

Compliance Corner

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Don't Get in a Bind by Ignoring Child Find

School districts across the country have an affirmative duty to locate, identify and evaluate students who are suspected of having a disability. The Individuals with Disabilities Education Act (IDEA) (34 CFR §300.111) requires school districts to have in effect policies and procedures to ensure that-

(a)(1) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located and evaluated...

Child Find must also include-

(c)(1) children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade; and

(c)(2) highly mobile children, including migrant children

Across New Mexico, there are activities in place to assist schools and parents in providing evidence-based interventions for students who are not achieving satisfactorily in academics and/or behavior. These activities are included in the Multi-Layered System of Supports (MLSS), a comprehensive framework providing students with additional supports while receiving robust core instruction and universal supports. MLSS allows for early detection of concerns and monitors the student's responses to targeted interventions. It replaces what is considered the "wait to fail" model, the RtI Framework from 2014. Student progress data is monitored for grade-level standards and provides teachers the ability to use their professional judgment to make data-informed decisions regarding the students in their classrooms. The MLSS model is a more stream-lined framework that removes barriers, including the unnecessary burden of additional paperwork, forms and meetings in order to make decisions regarding layered interventions. Students move more freely among the three levels of interventions based on data.

However, it is important to note that a parent may request an evaluation at any time while these interventions are being implemented. Regardless of where a student is in this

intervention process, a school should timely move forward with the evaluation if there is a suspicion of a disability. Whether the school agrees or rejects the parent's request, a Prior Written Notice must be provided to the parent. IDEA 34 CFR §300.503 states the following:

(a) Written notice... must be given to the parents of a child with a disability a reasonable time before the public agency-

(a)(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(a)(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

If refusing a parental request to evaluate, school staff must be resolute in their decision that there is no suspicion of a disability. It is important to note the threshold is low, and schools would likely benefit by erring on the side of caution when refusing to evaluate. It is also important to note that delaying or refusing to evaluate a student based on the incompleteness or involvement in evidence-based interventions is not an acceptable reason to reject that evaluation.

Many school personnel make the mistake of believing the intervention process must be completed prior to conducting an evaluation. This is simply not true. The Office of Special Education and Rehabilitative Services (OSERS) under the United States Department of Education (USDOE) issued a memo (*A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)*) to all school districts in January 2011 stating the following:

"It is critical that this identification occur in a timely manner and that no procedures or practices result in delaying or denying this identification. It has come to the attention of the Office of Special Education Programs (OSEP) that, in some instances, local educational agencies (LEAs) may be using Response to Intervention (RTI) strategies to delay or deny a timely initial evaluation for children suspected of having a disability. States and LEAs have an obligation to ensure that evaluations of children suspected of having a disability are not delayed or denied because of implementation of an RTI strategy."

Failing to timely evaluate a student when there is a suspicion of a disability or there should have been a suspicion of a disability could result in the denial of a free appropriate public education (FAPE). This, in turn, could result in requiring schools to provide compensatory educational services or tuition reimbursement beginning from the time the evaluation was requested or the staff should have suspected the presence of a disability. It would behoove the school staff to begin the evaluation process while continuing to provide targeted, evidence-based interventions in conjunction with robust core instruction.

The information included herein is not intended to provide legal advice. Should you need legal advice or guidance on any issue involving special education, please contact the appropriate person for your district.