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## FULFILLING CHILD FIND REQUIREMENTS UNDER IDEA 2004

We continue to see growth in the number of requests statewide for evaluations of students who may be in need of special education and related services. We suspect that this continuing rise in the number of evaluation requests stems from several factors, including greater public and media awareness of a variety of potential disabling conditions and advances in obstetric and pediatric medicine that serve to reduce infant mortality rates for severely, medically compromised infants and children. In addition there is an enhanced mandate by the federal and state governments to ensure districts are finding students in need of special education services. At the same time that public awareness and advanced medical treatments increased, the Individuals with Disabilities Education Act ("IDEA") 1997 amendments heightened the child find requirements placed upon districts. Ultimately, the IDEA '97 amendments created a mandate on districts to ensure timely identification of students with disabilities in order to provide those students with appropriate programming. The subsequent 2004 amendments to the IDEA and revisions to Pa. Chapter 14 are no different.

The purpose of this article is to provide our clients with a summary of laws pertaining to child find requirements and some guidance as to how to fulfill these obligations under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEA '04") and Pa. Chapter 14.

Pursuant to IDEA '04, Section 1412 (a)(3)(A) all 501 school districts in the Commonwealth are required to actively identify every student with disabilities. This duty to seek and identify such students applies regardless of whether the student is officially "enrolled" in the district. Specifically, this duty applies to all children with disabilities residing in the State, including children with disabilities attending private schools, both parochial and secular, as well as students placed in Department of Public Welfare licensed facilities, foster care and students who are incarcerated. Regardless of the severity of these students' disabilities, these students must be identified, located, and evaluated by the district. Moreover, each district must develop and implement a practical method to determine which children with disabilities are currently receiving needed special education and related services.

Further, pursuant to Section 1412 (a)(10)(A)(i) of IDEA '04, all local education agencies (LEA) serving school districts continue to be required to implement child find activities for children enrolled in private elementary and secondary schools for purposes of equitable participation. Specifically, this mandate obligates the twenty nine (29) Pennsylvania Intermediate Units to implement child find activities designed to ensure equitable participation of private school students with disabilities and to provide an accurate account of the number of students eligible for such services.

Essentially, IDEA '04, like its predecessor IDEA '97, requires child find activities for all private school students similar to those activities for public school students. The Act also requires such activities be completed in a time period comparable to that for students attending public schools. Each Intermediate Unit, as a recipient of IDEA Part B funding, is required to ascertain if the amount of federal funding expended for the provision of IDEA services for private school students is equal in proportion to that expended for eligible students attending public school. Pursuant to federal regulations, the Intermediate Units must survey the representatives of all private schools located in its constituent districts in order to ascertain the number of eligible private school students attending private schools with in the Intermediate Units constituent school districts .

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The Intermediate Units are required to maintain records and report to the Department of Education the number of private school students evaluated, the number of children determined to be children with disabilities, and the number of parentally placed private school students with disabilities who are served.

While IDEA '04 retains the IDEA '97 mandate as it relates to child find for purposes of equitable participation, the most noteworthy change under IDEA '04 relates to a LEA's obligation to now identify private school children who are attending any private school located within the LEA's geographical boundaries. Specifically, this mandate obligates the Intermediate Units to identify all potential student's in need of special education who are enrolled in a private school within its geographical boundaries. This obligation represents a departure from IDEA '97, where the LEA's responsibility to identify private school students was based on where the student resided and not where the student attended school.

Each School District must fulfill its local child find obligations by complying with Pennsylvania's child find policies and procedures. 22 Pa. Code Sections 14.121 requires each school district to do the following:

**Awareness Activities:** each district is required to conduct awareness activities to inform the public of early intervention and special education services and the manner by which to request these services and programs. See 22 Pa. Code § 14.121 (a), (b). New to Chapter 14 in 2008 is the requirement that districts include in their awareness activities, the provision of "information regarding potential signs of developmental delays and other risk factors that could indicate disabilities".

**Public Notification:** each district is required to notify the public annually of child identification activities and procedures followed to ensure confidentiality of information pertaining to exceptional students or eligible young children. These communications must be in English or the native language or other mode of communication used by the parents. See 22 Pa. Code § 14.121 (c);

**Method of Publication:** each district must provide this annual public notification through publishing or announcing it in newspapers or other electronic media, or both, with circulation adequate to notify the parents throughout the district, of child identification activities. See 22 Pa. Code § 14.121 (c).

**Gifted Education:** similar to the Federal requirements for identifying disabled children, Pennsylvania law also requires districts to locate and identify all students within the district who may qualify for gifted education services. See 22 Pa. Code § 16.21 (a). Districts must conduct awareness activities to inform the public, including parents of students enrolled in private schools, of the availability of gifted education services and how to request screening for such services. See 22 Pa. Code § 16.21(b). The confidentiality requirements applicable to use of information about disabled students apply equally to gifted education services. See 22 Pa. Code § 16.65.

**Content of Notice:** Based on Pennsylvania's Regulations, each District's annual public notice should include the following:

- purpose of the identification activities;
- a description of special education services and programs available and the needs of children served by these services and programs;

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- the purpose, time and location of screening activities to be held in the district;
- a description of how to request that the district initiate screening or evaluation activities for a child;
- an explanation of the protection of the confidentiality of information obtained regarding specific child. This explanation shall include a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the District intends to use in gathering the information and the sources from which it is gathered, and the uses to be made of the information;
- in light of the regulations pertaining to gifted education services, we strongly encourage districts to include an additional section in the child find publication notifying parents of the right to gifted education services.

**Summary of District's Policies and Procedures:** each district must also provide a summary of the policies and procedures which the district shall follow regarding storage, retention, destruction, and disclosure to third parties of personally identifiable information.

**Description of Rights of Parents and Children:** each district must provide a description of the rights of parents and children regarding the information under federal law and regulations relating to family education rights and privacy. We also suggest that every school district, through the building principal, provide printed materials when parents inquire about special education.

In order to comply with the child find regulations discussed above, we recommend that each school district incorporate the following methods into their current child find notice practices and staffing plans:

*Newspaper Publication:* As we have recommended in the past, we suggest that districts continue to publish prominent notices which contain information about special education and Chapters 15 and 16 rights in a local newspaper of general circulation on an annual basis. If your district relies upon the intermediate unit (IU) to publish this notice, have your Solicitor review it to assure that it complies with your obligation under current law.

### *Other Publications:*

- **Brochures:** We recommend that each district develop a brochure containing information about special education and due process rights, printed in a reader-friendly format, using bright paper (e.g. florescent yellow, orange, magenta, etc.), folded pamphlet style. If your district relies upon the IU to print such a brochure, we suggest you have your Solicitor review it to assure that it complies with your child find obligation under current law. We suggest these brochures may be utilized in the following ways:
- **Brochures and Notices in Every Building:** Keep brochures and notices in every school and administrative building in the district (i.e., main office, guidance counselors' offices). Brochures and/or notices should be provided by the building principal in each school building as well as by the appropriate administrator in the district office upon receipt of

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any inquiry into special education services;

- Meetings with Parents: Provide every parent with a brochure, notice or the state's Procedural Safeguards Notice regarding Programs for Eligible or Protected Handicapped Students at every meeting the school district holds with a parent of a student who is possibly (even remotely) eligible for special education and related services
- Brochures Sent to Private Schools: Mail brochures to every private school within the district's boundaries, to every private school to which you provide transportation, and to those private schools serving children within your district who are not provided with transportation, with a letter requesting that they distribute this information to their students and their parents. This can be an important aspect of fulfilling your duty to reach children who attend private school within your district's jurisdiction as well as reaching the private schools providing instruction to children who reside in your district.
- Tax Bills: You might consider attaching a brochure or notice to every tax bill mailed throughout the district;
- School Calendars: Including the notice in your school calendars, student handbooks, taxpayer reports or parents handbooks that are distributed throughout the district is an easy means to show an outreach;
- Act 372 Transportation Schedules: Consider sending a brochure or notice to every private school student on this list; and
- Area Pediatricians' Offices: Consider providing pediatricians in your area with copies of brochures or notices for them to make available to their patients (i.e., brochures in waiting room).

*Private School Fair:* In addition to mailing brochures or notices to area private schools, we suggest that each district consider holding an annual "private school fair" where the district invites all private school representatives from its area, and those private schools who serve children within its district, and provide the following:

- Give a presentation explaining the child find process, with particular emphasis on procedures that will be used if a child is thought to be eligible and may need evaluation;
- Distribute brochures to private school representatives attending the fair, and request that they in turn take these brochures back to their students; and
- Follow-up by mailing brochures to those private school representatives not attending the fair.
- Discuss how you and the private school can cooperate in the child find effort. This is also a

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good opportunity to have the required annual discussion with the private school personnel concerning what will be provided under “equitable participation.” [See below, relating to this subject]

*Review Discipline Records:* We recommend reviewing students’ discipline records on a regular basis for warning signs triggering a need for an evaluation (e.g., student develops an extensive disciplinary record during a given school year, or is involved in Juvenile proceedings).

*Review Standardized Test Results:* We recommend purposefully reviewing students’ standardized test results for warning signs of a student’s possible disability.

*Follow-Up All Medical Concerns:* We recommend that every district have a procedure in place (likely involving an administrator, guidance counselor, school nurse, school psychologist) to contact parents and investigate further to determine if a student qualifies as a candidate for a child with disabilities when:

- Parents provide any school personnel with a Physician’s prescription specifying that their child is ADD, ADHD or other condition potentially impacting the student’s learning;
- Parents (or student) reveal that the student is receiving counseling or therapy outside of school;
- Parents disclose that their child is being treated for a medical or psychological condition to any school personnel; or
- Parents withdraw student from school to a hospital or mental health treatment facility.

*Review Attendance Records and Grade Reports:* We recommend reviewing students’ attendance records on a regular basis for warning signs, such as a sudden increase in absences or tardiness. We also suggest reviewing students’ grade reports for signs such as a sudden decline in grades. In both cases, follow-up with student’s parents and investigate if the possibility exists that the child may qualify for special education services.

*Equitable Participation – Annual Consultation with Private Schools in District:* As another component of the child find requirement, we recommend that districts build upon their IU’s equitable participation survey responsibility. As noted above, each IU, as a recipient of IDEA Part B funding, is required to ascertain if the amount of federal funding expended for the provision of IDEA services for private school students is equal in proportion to that expended for eligible students attending public school. Pursuant to federal regulations, the IU must survey the representatives of all private schools located within its constituent districts in order to ascertain the number of eligible private school students.

*Review Staffing Levels:* In light of the growing number of requests for evaluations, we suggest that every district review their current staffing levels. It is important that each district has access to a sufficient number of school psychologists to ensure time deadlines are met when an evaluation is requested. We strongly recommend assigning a particular individual to oversee special education issues specifically, rather than

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assigning someone to supervise all pupil personnel functions, including special education. An additional area for review of staffing is in the related services. We see occupational therapy, physical therapy and speech and language needs ignored because the district does not have the appropriate staff to evaluate. We are also seeing a growing need for reading specialists as well, due to the many requests for multi-sensory, phonetic, alphabetic reading instruction (Wilson, Orton-Gillingham, etc.).

We believe that the recent rise in the number of evaluation requests will continue. It is important to note that even if parents do not file more requests for evaluations, every district needs to be initiating more requests in any event due to the child find and “deemed to know” provisions of IDEA '04.

Please note that a formal evaluation is not the end result of every inquiry under child find. Frequently, all that is needed is to alert the parents to their rights and to make a note of having done so.

However, once a school district is alerted to any signs that a child may have special needs, and upon further investigation, if it reasonably believes that the child may qualify as an exceptional child, the district must propose an evaluation. If the parents refuse to consent to the child being evaluated, then the district may proceed to a due process hearing and seek an order requiring such an evaluation take place.

On the other hand, when the district investigates signs of a child’s possible need for special education and related services and reasonably concludes that such signals come from issues not warranting special education services (e.g., student’s lack of motivation, personal/home life, age-related concerns, etc.), then the district is not required to propose an evaluation. In this case, although the district has concluded that the student does not need to be evaluated for special education services, we strongly recommend that the district nonetheless have an informal conference with the student’s parents to discuss the issue, and nevertheless inform them of their rights (both verbally, and in writing through a brochure or notice) to request an evaluation for their child if they disagree about the need for evaluation.

In conclusion, in order to facilitate the child find and “deemed to know” provisions of IDEA '04, we recommend that you review your practices and make any necessary changes in light of our suggestions noted above, to make sure that you will be in a position in the future to assure that the child find obligation has been met.

**Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.**