# "CHILD FIND": THE LORE V. THE LAW*

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The relatively extensive and continuing case law illustrates that "child find" under the Individuals with Disabilities Education Act (IDEA)[1] and, as a secondary matter, Section 504 of the Rehabilitation Act[2] is subject to incomplete understanding and implementation.[3] Part of the problem is that the meaning of child find in the original version of the IDEA focused on its collective application[4] whereas the meaning has shifted in recent decades to its individual meaning.[5] To clarify the modern meaning, the following items use a law v. lore approach,[6] comparing prevalent perceptions and practices with an objective synthesis of the relevant

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* This article appeared in *West's Education Law Reporter* (Ed.Law Rep.), v. 307, pp. 574–80 (2014). Updated material is highlighted in yellow.

[1] 20 U.S.C. §§ 1401 *et seq*. (2014).

[2] 20 U.S.C. §§ 705(20) and 794 (2014).

[3] The footnotes of this Article provide an ample sampling of the ongoing pertinent case law. For a recent trends analysis of the frequency and outcomes of the relevant rulings from 1994 through 2016, see Perry A. Zirkel, *Child Find Under the IDEA: An Empirical Analysis of the Judicial Case Law*, 45 COMMUNIQUÉ 4 (May 2017).

[4] The reference to "institutional" in this context refers to the local education agency obligation to provide continuing public notices about the availability of evaluation and services for the many children with disabilities legally or practically excluded from the school system.

[5] As shown *infra*, this modern meaning refers to the obligation to evaluate the child upon reasonable suspicion of eligibility and to proceed from the time of reasonable suspicion to initiate the evaluation, via the requisite consent, within a reasonable period. The specific boundaries of both components are not bright lines. Perry A. Zirkel, *The Law of Evaluations under the IDEA: An Annotated Update*, 297 Ed.Law Rep. 637 (2013) (illustrating the overlap between the period for consent and the subsequent period for completion and between evaluation and FAPE).

[6] E.g., Perry A. Zirkel, *The "Red Flags" of Child Find under the IDEA: Separating the Law from the Lore*, 23 EXCEPTIONALITY 192 (2015); Perry A. Zirkel, *Lore v. Law: Prevailing Beliefs and Objective Knowledge*, 13 PRINCIPAL LEADERSHIP 50 (Oct. 2012). For other applications of this approach, see, e.g., Sarah Betesh, Bridget Brown, Candace Thompson, & Perry A. Zirkel, *Lore Versus Law: The Misconceived IDEA*, 41 COMMUNIQUÉ 8 (Nov. 2012); Lauren Collins & Perry A. Zirkel, *Functional Behavior Assessments and Behavior Intervention Plans: Legal Requirements and Professional Recommendations*, 19 J. POSITIVE BEHAV. INTERVENTIONS 180 (2017); Perry A. Zirkel, *Lore v. Law for School Psychologists*, 41 COMMUNIQUÉ 10 (June 2013); Perry A. Zirkel, *The Common Lore of Section 504*, 54 IN CASE 4 (Summer 2012); Perry A. Zirkel, *Teacher Evaluation: A Case of "Loreful" Leadership?* 13 PRINCIPAL LEADERSHIP 46 (Mar. 2013); Perry A. Zirkel, The Common Lore About RTI, RTI Action Network, http://www.rtinetwork.org/learn/what/common-lore-about-rti].

legislation,[7] regulations,[8] agency interpretations,[9] and case law.[10] The items are grouped into three sequential categories, those that are general, those specific to reasonable suspicion, and the fewer items specific to reasonable period. For each pair of item, the first one, which is in regular font represents the "lore," and the second one, which is in italics, represents the "law." Each contains inevitable variance, and they provide you with the opportunity to examine and assess your own perceptions, practices, and interpretations.

GENERAL

1. **Lore:** The IDEA specifically spells out the modern meaning of child find (i.e., after the original requirement providing access for excluded students with disabilities collectively).

***Law:*** *Not so. The IDEA legislation*[11] *and regulations*[12] *only indirectly and incompletely set forth the modern meaning of child find. Instead, a long line of case law has established this individualized meaning.*

2. **Lore:** The modern, individualized meaning of child find is limited to the obligation to evaluate a child upon reasonable suspicion of eligibility.

***Law:*** *Not quite. The limitation to evaluation, as separate from eligibility, is technically correct,*

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[7] See *supra* notes 1–2.

[8] 34 C.F.R. §§ 300.1 *et seq*. (2015). For the corresponding regulations for Section 504, see 34 C.F.R. §§ 104.1 *et seq*. (2015).

[9] The administering agency for the IDEA within the U.S. Department of Education is the Office of Special Education Programs (OSEP). Its counterpart for Section 504 in relation to students is the Office for Civil Rights (OCR). For a systematic overview, see Perry A. Zirkel, *A Comprehensive Comparison of the IDEA and Section 504/ADA*, 282 Ed.Law Rep. 767 (2012).

[10] The case law here is limited to court decisions, because they—along with the other cited sources—provide the framework for the hearing and review officer decisions, which have relatively negligible precedential weight.

[11] 20 U.S.C. § 1412(a)(3)(A) (2014) (requiring states to identify, locate, and evaluate children with disabilities, including those who are homeless or wards of the state); *id*. § 1412(a)(10)(A) (providing specificity for child find of parentally placed private school children).

[12] 34 C.F.R. § 300.111 (2015) (adding migrant children and "[c]hildren who are suspected of being a child [eligible], even though they are advancing from grade to grade"; *id*. §§ 300.131–300.134 (paralleling statutory specifics for parentally placed private school children) and 300.140 (providing exception from non-jurisdiction of hearing officer process).

*but the courts have added a second, related obligation—to initiate the evaluation process within a reasonable period of time.*[13]

REASONABLE SUSPICION[14]:

3. **Lore:** For the first, reasonable-suspicion obligation, an absolute red flag is a written request from the parent to evaluate the child.

***Law:*** *No. If the district has no reason to suspect that the child is eligible, the district may decline to conduct the evaluation provided that it gives the parents written notice that includes the basis for the refusal and notification of their procedural safeguards.*[15] (*However, in such circumstances, the child is entitled to the IDEA protections against disciplinary changes in placement.*[16])

4. **Lore:** Aside from a parent's formal referral without the district's requisite response, the strongest "red flag" in terms of the courts' review of reasonable suspicion child find claims is low or declining grades.

***Law:*** *No, this factor alone, or even in combination with others, without other connected evidence that would raise a reasonable suspicion of not only 1) the criteria for one or more IDEA classifications, but also 2) the resulting need for special education, more often than not does not suffice, particularly when district personnel provide alternate reasons for such*

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[13] See, e.g., *E.D. v. Colonial Sch. Dist.,* 69 IDELR ¶ 245 (E.D. Pa. 2017); *El Paso Indep. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 236 Ed.Law Rep. 679 (W.D. Tex. 2008); *New Paltz Cent. Sch. Dist. v. St. Pierre*, 307 F. Supp. 2d 394, 186 Ed.Law Rep. 753 (S.D.N.Y. 2004). For OSEP support, see, e.g., Letter to Weinberg, 55 IDELR ¶ 250 (OSEP 2009).

[14] For a more detailed analysis, see Zirkel 2015, *supra* note 6.

[15] 71 Fed. Reg. 46,636 (Aug. 14, 2006) (OSEP commentary accompanying the latest IDEA regulations); Letter to Anonymous, 20 IDELR 998 (OSEP 1998). *But cf.* ***J.Y. v. Dothan City Bd. of Educ.*, 63 IDELR ¶ 33 (M.D. Ala. 2014)** ("The education agency's obligations upon a parent's initiation of a request for evaluation do not depend on whether agency employees would themselves have thought a referral for evaluation to be warranted").

[16] 34 C.F.R. § 300.534(b)(2) (2015).

*performance.*[17] *Instead, the most potent factor in this case law is therapeutic hospitalization.*[18]

5. **Lore:** The use of response to intervention (RTI) or other such intervention leads to district vulnerability to losing litigation based on child find.[19]

***Law:*** *Quite the contrary, in the majority of cases, the use of interventions—whether formally part of an RTI process or, much more often, part of either an earlier school-based systematic process or simply a classroom teacher's individual efforts—has counted against an alleged reasonable-suspicion child find violation.*[20] *The key is whether they have been sufficiently successful.*

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[17] *Compare P.J. v. Eagle-Union Cmty. Sch. Corp.*, 202 F.3d 274 (7th Cir. 1999); *Price v. Upper Darby Sch. Dist.*, 68 IDELR ¶ 214 (E.D. Pa. 2016); *T.C. v. Lewisville Indep. Sch. Dist.*, 67 IDELR ¶ 215, *adopted*, 67 IDELR ¶ 250 (E.D. Tex. 2016); ***Jefferson Cty. Bd. of Educ. v. Lolita S.*, 977 F. Supp. 2d 1091, 304 Ed.Law Rep. 280 (N.D. Ala. 2013)**; *J.S. v. Scarsdale Union Free Sch. Dist.*, 826 F. Supp. 2d 635, 279 Ed.Law Rep. 229 (S.D.N.Y. 2011); *Strock v. Indep. Sch. Dist. No. 281*, 49 IDELR ¶ 273 (D. Minn. 2008); *Reid v. District of Columbia*, 310 F. Supp. 2d 137, 287 Ed.Law Rep. 454 (D.D.C 2004), *rev'd on other grounds,* 401 F.3d 516, 196 Ed.Law Rep. 402 (D.C. Cir. 2005); *Hoffman v. E. Troy Sch. Dist.*, 38 F. Supp. 2d 750, 133 Ed.Law Rep. 897 (E.D. Wis. 1999) (not a violation), *with Jana K. v. Annville-Cleona Sch. Dist.*, 39 F. Supp. 3d 584, 313 Ed.Law Rep. 702 (E.D. Pa. 2014); *El Paso Indep. Sch. Dist. v. Richard R. ex rel. R.R.*, 567 F. Supp. 2d 918, 236 Ed.Law Rep. 679 (W.D. Tex. 2008); *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 234 Ed.Law Rep. 660 (D.D.C. 2008) (violation).

[18] *Compare Krebs v. New Kensington-Arnold Sch. Dist.,* 69 IDELR ¶ 9 (W.D. Pa. 2016); *Lauren G. v. W. Chester Area Sch. Dist.*, 906 F. Supp. 2d 375, 292 Ed.Law Rep. 680 (E.D. Pa. 2012); *Reg'l Sch. Dist. No. 9 Bd. of Educ. v. Mr. M.*, 53 IDELR ¶ 8 (D. Conn. 2009); *Integrated Design & Elec. Acad. v. McKinley*, 570 F. Supp. 2d 28, 237 Ed.Law Rep. 194 (D.D.C. 2008); *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 234 Ed.Law Rep. 660 (D.D.C. 2008); *Heather D. v. Northampton Area Sch. Dist.*, 511 F. Supp. 2d 549, 225 Ed.Law Rep. 571 (E.D. Pa. 2007), *with Munir v. Pottsville Area Sch. Dist.*, 59 IDELR ¶ 35 (E.D. Pa. 2012), *aff'd on other grounds,* 723 F.3d 423, 295 Ed.Law Rep. 529 (3d Cir. 2013).

[19] See, e.g., David W. Walker & David Daves, *Response to Intervention and the Courts: Litigation-Based Guidance*, 21 J. DISABILITY POLICY STUD. 40 (2010).

[20] *Compare Demarcus L. v. Bd. of Educ.*, 63 IDELR ¶ 13 (N.D. Ill. 2014) (RTI); *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 285 Ed.Law Rep. 730 (3d Cir. 2012); *A.P. v. Woodstock Bd. of Educ.*, 370 F. App'x 202, 258 Ed.Law Rep. 58 (2d Cir. 2010); *Bd. of Educ. of Fayette Cty. v. L.M.*, 478 F.3d 307, 216 Ed.Law Rep. 354 (6th Cir. 2007); *E.J. v. San Carlos Elementary Sch. Dist.,* 803 F. Supp. 2d 1024, 274 Ed.Law Rep. 979 (N.D. Cal. 2011); *Jackson v. Nw. Local Sch. Dist.*, 55 IDELR ¶ 71 (S.D. Ohio 2010), *adopted,* 55 IDELR ¶ 104 (S.D. Ohio. 2010), *with Greenwich Bd. of Educ. v. G.M.,* 68 IDELR ¶ 8 (D. Conn. 2016) (RTI); *Cent. Sch. Dist. v. K.C.,* 61 IDELR ¶ 125 (E.D. Pa. 2013); *Hupp v. Switzerland Sch. Dist.,* 912 F. Supp. 2d 572, 293 Ed.Law Rep. 352 (S.D. Ohio 2012); El *Paso Indep. Sch. Dist. v. Richard R. ex rel. R.R.,* 567 F. Supp. 2d 918, 236 Ed.Law Rep. 679 (W.D. Tex. 2008); *Colvin v. Lowndes Cty. Sch. Dist.,* 114 F. Supp. 2d 504, 147 Ed.Law Rep. 601 (N.D. Miss. 1999).

6. **Lore:** Providing the student with a 504 plan is also likely to lead to losing child find litigation.

***Law:*** *In the vast majority of court decisions to date, the districts' implementation of a Section 504 eligibility process, usually with the non-rigorous result of a 504 plan, has not been a major contributing factor to the judicial outcome of the case.*[21] *The limited exception may be within the context of a disciplinary change in placement to the extent that in a recent unpublished decision the court interpreted the 504 eligibility meeting as triggering protection when a "teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the . . . other supervisory personnel of the agency."*[22]

7. **Lore:** The reasonable-suspicion meaning of child find applies to disciplinary changes in placement, i.e., the "deemed to know" child protection.

***Law:*** *This conclusion may no longer be legally valid. The reason is that in the most recent IDEA amendments, Congress—while keeping the parent- and personnel-triggering protections—eliminated the one where "the behavior or performance of the child demonstrates the need for such services."*[23] *However, unless the defendant district cogently raises this argument, courts*

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[21] See, e.g., *R.E. v. Brewster Cent. Sch. Dist.*, 180 F. Supp. 3d 262, 337 Ed.Law Rep. 62 (S.D.N.Y. 2016); *D.G. v. Flour Bluff Indep. Sch. Dist*., 481 F. App'x 887, 286 Ed.Law 131 (5th Cir 2012); *Scarsdale Union Free Sch. Dist. v. R.C*., 60 IDELR ¶ 195 (S.D.N.Y. 2013); *Munir v. Pottsville Area Sch. Dist*., 59 IDELR ¶ 35 (E.D. Pa. 2012), *aff'd on other grounds,* 723 F.3d 423, 295 Ed.Law Rep. 529 (3d Cir. 2013); *Simmons v. Pittsburg Unified Sch. Dist.*, 63 IDELR ¶ 158 (N.D. Cal. 2014); *Strock v. Indep. Sch. Dist*., 49 IDELR ¶ 273 (D. Minn. 2008). However, after a sufficient period of time the 504 plan proves to be ineffective, this factor switches direction in terms of a child find violation. See, e.g., *Simmons v. Pittsburg Unified Sch. Dist*., 63 IDELR ¶ 158 (E.D. Cal. 2014).

[22] *Anaheim Union High Sch. Dist. v. J.E*., 61 IDELR ¶ 107 (E.D. Cal. 2013).

[23] 20 U.S.C. § 1415(k)(5)(B) (2014). For a more comprehensive comparison of the changes in the 2004 IDEA amendments and the 2006 IDEA regulations, see Perry A. Zirkel, *Suspensions and Expulsions of Students with Disabilities: The Latest Requirements*, 214 Ed.Law Rep. 445 (2007). For deemed to know cases prior to the latest regulations, see, e.g., *S.W. v. Holbrook Pub. Sch.,* 221 F. Supp. 2d 222, 170 Ed.Law Rep. 565 (D. Mass. 2002); *Colvin Lowndes Cty. Sch. Dis*t., 114 F. Supp. 2d 504, 147 Ed.Law Rep. 601 (N.D. Miss. 1999).

*are not likely to recognize and rely on this nuance.*[24]

8. **Lore:** For courts, in determining reasonable suspicion, the opinions of outside experts, such as physicians, psychologists, and professors generally has more weight than those of teachers and other school personnel.

***Law:*** *In general, courts give more credence to the school personnel because the controlling criteria are expertise in the need for special education and familiarity with the child in the school context.*[25] *The outside experts often fall short based on these criteria.*[26]

REASONABLE PERIOD[27]:

9. **Lore:** Once the district has the requisite reasonable suspicion, the reasonable period to request parental consent for the evaluation is approximately 1–2 weeks.

***Law:*** *No. The reasonable period varies considerably depending on the particular*

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[24] See, e.g., *Artichoker v. Todd Cty. Sch. Dist.*, 69 IDELR ¶ 58 (D.S.D. 2016).

[25] See, e.g., *Richard S. v. Wissahickon Sch. Dist.*, 334 F. App'x 508, 249 Ed.Law Rep. 755 (3d Cir. 2009); *Price v. Upper Darby Sch. Dist.*, 68 IDELR ¶ 214 (E.D. Pa. 2016); *J.S. v. Scarsdale Union Free Sch. Dist.*, 826 F. Supp. 2d 635, 279 Ed.Law Rep. 229 (S.D.N.Y. 2011); *E.J. v. San Carlos Elementary Sch. Dist.*, 803 F. Supp. 2d 1024, 274 Ed.Law Rep. 979 (N.D. Cal. 2011); *Krista P. v. Manhattan Sch. Dist.*, 255 F. Supp. 2d 873, 176 Ed.Law Rep. 671 (N.D. Ill. 2003); *Hoffman v. E. Troy Sch. Dist.*, 38 F. Supp. 2d 750, 133 Ed.Law Rep. 897 (E.D. Wis. 1999).

[26] See, e.g., *Perrin v. Warrior Run Sch. Dist.*, 66 IDELR ¶ 225 (M.D. Pa. 2015); *Demarcus L. v. Bd. of Educ.*, 63 IDELR ¶ 13 (N.D. Ill. 2014); *Daniel P. v. Downingtown Area Sch. Dist.*, 57 IDELR ¶ 224 (E.D. Pa. 2011).

[27] For a more detailed analysis, see Perry A. Zirkel, *Child Find: The "Reasonable Period" Requirement*, 311 Ed. Law Rep. 576 (2015).

*circumstances of the case, but a 1–2 week period is stricter than the courts find to be fatal.*[28]

10. **Lore:** Even if the district exceeds the reasonable period standard, it is a *per se*, i.e., automatic substantive violation of the IDEA.

***Law:*** *No, the courts consider the violation to be procedural, thus in some cases—depending on the circumstances—amounting to harmless error.*[29]

MISCELLANEOUS OTHER:

11. **Lore:** If the court concludes that the district violated its child find obligation, the remedy is limited to an order to evaluate the child.

***Law:*** *In some cases, an evaluation order may be the remedy.*[30] *However, because the district violated its duty for a timely evaluation and other events have typically transpired before the court's decision, the consequences—depending on subsequent circumstances—may warrant*

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[28] For violations, see, e.g., *C.C. v. Beaumont Indep. Sch. Dist*., 65 IDELR ¶ 109 (E.D. Tex. 2015) (3.5 mos. until obtaining consent); *A.W. v. Middletown Area Sch. Dist*., 65 IDELR ¶ 9 (E.D. Pa. 2015) (approx. 11 months until initiating the evaluation); *Long v. District of Columbia*, 780 F. Supp. 2d 49, 270 Ed.Law Rep. 664 (D.D.C. 2011) (2.6 years until completion of evaluation); *D.A. v. Houston Indep. Sch. Dist.*, 716 F. Supp. 2d 603 (N.D. Tex. 2009), *aff'd on other grounds*, 629 F.3d 450, 264 Ed.Law Rep. 50 (5th Cir. 2010) (2 months until initiating evaluation); *Reg'l Sch. Dist. No. 9 Bd. of Educ. v. Mr. M*., 53 IDELR ¶ 8 (D. Conn. 2009) (almost 7 months until initiating evaluation); *El Paso Indep. Sch. Dist. v. Richard R. ex rel. R.R*., 567 F. Supp. 2d 918, 236 Ed.Law Rep. 679 (W.D. Tex. 2008) (13 months until initiating evaluation). For non-violations, see, e.g., *W.A. v. Hendrick Hudson Sch. Dist.,* 219 F. Supp. 3d 421 (S.D.N.Y. 2016) (2.5 months); *Dallas Indep. Sch. Dist. v. Woody*, 178 F. Supp. 3d 443, 336 Ed.Law Rep. 786 (N.D. Tex. 2016) (3 months until offering and 7 months until completing evaluation); *M.N. v. Katonah-Lewisboro Unified Free Sch. Dist*., 68 IDELR ¶ 158 (S.D.N.Y. 2016) (2 months).

[29] See, e.g., *P.P. v. W. Chester Area Sch. Dist*., 585 F.3d 727, 250 Ed.Law Rep. 517 (3d Cir. 2009) (student would have remained in private school); *T.B. v. Prince George's Cty. Bd. of Educ.*, 70 IDELR ¶ 47 (D. Md. 2016) (not special education need); *Horen v. Bd. of Educ*., 63 IDELR ¶ 264 (N.D. Ohio 2013) (parents refused to participate in the entire process); *Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 270 Ed.Law Rep. 664 (D.D.C. 2011) (parents refused consent); *E.M. v. Pajaro Valley Unified Sch. Dist*., 53 IDELR ¶ 41 (N.D. Cal. 2008) (court upheld district's resulting determination that student was not eligible).

[30] See, e.g., *E.D. v. Colonial Sch. Dist.,* 69 IDELR ¶ 245 (E.D. Pa. 2017); *Artichoker v. Todd Cty. Sch. Dist*., 69 IDELR ¶ 58 (D.S.D. 2016); *Indep. Sch. Dist. No. 413 v. H.M.J*., 123 F. Supp. 3d 1100, 327 Ed.Law Rep. 213 (D. Minn. 2015); *Scott v. Dist. of Columbia*, 45 IDELR ¶ 160 (D.D.C. 2006); *Colvin Lowndes Cty. Sch. Dis*t., 114 F. Supp. 2d 504, 147 Ed.Law Rep. 601 (N.D. Miss. 1999); *Paul T. v. S. Huntington Union Free Sch. Dist.*, 14 N.Y.S.3d 627, 320 Ed.Law Rep. 373 (Sup. Ct., Suffolk Cty. 2015).

*compensatory education*[31] *or even tuition reimbursement.*[32] *Moreover, the court may also award attorneys' fees*.[33]

12. **Lore:** If the court concludes not only that the district violated its child find obligation but also that the child was not eligible, the parent is still entitled to compensatory education and/or attorneys' fees.

***Law:*** *Not necessarily, depending on the court. In the lead case contrary to this view, the Fifth Circuit ruled that neither compensatory education nor attorneys' fees were available because the violation was a harmless procedural error, reasoning that "[the] IDEA does not penalize school*

[31] See, e.g., *Krawietz v. Galveston Indep. Sch. Dist.,* 69 IDELR ¶ 207 (S.D. Tex. 2017); *Brandywine Area Sch. Dist. v. B.M.*, 69 IDELR ¶ 202 (E.D. Pa. 2017); *Cent. Sch. Dist. v. K.C.,* 61 IDELR ¶ 125 (E.D. Pa. 2013); *M.J.C. v. Special Sch. Dist. No. 1*, 58 IDELR ¶ 288 (D. Minn. 2012); *Long v. Dist. of Columbia*, 780 F. Supp. 2d 49, 270 Ed.Law Rep. 664 (D.D.C. 2011).

[32] See, e.g., *Greenwich Bd. of Educ. v. G.M.,* 68 IDELR ¶ 8 (D. Conn. 2016); *Scarsdale Union Free Sch. Dist*., 60 IDELR ¶ 195 (S.D.N.Y. 2013); *N.G. v. District of Columbia*, 556 F. Supp. 2d 11, 234 Ed.Law Rep. 660 (D.D.C. 2008).

[33] See, e.g., *Williamson Cty. Bd. of Educ. v. C.K.*, 52 IDELR ¶ 288 (M.D. Tenn. 2009).

*districts for not timely evaluating students who do not need special education."*[34]

13. **Lore:** For students in private schools, child find only applies to parentally placed (i.e., voluntarily w/o any claim of eligibility or FAPE), not unilaterally placed, students, and this child find obligation applies only to the district where the private school is located.

***Law:*** *No. For parentally placed students, the 2004 amendments of the IDEA imposed a child find obligation for the limited equitable-participation purpose on the district of location.*[35] *However, the district of residence continues to have the more general child find obligation to any student in a private school upon parental request for "the purpose of having a program of FAPE*

[34] *D.G. v. Flour Bluff Indep. Sch. Dist*., 481 F. App'x 887, 893, 286 Ed.Law Rep. 13 (5th Cir 2012). More specifically, the court concluded: "Because D.G. was not 'eligible for IDEA's benefits' during the ninth grade—the 2008–09 school year—he may not recover for the [district's] not evaluating him at that time." *Id*. For cases that are partially relevant, see *S.H. v. Lower Merion Sch. Dist*., 729 F.3d 248, 297 Ed.Law Rep. 58 (3d Cir. 2013) (rejecting child find claim where parent asserted and district acknowledged misidentification); *T.B. v. Bryan Indep. Sch. Dist*., 628 F.3d 240, 263 Ed.Law Rep. 490 (5th Cir. 2010) (denying attorneys' fees where hearing officer ordered evaluation, including possible child find violation, but evaluation had not yet occurred); *D.S. v. Neptune Twp. Bd. of Educ*., 264 F. App'x 186, 232 Ed.Law Rep. 107 (3d Cir. 2008) (denying attorneys' fees where parent obtained hearing officer decision ordering IEE and evaluation but district ultimately determined child was not eligible under the IDEA); *D.F. v. Sacramento Unified Sch. Dist*., 63 IDELR ¶ 164 (E.D. Cal. 2014) (denying attorneys' fees where hearing officer ruled that district's did not provide requisite timely evaluation but also that child was not eligible); *Cent. Sch. Dist. v. K.C*., 61 IDELR ¶ 125 (E.D. Pa. 2013) (dicta that student would not be entitled to ensatory education if determined ineligible under the IDEA); *Henry v. Friendship Edison P.C.S.,* 880 F. Supp. 2d 5, 287 Ed.Law Rep. 896 (D.D.C. 2012) (denying attorneys' fees where hearing officer found child find violation and ordered evaluation and denied other requested relief, but either due to lack of consent or other reasons the evaluation had not been implemented); *J.P. v. Anchorage Sch. Di*st., 260 P.3d 285, 271 Ed.Law Rep. 1077 (Alaska 2011) (reimbursement of IEE but not for tutoring). *But cf. M.A. v. Torrington Bd. of Educ*., 980 F. Supp. 2d 245, 304 Ed.Law Rep. 384 (D. Conn. 2013), *further proceedings*, 980 F. Supp. 2d 279, 304 Ed.Law Rep. 418 (D. Conn. 2014) (denying tuition reimbursement where not eligible under IDEA but granting partial attorneys' fees); *Boose v. District of Columbia*, 786 F.3d 1054, 318 Ed.Law Rep. 43 (D.C. Cir. 2014) (ruling the child find issue is not moot in terms of compensatory education where district subsequently conducted the evaluation, found the child eligible, and provided an IEP). A recent amendment to the special education regulations in the state of Washington, which extends to definition of eligible student for the purpose of providing the requisite procedural safeguards, would not seem, in that jurisdiction, to change the substantive effect of this line of case law. WASH. ADMIN. CODE § 392-172A-01035(1)(b) (2012).

[35] 20 U.S.C. § 1412(a)(10)(A)(ii)(II) (2014). This obligation may extend to full FAPE based on state law. E.g., S*pecial Sch. Dist. No. 1 v. R.M.M*., __ F.3d __ (8th Cir. 2017).

*made available [by the district] to the child."*[36] *Moreover, this obligation extends to children in private schools whose parents are residents of other countries.*[37]

14. **Lore:** Child find does not extend to a) migrant students, b) homeless children, c) preschool children, or d) home-schooled students.

***Law:*** *Correct in terms of home-schooled children only.*[38] *Child find clearly extends to migrant, homeless, and other school-age children even if not enrolled.*[39] *It also applies to preschool children.*[40]

15. **Lore:** Section 504 does not provide a corresponding individualized obligation of child find.

***Law:*** *Quite the contrary, both the regulations and the courts make sufficiently clear that child find applies for the broader definition of disability under Section 504 just as it does for the narrower scope of eligibility under the IDEA. The Section 504 regulations expressly require evaluation for individuals who, by reason of an impairment that substantially limits a major life activity "need or are believed to need special education or related services."*[41] *Similarly, the*

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[36] For supporting case law, see, e.g., *District of Columbia v. Vinyard*, 971 F. Supp. 2d 103, 302 Ed.Law Rep. 1064 (D.D.C. 2013); *I.H. v. Cumberland Valley Sch. Dist.*, 842 F. Supp. 2d 763, 281 Ed.Law Rep. 1057 (M.D. Pa. 2013); *J.S. v. Scarsdale Union Free Sch. Dist.,* 826 F. Supp. 2d 635, 279 Ed.Law Rep. 229 (S.D.N.Y. 2011); *Dist. of Columbia v. Abramson*, 493 F. Supp. 2d 80 (D.D.C. 2007); *cf. R.M.M. v. Minneapolis Pub. Sch.*, 70 IDELR ¶ 64 (D. Minn. 2017) (for purposes of equitable services or FAPE under state law); *Moorestown Twp. Bd. of Educ. v. S.D.*, 811 F. Supp. 2d 1057, 222 Ed.Law Rep. 207 (D.N.J. 2011) (student with IEP, thus effectively reevaluation). For the latest repetition of OSEP Policy, see Letter to Eig, 52 IDELR ¶ 136 (OSEP 2009).

[37] Letter to Sarzynski, 66 IDELR ¶ 51 (OSEP 2015).

[38] 34 C.F.R. § 300.300(d)(4) (2015); *see also Fitzgerald v. Camdenton R-III Sch. Dist.*, 439 F.3d 773, 206 Ed.Law Rep. 837 (8th Cir. 2006); *Durkee v. Livonia Cent. Sch. Dist.*, 487 F. Supp. 2d 313, 221 Ed.Law Rep. 129 (W.D.N.Y. 2007).

[39] See *supra* notes 11–12. See, e.g., *Hawkins v. District of Columbia*, 539 F. Supp. 2d 108, 231 Ed.Law Rep. 76 (D.D.C. 2008) (ruling that district violated child find for student who was resident of the district but who did not enroll in school).

[40] See, e.g., *Metro. Nashville & Davidson Cty. Sch. Sys. v. Guest*, 900 F. Supp. 905, 104 Ed.Law Rep. 634 (M.D. Tenn. 1995). The required age range now starts at age 3, whereas at the time of this case, it was optional for each state at the preschool level. The outcome is the same.

[41] 34 C.F.R. § 104.35 (2013) (emphasis added). The accompanying procedural safeguards regulation repeats this quoted language. *Id.* § 104.36.

*courts have concluded that Section 504 imposes an individualized child find duty upon school districts. For example, citing Third Circuit precedents, a federal district court in Pennsylvania ruled: "In establishing a [Section 504] claim, a plaintiff must demonstrate that the defendants knew or should have known about the disability."*[42] *As an example of corresponding agency enforcement, OCR recently found a district in violation of its child find obligation under Section 504, resulting in a resolution agreement that included as the remedy compensatory education and staff training.*[43]

[42] *D.G. v. Somerset Hills Sch. Dist.*, 559 F. Supp. 2d 484, 496, 235 Ed.Law Rep. 112 (D.N.J. 2008) (emphasis added) (refusing to dismiss IDEA-alternative § 504 claim for student with depressive disorder). For other examples where courts recognized this duty but decided in favor of the district for an insufficient factual foundation, see *B.M. v. S. Callaway R-II Sch. Dist.*, 732 F.3d 882, 297 Ed.Law Rep. 712 (8th Cir. 2013) (summarily rejecting §504 claim where district' efforts to evaluate the student with behavioral problems under the IDEA did not amount to bad faith or gross misjudgment); *G.C. v. Owensboro Pub. Sch.*, 711 F.3d 623, 290 Ed.Law Rep. 527 (6th Cir. 2013) (summarily rejecting sole § 504, i.e., w/o IDEA, child find claim for student with behavioral problems).

[43] Gadsden Cty. (NC) Pub. Sch., 65 IDELR ¶ 22 (OCR 2014).