor a student for potential special education service needs.¹² A student’s actual or suspected chemical issue does not remove a district’s child find obligation when other factors are present.¹³

Similarly, a recent hearing decision stated that the “child-find duty ‘is triggered when the [district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.’ Under these requirements, a child must be identified and evaluated ‘within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability.’¹⁴

The suspicion standard is also very important when a student is disciplined, but not yet evaluated for special education services. If a student faces discipline and the district either had or was deemed to have knowledge¹⁵ of the student’s potential need for special education services, the student is entitled to all protections (e.g. manifestation determinations, notice, limits on suspension and expulsion, etc.) that students with identified disabilities have.¹⁶

Parent Requests

Second, the child find responsibilities are triggered by parent requests for special education evaluation. As there is no legally required form for parent requests, districts may be responsible for responding to either verbal or written requests. Districts must either agree to the request and start the evaluation process or provide written notice of refusal.¹⁷ Where a district fails to provide notice of refusal, even if there is no violation of the underlying child find obligation, it has been found in violation.¹⁸

Neither federal nor state law state by when a district must respond to a parent's request for an evaluation. The Office of Special Education Programs has noted that the determination of what constitutes a reasonable amount of time for the District to respond may be made on a "case-by-case basis."¹⁹ In Minnesota complaint decisions, delays of three months, with some compelling intervening circumstances, were determined to be reasonable.²⁰ This 3-month delay is likely an outside limit and is only excused for compelling reasons; a shorter timeframe for responding (closer to 2-4 weeks) will probably be determined "reasonable."²¹

If a district does not think a special education evaluation is warranted and wants to give pre-referral interventions a try first, this is fine, but the district still must provide notice of refusal to the parent's request for evaluation. In other words, a parent's request for evaluation does not disappear if they agree to pre-referral interventions. The notice of refusal certainly can include a statement about the provision of pre-referral interventions.

The provision of formal notice of the district's refusal to conduct an evaluation allows the parents to be adequately informed of the district's decision and of their rights to challenge the refusal in a due process hearing.²²

Care and Treatment Screening

The third and least common trigger to a district's child find obligation is if a regular education student is placed in a care and treatment facility (such as a hospital, treatment facility, etc) within the district. In that case, the district must not only begin providing regular education services immediately, it must conduct a screening to determine the student's academic, social, and behavioral needs and, on the basis of that screening determine if any pre referral activities or a special education evaluation was warranted.²³

The Next Step

If the district has met its initial Child Find obligations by having policies and procedures to determine if and when a child might be suspected of having special education needs, responding appropriately to parent requests, and by keeping track of students in care and treatment settings, the district may proceed to either agreeing to conduct pre-referral interventions (which is covered in the next section) or to conducting the initial evaluation (covered in the following section).

Pre-Referral Interventions

Overall, pre-referral interventions are defined as regular education strategies, alternatives or interventions that are designed to assist the student in school before resorting to special education services.²⁴ These pre-referral interventions might include Section 504 accommodation plans, tutoring, support services, Title I services, or a wide variety of extra regular education techniques to help the student succeed. Relevant law requires a school district to conduct and document at least two pre-referral interventions before initiating a special education evaluation, unless the district's assessment team waives this requirement because of an "urgent" need for evaluation. Importantly, where a parent requests an evaluation and agrees to pre-referral interventions prior to the evaluation, the district must still provide the parents a notice of refusal to evaluate.

It is also crucial to understand that pre-referral interventions can not be used to purposefully or practically deny or delay the parent's and student's rights to have a special education evaluation (or to receive notice of the district's refusal to evaluate). If a staff member conditions an evaluation on going through the pre-referral interventions or if multiple interventions are employed but none are successful, and where no evaluation occurs, a district is likely to be found in violation.²⁵ Further, where a child's needs are "urgent" and pre-referral interventions are not succeeding, but the district does not begin an evaluation, it is likely to be found in violation.²⁶

Evaluation

If an evaluation is warranted or a district agrees to a parent request for a special education evaluation, the district must provide notice to the parents of the evaluation, describe the evaluation in a plan presented to the parents, and obtain parental consent prior to starting the evaluation. Once parent consent is received, the district must complete the evaluation within 30 days²⁷ and must provide a copy of the final evaluation report to the parents within that same 30 day period.²⁸ The evaluation must follow all requirements concerning non-discrimination, comprehensiveness, adequacy, and proper procedures and personnel.²⁹ If a district's evaluation is not comprehensive, its subsequent use of planned conditional procedures, which require an appropriate evaluation before use, may be in question.³⁰

Given increasing numbers of students requiring evaluation, staff and service cutbacks, and the difficulty associated with coordinating everyone and everything involved with evaluations, it is no surprise that districts are found in violation of missing the required timelines. The consequence, however, for missing timelines is significantly less in scope than missing the overall child find responsibility (unless, of course, the district missed timelines for long periods of time, resulting in a denial of services and of FAPE).

Once the evaluation is complete and the parents are provided a copy of the evaluation report, a meeting to develop an IEP after the determination of initial eligibility "must be conducted within 30-days."³¹ Further, the Student's IEP must be implemented "as soon as possible" following this IEP meeting.³²

Review of Child Find Complaints

To determine where schools have encountered problems and successes in their child find duties, 24 special education complaints investigated by the Minnesota Department of Education were reviewed between July 2001 and July 2004.

In the 24 cases, two thirds concerned students in grades 6-12. This suggests that either these were new students to the districts or, for students who have been in the district for a while, the disability is newly developing or the disability went unrecognized. The rest of the 8 complaints involved students in grades PK-5.

For the students involved in these 24 cases, 13 were eventually determined eligible for special education services in EBD, 4 in OHI/OHD, and 1 in ASD³³. A basic review suggests that for the EBD students, significant behavior was overlooked or not addressed, and for the OHI/OHD students, some type of medical or health issues was missed.

Six students did not have a disability classification. In four of these six cases, no violation was found. In the remaining two, there were violations found concerning failing to provide a notice of refusal to evaluate to the parents.

In the eight cases where no violation was found, the district responded appropriately to parent requests,³⁴ continuously monitored the students for special education needs,³⁵ met relevant timelines,³⁶ or the student's academics and other factors did not demonstrate³⁷ the district should have suspected a need for special education services.³⁸

Violations and Corrective Action

The MDE found 16 child find violations in the 24 cases, or 66%. The MDE also ordered corrective action in most of the cases where violations were found.³⁹ In the cases where corrective action was not ordered, the district already remedied the issue by providing services, evaluations, or developing a plan.⁴⁰ Where a district proposed or completed its own corrective action, MDE accepted the proposal, at least in part.⁴¹

The most common corrective action ordered by the MDE included some type of compensatory education (e.g. make up services) and/or training (12 of 16 cases).⁴² The compensatory education awards are designed to remedy the violation for the student, while training and other orders are generally designed to ensure the problem does not happen again. The compensatory education plans were sometimes substantial in length of time and amount of services depending on the severity of the student's disability and time passed between when the district was deemed to have knowledge of the disability and when the student was actually determined eligible.

Other corrective action orders included: opportunities for the student to make up missed or failed classes,⁴³ developing a plan for future services,⁴⁴ and preparing a memo for distribution to staff.⁴⁵ Still other corrective action orders included: reimbursement to parents for evaluation expenses,⁴⁶ correcting incorrect district staff manuals,⁴⁷ conducting an independent evaluation,⁴⁸ conducting an FBA,⁴⁹ incorporating training as part of the

district's continuous improvement process⁵⁰ and informing the Department special education monitors of the violations for future monitoring.⁵¹

Pitfalls and Consequences

In the Child Find process, there are several recurring pitfalls:

- Having comprehensive procedures to catch students who demonstrate sudden or continual changes in a number of areas including academics, attendance, behavior, medical condition, and placements in correctional or care and treatment facilities.
- Responding effectively to “triggering” conditions such as sudden changes at school in grades, behavior, and attendance; a new doctor’s diagnosis; a major behavioral incident; a student entering a new district; and a student failing statewide tests, thus calling graduation into question.
- Complying with evaluation and meeting timelines in the initial evaluation process. Delays of months in responding to evaluation requests or completing evaluations will likely be determined unreasonable.
- Providing formal written notice of a refusal to evaluate to parents who have requested an evaluation.
- Monitoring the success of pre-referral interventions and not using them as a substitute for providing notice of refusal or of initiating a special education evaluation.

Falling into these common pitfalls can land schools and students into some substantial and potentially costly consequences. In their corrective action orders, the MDE is directed by law to remedy the violation and prevent it from occurring again. The MDE also appears to be willing to review and accept school-initiated corrective action and efforts to meet the student’s needs prior to the final issuance of the complaint decision.

- Compensatory education plans, which can be lengthy and extensive in time and services;
- Training of staff;
- Opportunities for the student to make up missed or failed classes;
- Developing a plan for future services;
- Preparing a memo for distribution to staff;
- Reimbursement to parents for evaluation expenses;
- Correcting incorrect district staff manuals;
- Conducting an independent evaluation;
- Conducting an FBA;
- Being subject to addition or focused monitoring; and
- In more serious cases, financial sanctions.

Strategies to Avoid Problems: Lessons from “No Violation Cases”

A strong defense to a child find violation allegation is that the student did not demonstrate any significant changes in academics, attendance, behavior or other triggering conditions.⁵² Minor changes in these areas will not trigger a child find

obligation unless the student starts failing or barely passing classes or shows significant changes in attendance or behavior for example.

Another strong defense is for a school to be able to show that it complied with parent requests in a timely fashion, conducted appropriate pre-referral interventions, completed evaluations and meetings in a timely fashion, and ensured parent notice, consent, and participation.⁵³

Summary

Based on a review of 24 complaints over the last three years, a district is relatively likely to be found in violation in a child find complaint. Most cases involve senior high students, and in most cases a student is eventually determined eligible, with EBD being the most common disability. Where a student is not eventually determined eligible, districts have been found in violation for not providing a notice to the parents indicating the district's refusal to evaluate.

Where violations are found, the MDE is likely to order corrective action in the form of compensatory education and/or training as well as ordering the development of a plan for future services, allowing the student to make up missed or failed classes, or preparing a memorandum for distribution. The MDE appears receptive to district efforts to offer its own corrective action or take steps to address student needs prior to the issuance of the complaint decision.

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¹ Complaints, hearing and policy letters from the Minnesota Department of Education can be searched at the MDE's website at: <http://education.state.mn.us/html/compliancesearchdisplay.htm>

An index and complete text of Minnesota Special Education Rules are available at <http://www.revisor.leg.state.mn.us/arule/3525/>

An index and complete text of Minnesota Special Education Statutes are available at: <http://www.revisor.leg.state.mn.us/stats/125A/>

Federal Special Education Regulations are available at: <http://www.ideapractices.org/law/index.php>

² School districts must have procedures and policies to ensure that all children with disabilities residing in their district, including Indian, homeless or transient children and children in private schools, are identified, located, and evaluated. *See* 34 C.F.R. § 300.111; 34 C.F.R. § 300.131; 34 C.F.R. § 300.712; Minn. R. 3525.0750.

The child find requirement applies to "children who are suspected of being a child with a disability ... in need of special education, even though they are advancing from grade to grade." 34 C.F.R. § 300.111 (c) (1).

³ Minn. R. 3525.1100, Subpart 2 A. Child study procedures for the identification and evaluation of students or other persons suspected of having a disability beginning at birth that include a plan for receiving referrals from parents, physicians, private and public programs, and health and human services agencies. Subpart B. Method of providing the special education services for the identified pupils. The district shall have, as part of the district's TSES plan, a description of the full range of available educational service alternatives. The district's TSES plan shall include: (1) a description of the sites available at which services may occur. Sites describe the building or other location where special education occurs; and (2) a description of the available instruction and related services.

⁴ Minn. R. 3525.1100, Subpt. 2A.

⁵ Minn. Stat. §125A.18

⁶ Department Policy Letter, Students Enrolled in K-12 Nonpublic Schools Outside the Resident District, L225, November 7, 2001.

⁷ MDE Complaint Decision C1812.

⁸ The District must conduct a special education evaluation when a student's "academic, behavioral, emotional, social, physical, communication, or functional skill acquisition in the present educational placement" warranted evaluation. See Minn. R. 3525.2750, subp. 1(A). (repealed)

⁹ MDE Hearing Decisions #577, 578, 584

¹⁰ MDE Hearing Decisions H552, 9/5/03, *Independent Sch. Dist. No. 11*, MDCFL Case No. 282 (August 26, 1998); *Rockwall Indep. Sch. Dist.*, 21 IDELR 403 (SEA TX 1994).

¹¹ See e.g. MDE Complaint Decisions C1642, 1837, 1605, 1548, 1502, 2028, 1897, 1685, 1672, 1717, 1469.

¹² MDE Complaint Decision C1469

¹³ MDE Hearing Decision 586.

¹⁴ MDE Hearing Decision MDE 584M, 3/23/04, <http://education.state.mn.us/140/Hearings/H584M.pdf>, *Department of Education v. Cari Rae S.*, 158 F. Supp. 2d 1190, 35 IDELR 90 (D. Hawaii 2001), quoting *Corpus Christi Independent School District*, 31 IDELR ¶ 41, at 158 (1999).

¹⁵ Incidentally, it is this "deemed" knowledge standard that the complaint and hearing decisions use to determine child find violations regardless if the student is facing disciplinary consequences.

¹⁶ 34 CFR §300.534.

¹⁷ If the District refuses to conduct an initial special education evaluation, the District must comply with the procedural and content requirements in 34 C.F.R. § 300.503

¹⁸ MDE Complaint Decision C1888

¹⁹ *Letter to Saperstone*, 21 IDELR 1127, July 28, 1994.

²⁰ MDE Complaint Decisions C2028 (3 month delay excused because of district attempts to schedule meetings and gain parent consent), C1926 (3 month delay excused because of intervening circumstances including hospitalization of student).

²¹ See e.g. MDE Complaint Decision C1663

²² See 34 CFR § 300.507.

²³ Minnesota Rule 3525.2325, subpart 2 (B) states:

If a regular education student has not been identified as disabled or if the providing district cannot determine if a student has been identified as disabled:

(1) Regular education instruction must begin immediately upon enrollment in the education program.

(2) A screening must be conducted by education staff to determine the student's academic, social, and behavioral needs.

(3) Based on the documented results of the screening, a decision must be made about the need for prereferral interventions or an appropriate special education evaluation according to parts 3525.2550 and 3525.2710. It is not required that an appropriate evaluation be started unless it appears that it can be completed.

(4) During the student's placement, regular education instruction must be provided.

²⁴ Minnesota Statute §125A.56

²⁵ MDE Complaint Decision C1642

²⁶ MDE Complaint Decision C1831

²⁷ Minn. R. 3525.2550

²⁸ Minn. R. 3525.2710, Subpart 6

²⁹ The District must provide notice of the proposed evaluation to parents and must obtain prior informed consent of the parents prior to conducting the evaluation. Minn. R. 3525.2710, subpt. 1.

Districts may use mediation or due process procedures to pursue an initial evaluation if parents refuse consent. Minn. R. 3525.2710, subpt. 1.

Special education services cannot be provided prior to a full evaluation. Minn. R. 3525.2710, subpt. 1.

The evaluation must include a variety of evaluation tools, obtain information from parents, use technically sound instruments, and must not use any one evaluation tool as a sole criterion for determining eligibility. Minn. R. 3525.2710, subpt. 3B.

The evaluation must be administered in the student's native language, be administered in such a way to not be discriminatory, protect against identification because of limited English proficiency, review all areas of suspected disability, use appropriate testing methods conducted by appropriate personnel, and be sufficiently comprehensive. Minn. R. 3525.2710, subpt. 3C.

The IEP team and qualified personnel must review existing evaluation data, information from parents, classroom based information, and other staff observations, and determine, with parental input, what other information is needed to make an eligibility decision. Minn. R. 3525.2710, subpt. 4A.

Following the evaluation, eligibility determinations are made by qualified personnel and the parents, and a copy of the evaluation report must be given to the parents. Minn. R. 3525.2710, subpt. 3D.

The evaluation report must be given to parents within the "specified evaluation timeline" and must, at a minimum, include a summary of evaluation results, documentation of disability, present levels of performance and education needs stemming from the disability, state whether the student needs special education services (or continues to need services), and state whether any changes are needed to existing IEPs. Minn. R. 3525.2710, subpt. 6.

The evaluation process must be sufficient to address all of a student's needs whether or not commonly linked to the student's disability classification. Minn. R. 3525.2710, subpt. 3C (9).

³⁰ MDE Complaint Decision C1971

³¹ 34 CFR §300.323 (c)

³² Id.

³³ MDE Complaint Decision C1971

³⁴ See e.g. MDE Complaint Decision C1926.

³⁵ See e.g. MDE Complaint Decision C1837

³⁶ See e.g. MDE Complaint Decisions C1926, 1838, 1812.

³⁷ See e.g. MDE Complaint Decisions C1477, 1837, 1945

³⁸ Note that the applicable standard is whether the district should have suspected a need for special education services. This is a lower standard than determining the student needed special education.

³⁹ MDE Complaint Decisions C1469, 1465, 1642, 1502, 1605, 1548, 1888, 1831, 2028, 1897, 1685, 1672, 1717, 1662

⁴⁰ MDE Complaint Decision C1971

⁴¹ MDE Complaint Decisions C1971, 1605, 1685

⁴² Training: MDE Complaint Decisions 1888, 1605, 1831, 1897, 1672, 1717, 1662; Compensatory Education: MDE Complaint Decisions 1662, 1672, 1897, 1831, 1548, 1605, 1465, 1469, 1642, 1502

⁴³ MDE Complaint Decisions C1469, 1642, 1502

⁴⁴ MDE Complaint Decisions C1469, 1642,

⁴⁵ MDE Complaint Decisions C1502, 2028

⁴⁶ MDE Complaint Decision C1502

⁴⁷ MDE Complaint Decision C1685

⁴⁸ MDE Complaint Decision C1831

⁴⁹ MDE Complaint Decision C1971

⁵⁰ MDE Complaint Decision C1888

⁵¹ MDE Complaint Decision C1831

⁵² MDE Complaint Decisions C1477, 1837, 1945

⁵³ MDE Complaint Decisions C1926, 1838, 1812, 1801