

# Child Find

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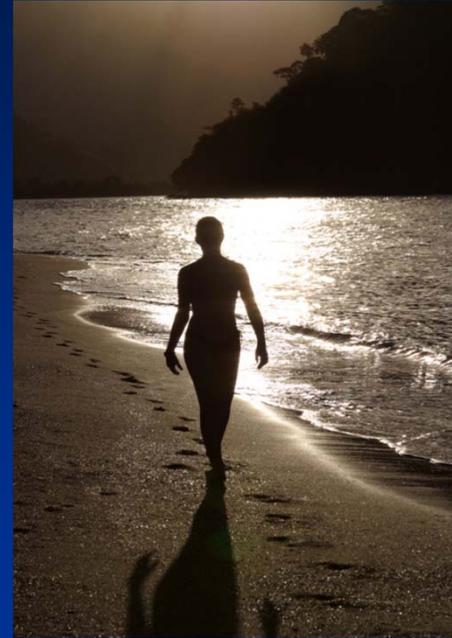
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**Child Find**  
**The Basic Standards For When The Duty**  
**To Evaluate A Child Suspected Of**  
**Having A Disability Arises**

# Child Find - Introduction

- The most fundamental of concepts in IDEA, and it is well recognized by the Courts.
- In Forest Grove School District, 129 S.Ct. 2484 (2009), the Supreme Court commented ...

# Child Find - Introduction

“...IDEA’s ‘child find’ requirement, pursuant to which States are obligated to ‘identif[y], locat[e], and evaluat[e] [a]ll children with disabilities residing in the State’ to ensure that they receive needed special-education services.”

# Child Find - Introduction

“A reading of the Act that left parents without an adequate remedy when a school district unreasonably failed to identify a child with disabilities would not comport with Congress’ acknowledgment of the paramount importance of properly identifying each child eligible for services.”

# Statutory Language

## CHILD FIND

- Who
  - All children residing in the State, including:
    - Homeless children
    - Wards of the State
    - Private school students
- What
  - Locate
  - Identify
  - Evaluate

20 U.S.C. § 1412(a)(3)(A)

# Statutory Language

Be Sure To Include ALL Private School Children

“(ii) CHILD FIND REQUIREMENT. –

“(I) IN GENERAL. – The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.

“(II) EQUITABLE PARTICIPATION. – The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

“(III) ACTIVITIES. – In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency’s public school children.

# Statutory Language

## COST

“The cost of carrying out [child find], including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

## TIMELINE

“Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

20 U.S.C. § 1412(a)(10)(A)(ii)

# Federal Regulations

## § 300.111 Child find.

(a) *General.* (1) The State must have in effect policies and procedures to ensure that--

(i) 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; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

34 C.F.R. § 300.111(a)

# Federal Regulations

## § 300.111 Child find. (contd.)

(c) *Other children in child find.* Child find also must include—

(1) Children who are suspected of being a child with a disability under Sec. 300.8 and in need of special education, even though they are advancing from grade to grade; and

(2) Highly mobile children, including migrant children.

34 C.F.R. § 300.111(c)

# Child Find – State of Wyoming Rules

## Section 4. Identification, Evaluation, and Eligibility Determinations.

(a) Child find. Consistent with 34 C.F.R. §300.111, each school district or public agency **shall adopt and implement policies and procedures** to ensure that all children with disabilities who reside within the school district's or public agency's educational jurisdiction, **including children with disabilities attending private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities, children who are highly mobile, and children who are advancing from grade to grade, regardless of the severity of their disability**, and who are in need of special education and related services, are located, evaluated and identified in compliance with all applicable requirements of IDEA, including but not limited to 34 C.F.R. §300.111, 300.131, 300.301 through 300.306 and these WDE rules and standards.

# Child Find – State of Wyoming Rules

- Wyoming Rules incorporate important federal provisions and specifically include:
  - Private school students
  - Students in facilities such as residential and day treatment centers, hospitals, mental health facilities, detention and corrections settings
  - Highly mobile children
  - Children advancing from grade to grade
- Policies and Procedures Required

# Child Find – State of Wyoming Rules

## Section 4. Identification, Evaluation, and Eligibility Determinations.

(Cont.)

(i) School districts or public agencies must provide parents with **public notice of its child find activities** pursuant to 34 C.F.R. §300.612(b).

(ii) School districts or public agencies must implement procedures to **ensure protection of the confidentiality** of any personally identifiable information collected, used, or maintained in child find activities in accordance with the federal regulations, including but not limited to 34 C.F.R. § §300.32, 300.134 and 300.610 through 300.627.

# Child Find – State of Wyoming Rules

## Section 4. Identification, Evaluation, and Eligibility Determinations.

(iii) Consistent with 34 C.F.R. § §300.130 through 300.144, if a child is parentally enrolled in a private elementary or secondary school outside the boundaries of the school district or public agency in which the student is living, **the school district or public agency where the private school is located is responsible for child find activities, evaluations, and provisions of services.**

(iv) School districts and public agencies shall coordinate child find responsibilities for children ages birth through two (2) with early intervention providers or agencies.

# Child Find – Identify, Locate, Evaluate

- Affirmative, ongoing obligation.
- Identify, locate and evaluate.
- Residing within the jurisdiction.
- Have or are suspected of having disabilities.
- Are in need of special education and related services.

# Child Find – Identify, Locate, Evaluate

- Failing to meet child find requirements is serious, as it can deprive a student of FAPE
- Private school tuition remedy for failure.

# Child Find – Identify, Locate, Evaluate

- Forest Grove School District, 541 IDELR 237 (OR SEA, 2010).
- 12-year old student with a history of eligibility (communication disorder).
- During 6<sup>th</sup> grade, grades dropped from As and Bs to Cs, Ds and Fs.
- At beginning of 7<sup>th</sup> year and again in December, parents informed school officials of ADHD diagnosis.
- District drafted a 504 plan in January.
- Did not refer for special education evaluation until February 10.
- Had missed 29 days of school; 24 disciplinary referrals; expelled on February 22.

# Child Find – Identify, Locate, Evaluate

- Oregon Education Department concluded:
  - District had ample reason to suspect that this child might have a disability.
  - Trouble focusing in class, had poor grades and work completion habits, was skipping school, was defiant and disruptive.
  - By the time the district moved to consider interventions, the student was failing a number of classes and being disciplined frequently.
  - District should have suspected the child had a disability and proceeded with the evaluation process.

# Child Find – Parent Consent

- Parent is not required to request that a district identify and evaluate a child.
- Parent's failure to request identification or evaluation does not relieve a district of its child find obligation.
- Parent who has revoked consent for a child who has previously received special education and related services is not treated any differently in the child find process.

# Child Find – Parent Consent

- Except, when parent refuses consent to initial provision of services or fails to respond to request for consent, LEA is not liable for failure to provide a FAPE *and* is not required to convene an IEP Team meeting or develop an IEP
  - 20 U.S.C. §1414(a)(1)(D)(ii)

# Child Find

- *Cudjoe v. Ind. Sch. Dist. No. 12*, 297 F.3d 1058 (10<sup>th</sup> Cir. 2002): a student who had never been evaluated for special education eligibility was required to exhaust administrative remedies under IDEA for claims of educational deficiencies based on disability discrimination before filing a civil suit

# Child Find

- Epstein-Barr virus required homebound services from 5<sup>th</sup> to 11<sup>th</sup> grade
- No showing of ineligibility under IDEA although eligible for Section 504
- Basis of discrimination claims was tardy provision of teaching materials, District's teacher selections, and attendance at 504 meetings of psychologists and assistant superintendent

# Child Find

- A student with a disability seeking relief for educational injuries must plead and show exhaustion of administrative remedies or unavailability of relief under IDEA

# Child Find

- “Although the school bears the burden generally in identifying eligible students for IDEA . . . A parent has the right to ‘present [a] complaint [] with respect to *any matter relating to* the identification [or] evaluation” of a child, *id.* §1415(b)(6)(emphasis added), including a school’s failure to evaluate or identify a child.”

# Child Find

- In order to prove a child find violation, the parent needs to show the district knew or should have known that the child was a student with a disability. See D.K., et al., v. Abington School District, 54 IDELR 119 (U.S. District Court, ED PA, 2010).

# Child Find

- If a parent can prove that the district ignored the basic red flags and failed to evaluate the student within a reasonable period of time, an IHO may rule that the district violated the IDEA's "child find" provisions. See Deer Creek-Mackinaw Community Unit School District 701, 54 IDELR 138 (IL SEA, 2010).
  - Student's grades
  - Hospitalizations
  - Behavior

# Child Find

- Ignoring academic struggles, especially when combined with behavioral or emotional difficulties is problematic. See Compton Unified School District, 598 F.3d 1181 (9<sup>th</sup> Cir. 2010).
  - 9<sup>th</sup> grader (2002-03) had very poor grades and scored below the 1<sup>st</sup> percentile on standardized tests. Performance was at a 4<sup>th</sup> grade level.
  - Student failed every academic subject in the 10<sup>th</sup> grade.
  - Counselor considered this to be a “red flag.”

# Child Find

- Teachers said her work was “gibberish and incomprehensible.”
- Refused to enter class, colored with crayons at her desk and urinated on herself in class.
- Mother was reluctant to have student “looked at.”  
Mental health counselor recommended assessment for LD.
- No district action.
- Parents submitted written request for educational assessment and IEP meeting.

# Child Find

- IEP team determined she was eligible for special education services.
- Family sought compensatory educational services.
- ALJ found for the student. District court affirmed.
- 9<sup>th</sup> Circuit affirmed and upheld the district court's award of attorney's fees.

# Child Find

- Failure to acknowledge disciplinary referrals as triggers of child find obligations. See Family Foundation Academy Charter School, 54 IDELR 207 (DE SEA 2010).

# Child Find

- The standard for triggering a child find obligation is suspicion, rather than factual knowledge.
- District should have evaluated a 16-year old student after her placement in a psychiatric hospital.
- See Regional School District #9 v. Mr. & Mrs. M., 53 IDELR 8 (U.S. District Court, CT, 2009).

# Initial Evaluations

- A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation . . . before the initial provision of special education and related services to a child with a disability under this part.
  - 20 U.S.C. § 1414(a)(1)(A)

# Initial Evaluations

- . . . either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.
  - 20 U.S.C. § 1414(a)(1)(B)

# Initial Evaluations

- Such initial evaluation shall consist of procedures –
  - (I) to determine whether a child is a child with a disability . . . within 60 days of receiving parental consent for the evaluation [unless state law establishes a different timeframe]; and
  - (II) to determine the educational needs of the child.

- 20 U.S.C. § 1414(a)(C)

# Initial Evaluations

- Informed parental consent is required
- Consent to initial evaluation is not consent for receipt of services
  - 20 U.S.C. §1414(a)(1)(D)(i)

# Initial Evaluations

- The determination of whether a child qualifies for special education “shall be made by a team of qualified professionals and the parent of the child . . . and a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.”
  - 20 U.S.C. §1414(b)(4)

# Initial Evaluations

- Children are not eligible “if the determinant factor for such determination is –  
(A)lack of appropriate instruction in reading, including in the essential components of reading instruction  
(B)lack of instruction in math; or  
(C)limited English proficiency.”  
- 20 U.S.C. §1414(b)(5)

# Initial Evaluations

- Initial evaluations must include a review of existing evaluation data, information from parents, and current assessments and observations
  - 20 U.S.C. §1414(c)(1)(A)

# Initial Evaluations

- On the basis of that review and parental input, Team must identify any additional data needed to determine:
  - Whether child is eligible
  - Child's educational needs
  - Present levels of achievement and needs
  - Services needed to meet goals and participate in general education curriculum
    - 20 U.S.C. §1414(c)(1)(B)

# Wyoming Rules – Initial Evaluation

- Parents, school districts or public agencies may request initial evaluation
- Schools shall establish procedures to request initial evaluation
- “If a comprehensive initial evaluation is determined warranted, consent must be obtained . . . and the evaluation must be conducted consistent with [federal regulations].”

# Wyoming Rules – Initial Evaluation

- “If the school district . . . does not suspect that the child has a disability and refuses a parent’s request for an initial evaluation, the school district . . . must provide written notice to the parent consistent with [federal regulations]. The parent may challenge the refusal by utilizing the dispute resolution procedures in these rules.”
  - Wy. R. § 4(b)(i)

# Child Find

## The Discipline Protections For Students Not Yet Identified As Eligible

# Not Yet Identified As Eligible

(a) General. A **child who has not been determined to be eligible** for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, **may assert any of the protections provided for in this part if the public agency had knowledge** (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

34 C.F.R. § 300.534(a)

# Not Yet Identified As Eligible

- Student facing disciplinary action may claim the IDEA procedural safeguards if –
  - The district had knowledge BEFORE the behavior that precipitated the disciplinary action occurred.

# Not Yet Identified As Eligible

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred--

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to Sec. Sec. 300.300 through 300.311; or

# Not Yet Identified As Eligible

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

34 C.F.R. § 300.534(b)

# Not Yet Identified As Eligible

- If the district knew or should have known the student had a disability under any of those three circumstances, student may secure protection available to IDEA-eligible children.
- This includes the right to stay-put.

# Not Yet Identified As Eligible

- (c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if--
- (1) The parent of the child--
    - (i) Has not allowed an evaluation of the child pursuant to Sec. Sec. 300.300 through 300.311; or
    - (ii) Has refused services under this part; or
  - (2) The child has been evaluated in accordance with Sec. Sec. 300.300 through 300.311 and determined to not be a child with a disability under this part.

34 C.F.R. § 300.534(c)

# Not Yet Identified As Eligible

No knowledge if –

- Parent has not allowed an evaluation, or
- Parent has refused services, or
- Child has been evaluated and determined not to be eligible.

# Not Yet Identified As Eligible

(d) Conditions that apply if no basis of knowledge.

(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

(2)

(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Sec. 300.530, the evaluation must be conducted in an expedited manner.

# Not Yet Identified As Eligible

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of Sec. Sec. 300.530 through 300.536 and section 612(a)(1)(A) of the Act.

34 C.F.R. § 300.534(d)

# Not Yet Identified As Eligible

- If no basis of knowledge, no IDEA protections are available when the district disciplines a disabled student the same way it would discipline a non-disabled student for similar misconduct.

# Not Yet Identified As Eligible

- If no basis of knowledge, a district must conduct an expedited evaluation of the parent's request.
- Pending the evaluation, though, the child will remain in the educational setting determined by the district.
  - This can be suspension or expulsion.

# Child Find – Disciplinary Protections

- See *Forest Grove School District*, 541 IDELR 237 (OR SEA, 2010).
- Procedural safeguards are triggered when a parent expresses concern in writing or teachers express concern.
- The expulsion was for an incident that occurred on January 28, 2010.
- Here, the parents did not express concern in writing before the January 28, 2010 suspension.

# Child Find – Disciplinary Protections

- Rather, the parents asked for “assessment data” to “help the student” on January 7, 2010.
- The Department concluded that the parents’ “assessment data” request was enough to constitute a request for a special education evaluation.
- District had knowledge. Disciplinary procedural safeguards should have applied.

# Child Find

## The New Response To Intervention Eligibility Requirements

# Child Find and RtI

- In determining eligibility for specific learning disability, “a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.”

# Child Find and RtI

- “In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures . . .”
  - 20 U.S.C. §1414(b)(6)(2004).

# Child Find and RtI

- SLD criteria adopted by the State
  - Must not require the use of a severe discrepancy
  - Must permit the use of an RTI process and
  - May permit the use of other alternative research-based procedures to determine SLD
    - 34 C.F.R. § 300.307

# Child Find and RtI

- Wyoming has adopted rules that permit SLD eligibility determinations to be made on the basis of *either* a significant discrepancy pursuant to a specified formula *or* a response to intervention process
  - Wy. R. Ch. 7, §4(d)(x)(E)

# Child Find and RtI

- “The group may determine that the child does not make sufficient progress to meet age or Wyoming grade-level standards in one (1) or more of the [enumerated] areas . . . When using a process based on the child’s response to scientific, research-based intervention.”
  - Wy. R. §4(d)(x)(E)(II)

# Child Find and RtI

- SLD eligibility determination must include specific documentation:
  - “If the child has participated in a process that assesses a child’s response to scientific, research-based intervention:
    - (1.) The instructional strategies used and the student-centered data collected; and

# Child Find and RtI

- (2.) The documentation that the child's parents were notified about:
    - a. Wyoming's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - b. Strategies for increasing the child's rate of learning; and
    - c. The parents' right to request an evaluation.
- Wy. R. §4(d)(x)(I)(VII)

# Wyoming Policies - RtI

- Additional guidance from WDE is forthcoming in the policies and procedures manual currently in revision after public comment

# Response to Intervention

- Considered by many to be a promising alternative to the traditional IQ-achievement discrepancy model
- Better at improving classroom instruction in general education
- Better at identifying students with learning disabilities

# Response to Intervention

- See, *Response to Instruction in the Identification of Learning Disabilities: A Guide for School Teams*, Kovaleski & Prasse, NASP Communique, 32(5)(2004).

# Response to Intervention

- “The standard that opens the gates to remedial and support services in schools, the ‘discrepancy formula,’ has undermined the ability of teachers to provide timely and effective assistance for students with learning disabilities. It virtually requires that students ‘crash and burn’ academically before they can gain access to special education services and it reinforces failure, ultimately making remediation much more difficult.”

# Response to Intervention

- See *The Discrepancy Formula-How the Aptitude-Achievement Formula Keeps Educators from Doing Their Jobs*, Horowitz, Sheldon H. (1999)(presentation at the 49<sup>th</sup> Annual Conference of the International Dyslexia Association)

# Response to Intervention

- See *Understanding Responsiveness to Intervention in Learning Disabilities Determination*, Mellard, National Research Center on Learning Disabilities

# OSERS Guidance on RTI (2007)

- RTI is a critical component of eligibility evaluations
- Requirement of statewide criteria is to promote consistency across state and avoid confusion
- SEA could require data from RTI be used in identification of all children with SLD
- RTI is not intended to replace comprehensive evaluation but is one tool to use

# Response to Intervention

- *Letter to Zirkel, 47 IDELR 268 (OSEP 2007):*  
“the manner in which the State chooses to use RTI as one component of a comprehensive evaluation is left up to the States.”

# Response to Intervention

- *Letter to Cernosia, 108 LRP 2652 (OSEP 2007):* if RTI is required then all children suspected of having an SLD in all schools in the LEA would be required to be involved in the process; “implementation of any process, across any system, is most effective when accomplished systematically, in an incremental manner, over time.”

# Response to Intervention

- *Letter to Anonymous*, 49 IDELR 106 (OSEP 2007): individual schools are not required to use RTI until the LEA has fully adopted and implemented the RTI process; if RTI is permissive an individual school can use RTI regardless of whether other schools in the LEA elect to do so

# Response to Intervention

- *Letter to Massanari, 108 LRP 2644 (OSEP 2007)*: nothing in IDEA prohibits an LEA from using multiple methods to identify a child with an SLD across schools or across levels (e.g., elementary, middle or high school) so long as consistent with state criteria

# Response to Intervention

- *Letter to Zirkel, 50 IDELR 49 (OSEP 2008):* state special education laws concerning use of RTI should address both the amount and nature of student performance data to be collected, as well as the general education services to be provided in the RTI process

# Response to Intervention

- *Letter to Combs, 52 IDELR 46 (OSEP 2008):* an LEA may not refuse to conduct an expedited evaluation during a disciplinary removals because an RTI process is ongoing

# Response to Intervention

- *Stone County (MS) Sch. Dist., 52 IDELR 51 (OCR 2008)*: 6<sup>th</sup> grader on academic interventions under RTI whose grades had improved and who was making academic progress, did not need to be evaluated under Section 504, given reasonable belief that he did not need services

# Response to Intervention

- *E.M. v. Pajaro Valley Unified Sch. Dist.*, 53 IDELR 41 (N.D. Ca. 2009): school district determination of ineligibility was correct where a student performed very well in class with the use of general education interventions

# Response to Intervention

- *ElPaso Ind. Sch. Dist. v. Richard R.*, 567 F.Supp.2d 918 (W.D. Tex. 2008): district violated child find obligations when it repeatedly referred student with ADHD for interventions rather than evaluation for eligibility; Section 504 accommodations, additional tutoring and tutoring camps did not demonstrate positive academic benefits

# Response to Intervention

- *Delaware College Prep. Academy, 53 IDELR 135 (De. SEA 2009)*: school's use of an RTI process did not justify its failure to meet child find obligations based on observations of a new student's extreme behavior leading to almost weekly suspensions; there was no evidence of a written RTI plan or the development of new interventions

# Response to Intervention

- *Citrus County Sch. Dist., 54 IDELR 40 (Fla. SEA 2009)*: parent of a child receiving RTI may request an evaluation before the district completes interventions, but no reason to conduct evaluation where student is making slow but steady progress in tier 3

# Response to Intervention

- *Fremont County Sch. Dist. #25, 106 LRP 30203 (Wy. SEA 2005):* unchallenged testimony of medical doctor established existence of a condition that causes or could cause a severe orthopedic impairment adversely affecting educational performance, sufficient to require school to evaluate, especially because child was entering kindergarten

# Child Find Issues Unique To Private School Placements

# Child Find and Private Schools

(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and Sec. Sec. 300.111 and 300.201.

34 C.F.R. § 300.131(a)

# Child Find and Private Schools

- District in which the private school is located is responsible for identifying a student in need of services.

# Child Find and Private Schools

- Home district must evaluate the student's eligibility upon the parent's request. Letter to Eng, 52 IDELR 136 (OSEP 2009).
  - If parent asks the home district to evaluate a student's eligibility, the district cannot refuse to do so on the grounds that the student attends private school in another district's territory.
  - This includes children who reside in other states, but who attend private schools located in the district.

# Child Find and Private Schools

(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.

34 C.F.R. § 300.131(f)