Identifying Students with an Emotional Disturbance or Other Health Impairment

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Identifying ED Students

ED eligibility criteria:

Pupil exhibits one or more of the following characteristics, over a long period of time and to a marked degree which adversely affect educational performance:
ED Eligibility Criteria

- An inability to learn which cannot be explained by intellectual, sensory, or health factors
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers
- Inappropriate types of behavior or feelings under normal circumstances
- A general pervasive mood of unhappiness or depression
- A tendency to develop physical symptoms or fears associated with personal or school problems
“Long period of time” and to a “marked degree”


☐ A “long period of time” is from two to nine months

☐ A “marked degree” generally refers to the frequency, duration or intensity of a student's emotionally disturbed behavior in comparison to the behavior of his peers and/or school and community norms
Case Example: Child Find
Student v. Saddleback Valley USD (SEA CA 2011)
Facts

- 16 year-old diagnosed with mild depression, ODD and mood disorder
- Private psychologist recommended permission to make-up missed assignments, but not special education assessment
- Parent requested assessment
- “Student Study Team” determined interventions could be implemented in general education setting

Student v. Saddleback Valley USD (SEA CA 2011)
Facts

- Assessment postponed
- Dissatisfied parent unilaterally enrolled student in RTC
- Student eventually assessed and qualified under OHI and ED

Student v. Saddleback Valley USD (SEA CA 2011)
Issues

- Violation of child find duties
- Parent alleged District should have assessed
  - Following receipt of psychologist recommendation
  - Following parent’s request for assessment

Student v. Saddleback Valley USD (SEA CA 2011)
Decision

- No child find violation
  - Psychologist email alone insufficient to trigger child find
  - Parent agreed to general education interventions
  - Parent did not notify school of dissatisfaction before unilaterally enrolling student in RTC

Student v. Saddleback Valley USD (SEA CA 2011)
Analyzing the Criteria

Case Example:  *Student v. Lakeside Joint School Dist.*, 110 LRP 24088 (SEA CA 2010)
**Student v. Lakeside Joint School Dist.,** 110 LRP 24088 (SEA CA 2010)

**Background**

- 12 year-old student resided with his adoptive parents, was diagnosed as having reactive attachment disorder, PTSD

- District had assessed Student for eligibility under ED the year before but found not eligible

- ALJ in previous hearing agreed not eligible
Student v. Lakeside Joint School Dist.,
110 LRP 24088 (SEA CA 2010)

FACTS:

Events prior to seventh grade

- Summer camp incident, assault by Jane Doe

September 2008 IEP team meeting

- Truancies
- Review of assessments
- Academic progress
- Diagnosis of depression?
Student’s behavior at school

☐ Student performed at grade level

☐ Student’s teachers reported Student did not seem depressed

☐ Student had friends, was on task, was not a behavior problem, and did not seem withdrawn
Student v. Lakeside Joint School Dist., 110 LRP 24088 (SEA CA 2010)

Issue:

Should the District have found Student eligible for special education and related services under the disability category of emotional disturbance (ED) at any time from July 29, 2008 through March 9, 2009?
Student v. Lakeside Joint School Dist.,
110 LRP 24088 (SEA CA 2010)

Law:

Student claimed eligibility as ED under

- a general pervasive mood of unhappiness or depression
- a tendency to develop physical symptoms or fears associated with personal or school problems
Student contended:

He qualified for special education and related services as a student with ED

- “School authorities did not view Student as depressed because he denies his depression and is so skilled at hiding it that it was not readily visible to District employees”

- Student’s fears, related to the Doe family, made him eligible as ED
District contended:

Student was not eligible for special education and related services at any relevant time
Student v.

Lakeside Joint School Dist.,
110 LRP 24088 (SEA CA 2010)

- The District prevailed on all issues
- Student was not eligible for special education and related services under the category of emotional disturbance at the time in question
“Student's argument proves too much. If Student's depression was invisible to school personnel, the IEP team cannot be faulted for failing to act on it. [Student’s therapist’s] letter...which does not mention depression, suggests that Student's depression was invisible even to him at that time. The IEP team was not required to declare Student eligible for special education based on a condition no professional could perceive”
Student v. Lakeside Joint School Dist., 110 LRP 24088 (SEA CA 2010)

Rationale: Not Eligible Based on Fear

The degree of Student’s fear - Was it to a marked degree?
- Student appeared happy

The duration of Student’s fear - Was it for a long period of time?
- Student continued to go to school after the incident at summer camp

The nature of Student's fear - Was it reasonable?
- “[I]t was fear almost any student would have in the circumstances”
Student v. Lakeside Joint School Dist.,
110 LRP 24088 (SEA CA 2010)

Tipping Points

- The District had multiple witnesses with consistent testimony
- District’s evidence showed that Student’s fear was not unreasonable given the circumstances
- The District looked carefully at the degree, duration and nature of Student’s fear
Lessons Learned

Criteria for ED may be strictly construed

- This case looked closely at the criteria for ED, including a good analysis of the degree, duration and nature of fear required for eligibility.
#1 - Inability to Learn

- Designed to rule out other reasons
- Student v. Lakeside Joint School Dist.
  - Declining scores on state-mandated tests, but high average WISC scores and no severe discrepancy
  - Student asked for help when needed
  - Student had ability to learn
#1 - Inability to Learn

- **Student v. Placentia-Yorba Linda Unified School Dist. (SEA CA 2009)**
  - Student with (at least) mood disorder-NOS, including significant depression
  - Cognitively bright, capable of learning
  - Lowered academic performance for two, short isolated periods
  - Not enough to show inability to learn
#2 - Inability To Build Or Maintain Satisfactory Interpersonal Relationships

- Occurs in multiple settings with peers and adults
- Lack of sympathy, empathy toward others
- Inability to establish, maintain friendships
- Excessive physical, verbal aggression, etc.
- Not an issue of getting along with others
#2 - Inability to Build or Maintain Satisfactory Interpersonal Relationships

- **Saddleback:** Choosing friends who are a bad influence does not satisfy criteria
- **Lakeside:** Positive relationships with teachers show factor does not apply
#3 - Inappropriate Types of Behavior or Feelings Under Normal Circumstances

- Behaviors or feelings that are strange or unusual (in comparison with others in same circumstances)
- Hallucinations or bizarre behavior not required
- Could be acting out or withdrawal behaviors
- Does not include willful and understood behaviors (e.g., ODD or conduct disorders)
- Consider whether circumstances are “normal” . . .
#3 - Inappropriate Types of Behavior or Feelings Under Normal Circumstances

- **Student v. Ravenswood City SD** *(SEA CA 2008)*
  Serious behavior problems (sexual assault, fighting, assault, defiance, profanity, and bringing a gun to school) insufficient to meet criteria

- **Torrance USD v. E.M.** *(C.D. Cal. 2008)*
  Inappropriate reaction to everyday events satisfies criteria

- **Student v. Los Angeles USD** *(SEA CA 1999)*
  Expected behavior from a child of same age does not satisfy criteria
#4 - General Pervasive Mood of Unhappiness or Depression

- Actual, chronic, persistent symptoms of depression
- Observable in school setting (and other situations)
- Not a natural reaction to a traumatic event
#4 - General Pervasive Mood of Unhappiness or Depression

- **Saddleback**: Diagnosis that presents with unhappiness or depression does not automatically fulfill criteria

- **Student v. Los Angeles USD (SEA CA 2007)**: Student need not meet the DSM-IV criteria for depression to fulfill criteria
#5 - Tendency to Develop Physical Symptoms or Fears Associated with Personal or School Problems

- Physical symptoms that are excessive and chronic
- Could manifest as severe anxiety, phobias, panic attacks, tics, headaches, etc.
- Not due to biologic or medical conditions
#5 - Tendency to Develop Physical Symptoms or Fears Associated with Personal or School Problems

- Student v. Capistrano USD (SEA CA 2011)
  - “Test anxiety” must impact ability to do well on test to satisfy criteria
ED and Young Students

- Sometimes, there is hesitation to label young students as ED
- Makes sense to adjust period for young students
- Cannot have “policy” of refusing to find young students eligible as ED
“Acting Out” may Indicate ED

Student v. Compton USD (SEA CA 2008)

- **Facts**
  - Kindergarten student performing above grade level academically, but exhibiting aggressive behaviors
  - First assessment focused on ADHD, Student eligible under OHI
  - (At age 5) Student began telling teacher was going to kill himself because he was “bad”
  - Second assessment, found eligible under ED

- **Ruling:** District should have assessed Student for ED as part of first assessment
“Acting Out” may Indicate ED

Student v. La Mesa-Spring Valley SD (SEA CA 2010)

- Facts
  - Student “kicked out” of daycare
  - Hospitalized at age 3 for self-injurious & aggressive behaviors
  - Diagnosed with anxiety
  - Enrolled in district preschool program:
    - Exhibited hitting, kicking and scratching, using profanity
    - Able to access preschool program
    - Assessed and found ineligible
“Acting Out” may Indicate ED

- **Facts**
  - In kindergarten, behaviors included
    - Crawling around, talking in strange voices, hitting others, using profanity, scratching herself, banging head on wall, stabbing self with scissors
    - Behavioral interventions were ineffective
    - District assessed and found eligible as ED
  - Parent would not consent to SDC placement
  - District filed due process complaint

**Student v. La Mesa-Spring Valley SD (SEA CA 2010)**
“Acting Out” may Indicate ED

Ruling

- District showed was inappropriate to maintain Student in general education setting even with significant supports
- Student failing to derive any academic or non-academic benefits
- Adversely impacted ability of other student to learn and ability of teacher to teach
Conduct Disorders/Drug Abuse

- **Student v. Colton Joint Unified School District, 104 LRP 54308 (SEA CA 2004):** Only evidence of inappropriate student behavior was student's conduct violations at school, e.g., alcohol abuse that led to suspension and marijuana possession that led to expulsion.

- Hearing Officer: These behaviors were typical behavior for a conduct disorder, so not a basis for ED.
Social Maladjustment

- IDEA 2004 and its regulations specifically exclude socially maladjusted children from eligibility as emotionally disturbed

- However, “socially maladjusted” is not defined
Social Maladjustment

Traditional views of social maladjustment

- Student meets DSM criteria for Conduct Disorder or Oppositional Defiant Disorder
- Behavior is willful, purposeful
- Student does not have internalizing/emotional problems or mental health problems

How best to address such behavior during assessment? In assessment report?
What About When Social Maladjustment and ED Co-Occur?

Case Example:

Eschenasy v. New York City Department of Education,
52 IDELR 66 (S.D.N.Y. 2009)
Eschenasy v. New York City Department of Education, 52 IDELR 66 (S.D.N.Y. 2009)

FACTS

- High school girl not previously eligible
- Attended series of private schools, expelled
- History of drug use, cutting class, stealing, running away from home, failing classes
- Suicide attempt
- Spring 2005, diagnosed with conduct disorder, trichotillomania (hair pulling), borderline personality features, expressive language disorder with mild amnestic features
**Eschenasy v. New York City Department of Education, 52 IDELR 66 (S.D.N.Y. 2009)**

- Summer 2005, parents requested public evaluation from DOE
- Student unilaterally placed at therapeutic boarding school before evaluation
- Lied and broke school rules, asked to leave
- Enrolled in another boarding school
Public evaluation consisted of records review due to Student’s fragility

DOE determined Student not ED, not eligible
- Reasoning?
- Likely based on conduct disorder/social maladjustment?

Family filed for hearing
Eschenasy v. New York City Department of Education, 52 IDELR 66 (S.D.N.Y. 2009)

- IHO found Student “socially maladjusted” and also “seriously emotionally disturbed.”
  - Lying, stealing, truancy and drug abuse symptomatic of social maladjustment
  - Cutting, hair pulling symptomatic of ED
- SRO reversed: Student not properly classified as ED because no adverse effect on education
Eschenasy v. New York City Department of Education, 52 IDELR 66 (S.D.N.Y. 2009)

District court’s review:

Inappropriate types of behavior or feelings under normal circumstances?

- DOE argued behavior was delinquent and attributable to her diagnosed conduct disorder rather than ED

- Court: Trichotillomania, self-cutting, suicide attempt are inappropriate behaviors under otherwise normal circumstances
Eschenasy v. New York City Department of Education, 52 IDELR 66 (S.D.N.Y. 2009)

District court’s review:

Generally Pervasive Mood of Unhappiness or Depression?

☐ Yes, as exhibited by suicide attempt as well as hair pulling, cutting, and mood disorder over a long period of time and to a marked degree
District court’s review:

- Adverse Effect on Education?
  - DOE argued in order to qualify as ED, there must be evidence these negative effects on education were caused by ED symptoms and not simply by bad behavior/social maladjustment
  - Court rejected argument, found Student eligible

*Eschenasy v. New York City Department of Education*, IDELR 66 (S.D.N.Y. 2009)
**Eschenasy v. New York City Department of Education, 52 IDELR 66 (S.D.N.Y. 2009)**

**RATIONALE:**

“It is more likely than not that all of Ann’s problems, not just her misconduct, underlie her erratic grades, expulsions, and need for tutoring and summer school. Although Ann exhibits conduct disorder, she also meets the criteria for emotional disturbance as a student exhibiting inappropriate behavior under normal circumstances and a pervasive depressive state, which adversely affect her educational performance.”
Substance Abuse v. ED

- Student v. Tamalpais Union H.S. Dist.
  59 IDELR 236 (SEA CA 2012)

- Facts
  - Student in blended program with related counseling services
  - Student suspended for marijuana possession and placed in juvenile hall
  - Before release, parents requested residential placement
Student v. Tamalpais Union H.S. Dist., 59 IDELR 236 (SEA CA 2012)

- **Facts**
  - Psycho-educational assessment revealed no identifiable mental illness, but characteristics of ED and substance abuse disorder
  - AB 3632 assessment supported placement in blended program with therapy; primary issues were related to oppositional defiance disorder and substance abuse; no masking behavior
  - District continued to offer blended program
Student v. Tamalpais Union H.S. Dist., 59 IDELR 236 (SEA CA 2012)

- Ruling: District not responsible for residential placement when primary issue is substance abuse
- Progress in RTC and juvenile hall due to lack of drug use in those settings
Social Maladjustment v. ED

- Look for the purpose of the conduct – is this purposeful behavior?
  - rebellious? deliberate?
- Don’t miss self-injury or suicidal ideation
- In the case of substance abuse, is it masking behavior?
  - Substance Abuse Subtle Screening Inventory
  - Does student’s behavior/academic achievement change when no access to drugs/alcohol?
Act Early!

Warning signs:

- Truancy
- Failing grades
- Escalation of behavioral problems
- Self-injurious behaviors
- Suicidal ideation
Duty to Reevaluate

Case Example:

*Student v. Corpus Christi Indep. School Dist.*, 57 IDELR 240 (SEA TX 2011)
Student v. Corpus Christi Indep. School Dist., 57 IDELR 240 (SEA TX 2011)

- Student identified as SLD in 2008; non-aggressive behaviors impacted education
- IEP team agreed to reassess if his behaviors of concern continued after interventions
- Began exhibiting significant behaviors with aggressive tendencies in January 2009
- District conducted FBA and developed BIP
Student v. Corpus Christi Indep. School Dist., 57 IDELR 240 (SEA TX 2011)

- Frequent disciplinary referrals
- Suspensions
- Aggressive and threatening behavior, which increased in severity
- Lack of success in classroom
- 2009-2010 - staff shadowed Student and monitored behaviors related to his BIP
- Even with staff support, Student was not successful behaviorally
**Student v. Corpus Christi Indep. School Dist.**, 57 IDELR 240 (SEA TX 2011)

- Behaviorist assigned in April 2010; no services provided until Sept. 2010
- Sept 2010: Student moved to behavior intervention classroom
- Nov. 2010: District conducted triennial reevaluation
- Student determined eligible under ED
- Did District timely assess?
Hearing Officer:

- District failed to timely conduct an assessment of Student for ED, “even in the face of overwhelming evidence linking [Student’s] behavior to an area of suspected disability”

- Rejected District’s argument that Student’s poor attendance was responsible for lack of educational progress
“It is clear that [Student’s] failure and refusal to attend school is a manifestation of [his] disabilities”

“The record provided no justification for the District’s delay in light of [Student’s] disability, escalating behaviors, and lack of response to disciplinary responses...”
A Few Words About Bullying

Students with emotional and behavioral challenges may engage in bullying behavior

- What then?
A Few Words About Bullying

- Bullying behavior may trigger child find obligations (*School Board of the City of Norfolk v. Brown*, 56 IDELR 18 (E.D. Va. 2010))

- Bullying behavior may suggest an emotional disturbance (*Student v. Birdville Independent School District*, 57 IDELR 60 (SEA TX 2011))
Assessment/IEP Team Tips

- Directly addresses five criteria for ED and aligns results to criteria in report
- Address emerging behaviors with general education supports; document the impact of those interventions, but do not delay in assessing
- Look at functioning in variety of settings: home, school, and community
Assessment/IEP Team Tips

- Placement is IEP team decision; don’t be concerned about placement in the assessment process
- Consider inclusion of nurse on IEP team
- Do not limit yourself to a single possible eligibility category
Other Health Impaired ("OHI")

What is OHI?

- Having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that
  - Is due to chronic or acute health problems; and
  - Adversely affects a child’s educational performance

(34 C.F.R. § 300.8(c)(9).)
What are Chronic or Acute Health Problems?

Section 300.8(c)(9) includes a list of possible conditions, including:

- Asthma
- ADD/ADHD
- Diabetes
- Epilepsy
- A heart condition
- Hemophilia
What are Chronic or Acute Health Problems?

- Lead poisoning
- Leukemia
- Nephritis
- Rheumatic fever
- Sickle cell anemia
- Tourette syndrome

This list is illustrative and not exhaustive

*Joint Policy Memorandum, 18 IDELR 116 (OSERS 1991)*
How is Eligibility Determined?

- Draw upon information from a variety of sources
  - Aptitude and achievement tests
  - Parent input
  - Teacher recommendations
  - Information about the child’s physical condition, social or cultural background, and adaptive behavior

- Ensure that information is
  - Documented
  - Carefully considered

34 CFR § 300.306(c).
How is Eligibility Determined?

- District reviewed multiple documents, including academic record, evaluations, IEE, teacher reports, guidance counselor report, medical reports and educational tests.

- Review sufficient to determine that Student with ADHD did not qualify for special education as OHI.

\[ P.R. \text{ and } B.R. \text{ ex rel. C.R. v. Woodmore Local Sch. Dist.}, 46 IDELR 134 (N.D. Ohio 2006) \]
Don’t Forget: The Student Must **Need** Special Education!

- All IDEA eligibility categories require that a student **needs** special education and related services because of his/her condition.

34 CFR § 300.8(a)(1)
What is an “Adverse Effect”? 

- Not defined by law
- Consider both academic and non-academic performance
“Typical Teenage Behavior”

- Student suffered from a condition “likely to develop into narcolepsy”
- Student was expelled “following an incident where a firecracker was thrown into a commode”
- Student was achieving at or above his IQ and medication was managing his condition
- The district also noted that the student’s behavior was typical (…exploding commodes aside…)
- IHO agreed that the student was not eligible as OHI

*Huntsville City Bd. Of Educ.,* 47 IDELR 277 (SEA AL 2005)
Gauging “Educational Performance”

- Generally evaluated through academic measures
  - Grades
  - Achievement tests

- Must consider other impacts as well
  - Socialization
  - Extracurricular activities
Don’t Base Eligibility Solely on a Doctor’s Note

- Doctors don’t determine eligibility
- The law requires that eligibility be determined by “a team of qualified professionals and the parent of the child.” (20 U.S.C. 1414(b)(4)(A).)
- But don’t ignore the doctor’s note either!
States May Require Medical Assessments

- States may require medical evaluation to determine OHI eligibility
- Evaluation must be at no cost to parents

When is it OHI? When is it ED?

- Mental Illness: May not meet the eligibility requirements for ED, but if adversely affects educational performance, student may be eligible under OHI (Student v. San Diego USD (SEA CA 2008))

- Impact of Disorder: Anxiety/panic attacks may not meet the criteria for ED, but may tire child out, leading to limited vitality and meeting the criteria for OHI (Student v. Poway USD (SEA CA 2009))
Mental Health Issues and OHI

- Mental health issues can lead to OHI eligibility
- Must limit strength, vitality and alertness to such a heightened degree that it adversely affects the student’s educational performance
Mental Health Issues and OHI

- Student was diagnosed with bi-polar disorder
- Student was academically successful
- Student was not OHI because her disorder did not affect her educational performance

*Board of Educ. of New York, 47 IDELR 120 (SEA NY 2007)*
Physical v. Psychological and “Feeling” Limited

- Forest Hills Public Schools (SEA MI 2012) No requirement that limitation be physical in nature
OHI Assessment Tips

- Health condition (alone) is not sufficient for OHI
- Is student exhibiting limited vitality, strength or alertness?
- If so, is Student’s educational performance adversely impacted
  - Could impact be addressed in the general education setting?
THANK YOU!