

**Child Find:**  
**When Does a Student’s Challenge Turn Into**  
**a Suspected Disability?**

By  
**Cynthia S. Buechler**  
Buechler & Associates, P.C.  
3660 Stoneridge Road, Suite D-101  
Austin, Texas 78746  
(512) 322-0588  
[attorneys@buechlerlaw.com](mailto:attorneys@buechlerlaw.com)

When to refer a child for special education testing is a recurring issue in special education hearing decisions. The following is a review of the administrative cases that addressed Child Find during 2016 and 2017.

1. ***Student v. Leander ISD, 223-SE-0416 (2017)***

The student qualified for 504 services in 2013 as dyslexic. The student had a 504 plan with accommodations. The student had experienced difficulty including, keeping up with assignments, a lack of attention/focus at times, and mood swings. The student had good behavior and got along well with others. At the 504 meeting, the mother indicated that the student had a medical condition and wanted it added to the eligibilities. The 504 committee determined that it needed more information. The mother also asked that 24 accommodations be added to the plan. The 504 committee determined that these additional accommodations were not necessary, but added the list to the 504 plan indicating that the teachers could use them at their discretion. The student struggled with inattention in her coursework and with reading in particular. Her academic anxieties substantially existed around particular courses. She experienced significant emotional stress. However, the teachers and her counselors worked closely with her to address her needs. Subsequent to the 504 meeting, both the mother and the student requested special education testing in February 2016.

The diagnostician made the determination that there was a lack of evidence supporting a need for specially designed instruction. She based her decision on the student’s history of passing classes and on the student’s passing of state assessments. In making her determination, the diagnostician did not review some relevant information, which included the student’s absences from school and the student having difficulties that required the intervention of the campus counselor.

Thereafter, the parent had the child evaluated by a neuropsychologist. Additionally, the parent had the physician provide information regarding her diagnoses, which included ADHD. Once that information was received, the district tried to schedule a 504 meeting, but the parent declined.

The hearing officer found the neuropsychologist's report was incomplete and insufficient for a variety of reasons, including not obtaining school information. Although the hearing officer found that the student had significant struggles and was correctly diagnosed with ADHD, the hearing officer found that the district's decision to deny the request for an FIE was not unreasonable.

### **LESSONS LEARNED:**

- While a student's academic achievement is important in determining the student's educational need, it is only one factor in the analysis of whether special education is necessary.
- The decision of whether a student who is advancing from grade to grade is in need of special education must be determined on an individual basis.
- Educational need includes behavioral progress and the acquisition of appropriate social skills, as well as academic achievement.
- When a student is experiencing difficulty, the difficulties need to be addressed, whether the student is in RTI, 504 or special education.
- Special education is not to assure that a student reaches his or her potential, rather has the student received a program is appropriately ambitious.
- The decision whether to assess a student is based upon whether the district has reason to suspect that the student has a disability that is in need of special education and related services.

### **2. Student v. Riesel ISD, 102-SE-1115 (2017)**

The student was eligible for special education services for OHI and SLD in the areas of basic reading and reading comprehension. An outside evaluation found that the student was dyslexic. The parent challenged the school's failure to provide dyslexia services and argued that the district failed to meet its child find obligations by not identifying the student as dyslexic.

The hearing officer found that the district's program was not appropriate because it did not address her needs related to her dyslexia. However, the Hearing Officer did find that the district met its Child Find obligations because the student had been identified as SLD in the areas of basic reading and reading comprehension. The hearing officer stated that dyslexia is akin to a learning disability in Basic Reading. Consequently, the district had identified her educational needs, including her dyslexia.

### **LESSONS LEARNED:**

- When testing for a learning disability in the area of reading, make sure that the characteristics of dyslexia are assessed.
- Programming for a student that has dyslexia and qualifies as having a SLD needs to meet the requirements of a dyslexia program.
- Teachers providing the instruction need to have training on the dyslexia program being offered.

### **3. *Student v. Pearland ISD, 117-SE-0217 (2017)***

The student was evaluated for special education services in 2013. Based upon the evaluation, the student qualified for special education under the eligibility of ED. The student was re-evaluated in 2016. The student had been medically diagnosed with ADHD. Based upon information provided by teachers, staff and parents, the psychological evaluation raised the possibility that the student also may be eligible as OHI due to ADHD. In the LSSP's report it stated the following: "[Student] currently demonstrates many of the behaviors commonly associated with ADHD. It should be noted that [Student's] difficulties with attention and focus may also be interfering with [Student's] academic learning and behavior...Further follow up in this area may be warranted."

The hearing officer found that the district did not meet its Child Find obligation because the 2016 psychological reevaluation identified ADHD as a suspected area of disability and specified that the student's behaviors were consistent with ADHD. The reevaluation coupled with the student's escalating behavior issues triggered the District's duty to evaluate for ADHD. A failure to evaluate in all areas of suspected disability is a Child Find violation.

### **LESSONS LEARNED:**

- If data is collected during an evaluation that would warrant considering additional evaluation, seek consent for the additional testing as soon as possible.
- When a report contains a statement "Further follow up in this area may be warranted", FOLLOW UP.
- It is a two part inquiry to determine whether a district has complied with its Child Find obligations. First, did the district have reason to suspect that a student had a disability and whether the district had reason to suspect that special education services might be needed to address that disability. Second, did the district evaluate the student within a reasonable time after having notice of the behavior likely to indicate a disability.

#### 4. *Student v. Killeen ISD*, 286-SE-0616 (2017)

A parent challenged that the district failed to identify her child as having a specific learning disability and emotional disturbance. The parent contended that the student's failure to ever pass a specific area of the STAAR indicated that the student had a SLD. The parent further contended that the district failed to timely identify her child as having an Emotional Disturbance.

The student was receiving 504 accommodations for ADHD. The student was screened for dyslexia in 2013 with negative results. In May 2014, the 504 committee determined that the student's diagnoses of developmental delay and another area did not substantially limit any of the student's major life activities and that continuing to provide accommodations for ADHD would be appropriate. A private neuropsychological evaluation conducted in September 2014 showed that the student did not have a SLD and the student had healthy social and emotional functioning. An October 2014 FIE showed the student did not meet IDEA eligibility, including OHI and SLD. An April 2015 IEE showed that the student did not qualify as SLD or in any other area. After the hearing was filed, the district offered to conduct an FIE which the parent declined.

The hearing officer found that the district conducted timely and appropriate evaluations as circumstances warranted. Prior to August 2016, the district had no reason to suspect the student might have an ED. The student exhibited no signs of ED at school, where the student had friends and no behavior issues. The ED manifested as absences from school due to an emotional condition. However, the district was not aware that the student's absences were due to an emotional condition because the mother informed school personnel that the student was absent due to illness and often provided doctor's notes for excused absences. In August, the parent provided a psychologist's evaluation that had DSM-V diagnoses. Upon receiving the evaluation, the district immediately obtained parent consent and conducted a timely FIE and ARD and made the student eligible as ED. The hearing officer also found that the district's SLD evaluation which found that the student did not qualify as SLD was appropriate.

#### **LESSONS LEARNED:**

- The Child Find duty applies to all children, including children who are advancing from grade to grade.
- Because the Child Find duty is an affirmative one, a parent is not required to request that the school identify and evaluate a child.
- If a student continues to experience difficulty after the provision of interventions, district personnel must refer the student for an FIE.
- A district can violate its Child Find duty by repeatedly referring a student for interventions, rather than evaluating the student's need for special education and related services.
- A student's STAAR performance is just one factor to consider, but is not dispositive.

- Far more dispositive to the identification issue is the student's academic performance throughout the entire school year, the student's grades, and the student's behavior.

##### 5. *Student v. Northeast ISD, 098-SE-0117 (2017)*

The parent filed for hearing, challenging that the district failed to meet its Child Find Obligations by not identifying their child with OHI due to ADHD, and not finding the student SLD. The student presented at school as a typical student for that grade. The student had very few behavior issues and on the few occasions that the student did misbehave at school, the general education interventions worked. The student passed all courses, passed the state assessment tests, and exhibited no unusual behavioral issues for the student's grade. The school district placed the student in 504 for ADHD at the end of the school year. Prior to being placed in 504, the student had performed well. The parent obtained a psychological evaluation done during the summer months. The outside evaluator did not look at any school records. The outside evaluator indicated that the student had ADHD and SLD.

The hearing officer held that the district had no reason to suspect that the student had a disability that required special education or related services. The student was able to progress academically and behaviorally appropriately even without the 504 accommodations put in place during the last month of the school year.

##### **LESSONS LEARNED:**

- A student with an impairment is not eligible for special education under IDEA unless the student has a need for such services.
- The existence of a disability such as ADHD does not automatically trigger a duty to conduct an FIE, even if the student has some academic difficulties.
- To meet criteria as a student with OHI, the student must have limited strength, vitality, or alertness ...that results in limited alertness with respect to the educational environment that (i) is due to chronic or acute health problems such as...ADD or ADHD... and (ii) adversely affects a child's educational performance.
- While a student may sometimes perform poorly on quizzes and tests, that doesn't necessarily mean that the student needs special education services. The question is whether there is a pattern.
- If a student's misbehavior is typical for that age group and can be addressed through the district interventions that are used for all general education students, those misbehaviors do not rise to the level of suspicion of a disability in need of special education services.

**6. Student v. Copperas Cove ISD, 101-SE-0117 (2017)**

A student was receiving special education services before transferring to the district. The district accepted the student's transfer IEP and began providing special education services to the student. In April of 2016, the mother requested via email that the student be evaluated for a SLD. Within 15 school days, the district sent the mother a Notice of Action, declining to perform the evaluation. That same month, the mother again requested a SLD evaluation. A second Notice of Action refusing to conduct the requested evaluation, along with a Notice of Procedural Safeguards, was sent to the mother within 15 school days. Ultimately, the school conducted an evaluation for the other disability and for SLD in November 2016. Based upon the evaluation, the ARD committee determined that the student no longer met eligibility for the other disability and did not meet eligibility criteria for a SLD. The parent asserted in hearing that the district incorrectly determined that the student should be dismissed from special education and improperly evaluate the student in determining that the student did not meet eligibility for a SLD. The parent also alleged that the district failed to provide a comprehensive and proper evaluation of the student when requested by the parent.

The hearing officer found that the district correctly denied the mother request because the district had no reason to suspect that the student had a SLD which might result in a need for special education services. Although the student was behind in one area, the student had made nearly a year's progress since the beginning of the year as a result of RTIs and other academic support services.

**LESSONS LEARNED:**

- When a parent requests a special education evaluation, a school district need only evaluate the student when the district suspects that the student has a disability.
- A district must notify the parents in writing anytime that it refuses to evaluate a child within 15 school days of the request.
- If RTI interventions are being successful, a referral for special education services would not be warranted.
- Progress monitoring at reasonable intervals in RTI is an important element of demonstrating its effectiveness.
- Parents need to be informed of the progress monitoring.