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2018



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A publication of:
NATIONAL CENTER ON EDUCATIONAL OUTCOMES

April, 2018

This work was supported through a Cooperative Agreement (#H326G160001) with the Research to Practice Division, Office of Special Education Programs, U.S. Department of Education. The Center is affiliated with the Institute on Community Integration at the College of Education and Human Development, University of Minnesota. The contents of this report were developed under the Cooperative Agreement from the U.S. Department of Education, but does not necessarily represent the policy or opinions of the U.S. Department of Education or Offices within it. Readers should not assume endorsement by the federal government.

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Boundy, K. B., & Cortiella, C. (2018, April). *Chronic absenteeism: Recognizing child find obligations*. Minneapolis, MN: University of Minnesota, National Center on Educational Outcomes.

Available at <http://www.nceo.info>

Chronic Absenteeism: Recognizing Child Find Obligations

Chronic absenteeism is gaining attention as states begin implementation of new statewide accountability systems under the Every Student Succeeds Act (ESSA), the latest version of the Elementary and Secondary Education Act. ESSA requires states to include one or more measures of “school quality or student success” in their accountability system used to annually differentiate public school performance. To meet this new requirement, designed to expand beyond test-based accountability systems, many states have chosen to measure student chronic absenteeism (Jordan & Miller, 2017).

Increased focus on chronic absenteeism should include attention to legal obligations under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 (Section 504).

See map in NCEO Brief Number 15: <https://nceo.umn.edu/docs/OnlinePubs/NCEOBrief15.pdf>

The purpose of this Brief is to provide information about student chronic absenteeism and the responsibilities that Local Educational Agencies (LEAs) have under IDEA and Section 504. As states develop policies and procedures to address chronic absenteeism, states should consider including information in their policies about how student absences might signal a possible need for a referral for protection under Section 504 or special education eligibility under the IDEA.

Chronic absenteeism is a measure of how many students miss a defined number of school days for any reason—excused, unexcused, suspension. Most of the states using this metric in their ESSA accountability plans are defining chronic absenteeism as the number and percentage of students missing 10 percent or more of their school days in a year.

Legal Mandates

Both IDEA and Section 504 require the identification of children with disabilities. In determining the potential need for eligibility under IDEA or Section 504, schools and districts must consider all relevant information, including attendance. Chronic absenteeism may be a red flag indicating the need for a referral.

IDEA. School districts are required to identify, locate, and evaluate all children residing within the jurisdiction (from birth to 21 years of age, inclusive), that either have, or are suspected of

having, disabilities and need special education and related services as a result of those disabilities - a requirement known as "Child Find."¹

Nearly six million students (ages 6-21) are served under IDEA nationwide (13% of public school enrollment). Still, over the past several years, there has been a significant decline in the identification of students as having specific learning disabilities (SLD). The SLD category has dropped by 13% over the 10-year period 2006-2015 from 45% of all IDEA-eligible students in 2006 to just 39% in 2015 (Advocacy Institute, 2017). This decline has occurred, at least in part, because many states and districts have implemented intervention systems such as Response to Intervention (RTI), which is designed to assist students who are struggling academically prior to referral for special education. Although early, evidence-based efforts to support struggling students can be very beneficial, care should be taken to ensure that such efforts are not used to delay or deny an evaluation for special education (U.S. Department of Education, 2011).

SECTION 504.

Section 504 prohibits discrimination on the basis of disability by recipients of federal funds from the U.S. Department of Education. It also obligates school districts to identify and locate every qualified individual with a disability who is residing within the district and not receiving a public education.²

The most recent OCR data available (2013-2014) indicate that 900,000 students (1.8% of public school enrollment) are served solely under Section 504 (Civil Rights Data Collection, 2017). Unlike students served under IDEA, those served under Section 504 are overwhelmingly white and male, suggesting that there is under-identification of minority students and females.

Role of Chronic Absenteeism in Child Find

In 2013-2014, elementary school students with disabilities served by IDEA were 1.5 times as likely to be chronically absent as elementary school students without disabilities. High school students with disabilities served by IDEA were 1.4 times as likely to be chronically absent as high school students without disabilities (U.S. Department of Education, 2016). This disparity suggests that chronic absenteeism may be a sign that a student has a disability and needs specialized instruction.

Excessive absenteeism by itself is not a basis for suspecting a student has a disability that warrants a referral for special education evaluation. However, a school district's Child Find obligation may be triggered when there are significant absences and a reason to believe the absences are linked to a disability, and a need for special education services under IDEA or only related services and accommodations under Section 504.

¹ 34 C.F.R. §§300.111 and 303.302

² 34 C.F.R. §104.32

Excessive absences invariably result in missed instruction. Therefore, it is important to keep in mind IDEA’s special rule for eligibility, which states that a child must not be determined to be a child with a disability if the determinant factor for that determination is a lack of appropriate instruction in reading or math.³ On the other hand, if a student “has a physical or mental impairment which substantially limits one or more major life activities” (such as anxiety) that interferes with regular school attendance, has a record of such an impairment, or is regarded by the school or district as having such an impairment, the student should be considered for a Section 504 plan that will help overcome barriers to learning and ensure access to comparable aids, benefits and services provided students without disabilities.⁴

Recent cases supporting the legal Child Find obligations of school districts:

- **Hilliard City School District (OH):** The Ohio Department of Education found the district in violation of IDEA’s Child Find by initiating truancy proceedings and offering the student a shortened school day. The district failed to refer the student for an evaluation despite being provided with two private evaluation reports that diagnosed the student with anxiety and depression.
- **Broward County Public Schools (FL):** The U.S. Department of Education Office for Civil Rights (OCR) found that the district violated Section 504 when it failed to timely evaluate two kindergarten students with bipolar disorder who were excessively absent from school.
- **Hawaii Dept. of Education (HI):** An administrative hearing officer found a student's 159 absences, numerous behavioral referrals, and failing grades should have triggered referral during the student's sophomore year, violating the “child find” provisions of IDEA.

Recommendations

We provide the following recommendations for states to consider as they formulate policies and guidance for districts and schools to help ensure compliance with IDEA and Section 504 Child Find obligations when dealing with chronic absenteeism. Adopting these recommendations will help districts avoid potential complaints of denial of FAPE.

- Include information about IDEA and Section 504 Child Find obligations in all guidance provided to districts and schools.
- Encourage involvement of personnel knowledgeable about school districts’ IDEA and Section 504 Child Find obligations during the early stages of addressing student excessive absences.

³ 34 C.F.R. 300.306 (b)

⁴ 34 C.F.R. 104.3(j)(i)-(iv), 34 C.F.R. 104.4(b)

- Remind districts and schools implementing early intervention processes such as response to intervention that such processes must not delay or deny a referral for evaluation.

One State's Efforts to Reduce Chronic Absenteeism

In 2015 Connecticut passed *An Act Concerning Chronic Absence* (Public Act 15-225). Among other requirements, the Act required the Connecticut State Department of Education (CSDE) to develop chronic absenteeism prevention and intervention guidance for use by local and regional boards of education.

In April 2017 CSDE introduced *Reducing Chronic Absence in Connecticut's Schools: A Prevention and Intervention Guide for Schools and Districts*. The guide offers specific recommendations about the roles and responsibilities of the District and School Attendance Review Teams that must be formed in schools and districts with high chronic absenteeism. It recommends a multi-tiered approach to reducing chronic absence. In this model, Tier 2 Interventions are individualized strategies responsive to the needs of frequently absent students. Importantly, among these strategies is the implementation of "Child Find protocols that require prompt referral to a Planning and Placement Team meeting of all children who have been suspended repeatedly or whose behavior, attendance, or progress in school has been considered unsatisfactory or at a marginal level of acceptance." (Connecticut State Department of Education, 2017).

Connecticut uses chronic absenteeism as one of its metrics for the ESSA school quality or student success indicator. In addition to its guide, CSDE created additional resources to assist districts and schools (see <http://portal.ct.gov/SDE/Chronic-Absence/Chronic-Absence>).

"Connecticut is fulfilling our promise of an excellent public education for every child by actively coordinating with families, educators and community stakeholders to develop and implement effective strategies to reduce chronic absenteeism. This includes ensuring that Child Find protocols are in place and implemented to identify students who may need additional supports," said Connecticut Commissioner of Education Dianna R. Wentzell. "The foundation of our work is providing the support and guidance necessary for school districts to create engaging, diverse and welcoming learning environments in which all students can achieve success."

States using chronic absenteeism as a metric of school quality or student success in their new accountability systems under ESSA should consider implications for other policies. Developing policies that include clear and consistent recognition of legal obligations of the "child find" requirements of both IDEA and Section 504 may be essential to protecting student rights and avoiding legal challenges.

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