

Montgomery County ESC

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Mental Health Hot Topics in Special Education

DSM Update, School Avoidance, Emotional Disturbance, and
Suicidal Ideation and Self Harm

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I. Diagnostic and Statistical Manual of Mental Disorders (DSM-5), released May 2013. Text Revision (DSM-5-TR), released March 2022

A. What is the DSM-5?

1. Diagnostic and Statistical Manual of Mental Health Disorders published by the American Psychiatric Association.
2. “Although the DSM-5 diagnostic criteria and text are primarily designed to assist clinicians in conducting clinical assessment, case formulation, and treatment planning, DSM-5 is also used as a reference for the courts and attorneys in assessing the legal consequences of mental disorders. As a result, it is important to note that the definition of mental disorder in DSM-5 was developed to meet the needs of clinicians, public health professionals, and research investigators rather than the technical needs of courts and legal professionals.
...
When used appropriately, diagnoses and diagnostic information can assist legal decision makers in their determinations. For example, when the presence of a mental disorder is the predicate for a subsequent legal determination (e.g., involuntary civil commitment), the use of an established system of diagnoses enhances the value and reliability of the determination. DSM-5-TR, p. 29
3. Provides common language and standard criteria for identifying mental disorders.
4. “DSM-5 strives to fulfill the need of clinicians, patients, families, and researchers for a clear and concise description of each mental disorder, which has been operationalized using diagnostic criteria that are supplemented by dimensional measures of severity and is accompanied by a digest of information about the diagnosis, including risk factors and cultural and sex- and gender-related issues.” DSM-5-TR, p. 5.
5. It also is used for diagnosis and insurance billing through use of ICD Codes (World Health Organization’s International Classification of Diseases and Related Health Problems)
6. Changes in the organization and number of disorders from prior version.
7. Revenue generator for the APA
8. Response in the field

B. Why is this important to special educators?

1. Child Find – IDEA/504

“A mental disorder is a syndrome characterized by clinically significant disturbance in an individual’s cognition, emotional regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress or disability in social, occupational, or other important activities. An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder. Socially deviant behavior (e.g. political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental health disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.” DSM-5-TR, p. 14.

2. Private evaluations

3. Eligibility determinations

“It should be noted that the definition of mental disorder was developed for clinical, public health, and research purposes. Additional information is usually required beyond that contained in the DSM-5 diagnostic criteria in order to make legal judgments on such issues as criminal responsibility, eligibility for disability compensation, and competency.” DSM-5-TR, p. 14.

In most situations, the clinical diagnosis of a DSM-5 mental disorder does not imply that an individual with such a condition meets legal criteria for the presence of a mental disorder or “mental illness” as defined in law, or a specified legal standard (e.g., for competence, criminal responsibility, or disability). For the later, additional information is usually required beyond that contained in the DSM-5 diagnosis, which might include information about the individual’s functional impairments and how those impairments affect the particular abilities in question. It is precisely because impairments of a particular diagnosis vary widely within each diagnostic category that assignment of a particular diagnosis does not imply specific level of risk, impairment or disability. DSM-5-TR, p. 29.

4. Manifestation Determinations – Use of DSM-5 to assess the presence of a mental disorder by nonclinical, nonmedical or otherwise insufficiently trained individuals is not advised. Nonclinical decision-makers should also be cautioned that a diagnosis does not carry any necessary implications regarding the etiology or causes of the individual’s mental disorder or the individual’s degree or control over behaviors that may be associated with the disorder. Even when diminished control over the individual’s own behavior is a feature of the disorder, having the diagnosis in itself does not

demonstrate that a particular individual is (or was) unable to control his or her own behavior at a particular time. DSM-5-TR, p. 29

B. Highlights of the DSM Changes That Impact Special Education

1. DSM-5

- Use of the term “intellectual disability” in place of “mental retardation.” In connection with this change, the manual calls for diagnoses to be based less on IQ scores and more on clinical assessment of an individual’s functional abilities.
- Disruptive Mood Dysregulation Disorder (DMDD)
 - (1) New diagnosis intended to reduce the over-diagnosis of children with bi-polar disorder.
 - (2) Applies to a child who exhibits persistent irritability and frequent episodes of intense behavior outbursts, inconsistent with development, three or more times per week for over a year.
 - (3) Cannot be diagnosed in children less than age six.
- Autism Spectrum Disorder (ASD)
 - (1) Now a single diagnosis covering Autism, Asperger disorder, Childhood Disintegration Disorder, and Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS)
 - (2) Those who supported this change claim that the common elements among these disorders warrant using only one diagnostic category, with diagnosticians indicating a level of severity once they determine the presence of the elements that support the diagnosis.
 - (3) Essential features = persistent impairment in reciprocal social communication and social interaction and restricted, repetitive patterns of behavior, interests, or activities. The symptoms are present from early childhood and limit or impair everyday functioning.
- Social Communication Disorder – According to an explanatory memo from the APA, ASD must first be ruled out. The disorder is characterized by persistent difficulties in the social use of verbal and nonverbal communication as manifested by all of the following:

- (1) Deficits in using communication for social purposes, such as greeting and sharing information, in a manner that is appropriate for the social context.
- (2) Impairment of the ability to change communication to match context or the needs of the listener, such as speaking differently in a classroom than on a playground, taking differently to a child than to an adult, and avoiding the use of overly formal language.
- (3) Difficulties following rules of conversation and storytelling, such as taking turns in conversation, rephrasing when misunderstood, and knowing how to use verbal and nonverbal signs to regulate interaction.
- (4) Difficulties understanding what is not explicitly stated (e.g. making inferences and nonliteral or ambiguous meanings of language (e.g idioms, humor, metaphors, multiple meanings that depend on the context for interpretation.)

The disorder limits effective communication, social relationships, academic achievement, or occupational performance. Symptoms must be present in early childhood even if they are not recognized until later when speech, language, or communication demands exceed abilities.”

- Somatic Symptom Disorder

- (1) Covers individuals who have one or more somatic symptoms that are distressing and result in a significant disruption in daily life.
- (2) Individual has excessive thoughts, feelings and behaviors related to these somatic symptoms with one of the following:
 - (a) Disproportionate and persistent thoughts about the seriousness of the symptoms
 - (b) Persistently high level of anxiety about symptoms
 - (c) Excessive time and energy devoted to these symptoms
 - (d) Symptoms persist for more than 6 months

- Specific Learning Disorder – Combines diagnoses of reading disorder, disorder of written expression, mathematics disorder, and learning disorder not otherwise specified. Characterized by difficulties in learning and using academic skills, as indicated by the presence of at least one of the following symptoms that have persisted for at least 6 months, despite provision of interventions that target those difficulties.
 - (1) Inaccurate or slow and effortful word reading
 - (2) Difficulty understanding the meaning of what is read
 - (3) Difficulties in spelling
 - (4) Difficulties with written expression
 - (5) Difficulties mastering number sense, number facts, or calculation
 - (6) Difficulties with mathematical reasoning

The affected academic skills are substantially and quantifiably below those expected for the individual’s chronological age, and cause significant interference with academic or occupational performance, or with activities of daily living as confirmed by individually administered standardized achievement measures and comprehensive clinical assessment. For individuals age 17 years and older, a documented history of impairing learning difficulties may be substituted for the standardized assessment.

Difficulties begin during school age years but may not become fully manifest until the demands for those affected academic skills exceed the individual’s limited capacities.

The learning difficulties are not better accounted for by intellectual disabilities, uncorrected visual or auditory acuity, other mental or neurological disorders, psychosocial adversity, lack of proficiency in the language or academic instruction or inadequate educational instruction.

Comprehensive assessment is required to diagnose -“No single data source is sufficient for a diagnosis of specific learning disorder. Rather, specific learning disorder is a clinical diagnosis based on a synthesis of the individual’s medical, developmental, educational and family history.; the history of the learning difficulty, including

its previous and current manifestation; the impact of the difficulty on academic, occupational, or social functioning; previous or current school reports; portfolios of work requiring academic skills; curriculum-based assessments; and previous or current scores from individualized standardized tests of academic achievement. ...Thus, comprehensive assessment will involve professionals with expertise in specific learning disorder and psychological/cognitive assessment.”

2. **DSM-5-TR**

- Reorganization
- Sensitivity to race, discrimination and stigmatizing language
- Autism Spectrum Disorder consolidation
- Intellectual Disorder
- Prolonged Grief Disorder – NEW DISORDER
- Disorders Recommended for Further Study
 - (1) Attenuated Psychosis Syndrome
 - (2) Depressive Episodes with Short-Duration Hypomania
 - (3) Caffeine Use Disorder
 - (4) Internet Gaming Disorder
 - (5) Neurobehavioral Disorder Associated with Prenatal Alcohol Exposure
 - (6) Suicidal Behavioral Disorder
 - (7) Nonsuicidal Self-Injury Disorder

I. School Avoidance / Phobia

A. Categories

1. **School Phobia/Refusal** – Absence because attendance causes emotional distress and anxiety.
 - a. Usually the result of anxiety

- i. Anxiety based school refusal affects 2-5% of school-age children.
 - ii. Separation anxiety is often the precursor to school refusal, which occurs in approximately $\frac{3}{4}$ of the children who present with separation anxiety.
 - iii. Social Anxiety
 - iv. Performance Anxiety
 - v. Rigid thinking
- b. Students obtain parent/doctor permission to stay at home.
 - c. Willing to do work as long as they don't have to go to school.

2. **Truancy**

- a. Hide absences from parents.
- b. Have no interest in making up work.
- c. Might involve other behaviors (e.g., criminal conduct, alcohol, and drug use).

B. Common Causes

1. Starting school or transitioning to new school
2. Fear of abandonment
3. Family stressors (e.g., death, incarceration, or illness of family members, danger in the community or home, moving)
4. Injury or illness
5. Divorce
6. Encopresis/Enuresis
7. Bullying/harassment
8. Social anxiety
9. Negative interactions with peers or adults
10. Phobias

C. Common Presentation

1. Absences (often gradual) and tardiness, including absence on significant days (tests, speeches, PE class)
2. Somatic complaints (e.g., stomach ache, headache, dizziness, nausea, vomiting) and frequent requests to go to the nurse's office
3. Anxiety, panic, or depression
4. Self-harm or related threats (e.g., cutting)
5. Create excuses to call/go home – behaviors
6. Crying / tantrums

D. **Child Find** – Adopt procedures for tracking unexcused absences, and be alert to excused absences that may trigger child find duties.

1. Physical symptoms/somatic complaints
2. Mental health treatment/hospitalization
3. Related diagnoses: Anxiety, depression, phobias, PTSD, OCD
4. Health care provider requests for home instruction
5. Coordinate with the absence intervention process under HB 410.

6. **Lessons from Case Law**

- a. Courts will look not only at whether a district *did* know about a student's suspected disability, but whether it *should have* known.
 - i. A district identified a student toward the end of her junior year as ED after she had been hospitalized, and the student later went on to graduate from high school. The court found, however, that the student had not received FAPE because the district had failed in its child find obligations when it failed to evaluate her in her freshman year after she was absent 79 times and had frequent behavior referrals. *Hawaii Dept. of Ed. v. Cari Rae S.*, 158 F. Supp. 2d 1190 (2001)
 - ii. A student's excessive number of absences (92 absences between September and May), due to both behavioral and medical problems, should have warned the District that the

student was not properly benefiting from her regular education program, and that an appropriate IEP should have been developed. The District hearing officer found that the District failed to properly correlate the student's medical and behavioral problems with the truancy issue and therefore ordered the District to identify the student as one with Behavioral and Other Health Impairments and to develop an IEP from which the student could benefit. *Maine School Admin Dist. #17*, 20 IDELR 298 (SEA ME 1993).

- b. Lack of attendance alone does not necessarily require a student to obtain special education services, but there were warning signs that this student had ED – decline in academic performance, absenteeism, discipline violations, family conflict, cautions in a neuropsychological report, and diagnoses of depression and dysthymia. The district was found responsible for compensatory education and private placement costs. *Board of Educ. Of Syracuse City School Dist.*, 37 IDELR 232 (NY SEA 2002)
- c. While absences alone do not create special education eligibility, the District is under an obligation to investigate the reason for the student's excessive absences in order to fulfill its child find responsibilities. Here, the District failed to make any attempts to determine the causes of the Student's absences outside automated phone calls and one live call three months following the student's enrollment. The District's lack of effort to determine the cause of the student's absences hindered the District's ability to determine whether the student was in need of special education services. *Minnesota Transitions Charter School #4017*, 110 LRP 15178 (MN SEA 2009)
- d. OCR concluded that a District had sufficient information to suspect that a child may have a condition that substantially limits a major life activity and should have conducted an evaluation. The District received a letter from the student's physician regarding the student's severe asthma as well as a medication form indicating that the student was to receive asthma medication every four hours. OCR found that this information, along with the student's frequent absences, hospitalization and failing grades should have alerted the District to the need for an evaluation. *Metro Nashville Pub. Schs.*, 110 LRP 49252 (OCR 2009)

- e. Parents alleged that a District failed to comply with its child find obligation when it overlooked their child's absenteeism. The Administrative Law Judge found that the student's in-school demeanor and academic success would not have given the District a reason to suspect that the child had anxiety that caused him to be absent from school. Because the parents did not share their concerns with his teachers and because his episodes of anxiety were occurring in the home, there were no red flags to trigger a further inquiry on the part of the District. *Montgomery County Public Schools*, 110 LRP 28793 (SEA MT 2010).

E. Programming and Services for School Avoidance

- 1. Need for Specialized Instruction – adaptation in the content/delivery of instruction
- 2. Involvement with mental health professionals
 - a. Get releases to obtain records.
 - b. Request permission to consult with the child's mental health/medical providers.
 - c. Request discharge paperwork from hospitalization.
 - d. If parent does not give permission for the district to consult with treating providers, offer to conduct your own evaluations.
 - i. A district should have conducted a psychological evaluation for a student who attended only three full days and seven half days of school between August 2005 and March 2006. Although the District made attempts to get recommendations regarding the student's educational needs from her mental health providers and/or verify need for homebound instruction, it should not have relied on the parents to supply this information. The Administrative Law Judge concluded that the District's failure to evaluate the student's psychological needs and failure to revise the student's IEP when it became apparent that the services provided – a modified schedule and permission to leave class when necessary – were not sufficient to address the student's extreme anxiety and panic attacks, and thus amounted to a

denial of FAPE. The District was ordered to reimburse the parents for a private psychological evaluation and provide enough compensatory education services to make up for the instructional time the student missed due to her excessive absences. *West Lyon Community Sch. Dist. and Northwest Area Education Agency*, 48 IDELR 232 (SEA IA 2007)

- e. Consider conducting a Functional Behavior Assessment to investigate the function of the school avoidance.
 - i. Attention-seeking
 - ii. Reeducation of triggers
 - iii. Oppositional behavior toward parents
 - iv. Tangible reinforcers outside of school
- f. Consider all identified students who develop attendance issues. If absenteeism is negatively impacting their learning, it must be addressed.
 - i. An IHO found that, while a student's IEP and placement were initially appropriate, they became unsuitable when the program failed to effectively address the student's "worsening attendance problems." The hearing officer found the placement made the student "too anxious to be able to attend regularly," and concluded that the District should have recommended further evaluation or services to address the student's absenteeism. *Boston Pub. Schs.*, 40 IDELR 108 (MEA 2003)
 - ii. A student with complex health issues was identified as OHI. Although the student's health condition affected her school attendance, the IEP did not contain services to address the student's absenteeism. After the student missed 35 days, she was automatically disenrolled by the District. OCR found that the district denied the student FAPE because it was aware of the student's health issues, but didn't conduct an evaluation or modify the IEP to address the impact of these health issues on her attendance. *Anacortes Sch. Dist. No 103*, 53 IDELR 241 (OCR 2009)
- g. Behavior plan
- h. Trigger avoidance

- i. Modified attendance – late start/early release – gradually increase attendance
- j. Excuse absences
- k. Mental health supports – counseling, social skills training, coping strategies, access to safe space in the school when triggered, de-escalation techniques, collaboration with private mental health professionals, etc.
- l. OT/Speech
- m. Reintegration plans
- n. Parent counseling and training. The definition of related services includes parent counseling and training, which means:
 - i. Assisting parents in understanding the special needs of their child;
 - ii. Providing parents with information about child development; and
 - iii. Helping parents to acquire the necessary skills that will allow them to support the implementation of their child’s IEP.

3. Placement

- a. Home Instruction
 - i. Consider whether receiving instruction at home may make the problem worse.
 - ii. Consider whether home instruction is actually the student’s LRE.
 - a) Trend Toward Homebound Placement for Bullying and Harassment
- b. A student diagnosed with ADHD, a speech-language impairment, and Asperger’s Syndrome was both bullied and the perpetrator of bullying, and eventually displayed suicidal ideation, after which the district served the student in a homebound placement. *T. B. and M.B. v. Waynesboro Area School District*, 56 IDELR 67 (MD Pa. 2011)
- c. Due to conflicts a student with bipolar disorder had with other students, she spent the better part of two school years placed at home. *Weidow v. Scranton School District*, 58 IDELR 93 (3rd Cir. 2012)

- d. A district agreed to place a student, who was suffering from PTSD and anxiety and “becoming hysterical” due to attending class with another student who had allegedly molested her sister and bullied her, in a home instruction placement. *M.S. v. Marple Newtown School District*, 82 F. Supp. 3d 625 (U.S. Dist. Court E.D. Penn. 2015)
- e. Thoroughly investigate the bullying/harassment claims.
- f. More restrictive setting with mental health supports
 - i. Day treatment
 - a) When an 11 year old student who had been diagnosed with Asperger’s Syndrome, school phobia, and generalized anxiety began to have significant school attendance issues, the District unsuccessfully tried several options, including home tutoring and receiving instruction in the library. When an expert recommended a day treatment placement with therapeutic services that would address the student’s school phobia, the parent disagreed and took the district to due process. The IHO found that the district had established that its proposed placement was indeed the LRE, after having considered and exhausted several other less restrictive options, and that the parent’s proposed placements were not appropriate. The decision was affirmed on appeal. *Lincoln School District*, Rhode Island SEA, 52 IDELR 174, April 15, 2009. See also 54 IDELR 94, February 23, 2010.
 - ii. Residential placement
 - a) The 8th Circuit Court of Appeals reversed a lower court’s order finding that a student’s truancy and disruptiveness were “social and emotional in nature” and therefore “separable from the learning process,” instead ruling that her emotional and behavioral struggles were so severe that a residential placement was the least restrictive environment in which the student could receive educational benefit. *Independent School District No. 284 v. A.C. and C.C.*, 258 F.3d 769 (8th Cir. 2001)

II. Emotional Disturbance

- A. IDEA Eligibility Criteria** – Emotional Disturbance means a condition exhibiting one or more of the following characteristics over a long period of time to a marked degree or that adversely affects a child’s educational performance.
1. An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 2. An inability to build or maintain satisfactory interpersonal relationships with peers or teachers.
 3. A general pervasive mood of unhappiness or depression.
 4. Inappropriate types of behavior or feelings under normal circumstances.
 5. A tendency to develop physical symptoms or fears associated with personal or school problems.

B. Implications for Special Education

1. **Child Find**

- a. **Students who are advancing from grade to grade and those that are hospitalized** – In Regional Sch. Dist. No. 9 v. Mr. and Mrs. M, 53 IDELR 8 (U.S. Dist. Ct. CT 2009), the Court held that the District violated its child find obligation when it failed to identify a student who was placed in a psychiatric program (hospital) for suicide intervention. While the court agreed that the program alone did not establish eligibility, it noted that the District should have been on notice of the suspected disability based on the health assessment completed by the parent a week before her placement. The form stated that the student had been diagnosed with depression and bulimia and was taking an antidepressant. These statements, along with the subsequent hospitalization should have raised suspicion that the student suffered from an emotional disturbance over a long period of time.
- b. **Truancy** – Consider whether the absenteeism is caused by an underlying mood disorder.
- c. **Bullying**
 - i. In Rose Tree Media School District, 111 LRP 6194 (SEA PA 2010), a hearing officer concluded that a PA school

district violated the IDEIA's child find provision when it failed to evaluate a student whose impulsivity, difficulty socializing, severe anxiety and other behaviors may have made him a target for bullies and whose emotional and social difficulties may have led him to misinterpret normal childhood interactions.

- ii. In Board of Educ. of the Massapequa Union Free Sch. Dist., [49 IDELR 89](#) (SEA NY 2007), a state review officer ordered a NY district to provide special education services to a high school sophomore with depression, anxiety and agoraphobia. Despite the fact the student received straight A's and performed well above average on assessment tests, her inability to attend school due to fears of bullying qualified her as a child with a disability.

C. Eligibility

1. **General eligibility requirements: Impairment, adverse effect, and need for special education and related services** – The definition of a child with a disability under the IDEIA means a child who has one or more of the 12 identified impairments; one of which is emotional disturbance, and who, by reason thereof, needs special education and related services. 34 CFR §300.8(a).
2. **Adverse Effect** – The definition of emotional disturbance, in 34 CFR §300.8 (c)(4)(i), states that the condition must "adversely affect a child's educational performance."
 - a. OSEP has noted that a discrepancy between ability and achievement is not specified in the eligibility criteria for ED. Letter to Anonymous, [213 IDELR 247](#) (OSEP 1989).
 - b. See G.H. v. Great Valley Sch. Dist., 61 IDELR 63 (E.D. Pa. 2013). A student who engaged in violent tantrums at home was found not eligible for services as a child with ED. The student's solid academic performance and generally good behavior at school suggested that her behavioral problems did not adversely affect her educational performance. While she was hospitalized for a month, that in itself did not demonstrate an adverse educational impact.

- c. See Dighton-Rehoboth Regional Sch. Dist., [45 IDELR 146](#) (SEA MA 2006). The hearing officer found that the district's reliance on the student's past academic performance as an indication that she did not require special education services was inappropriate. The hearing officer explained, "[t]he ability to attend class on a daily basis, to behave appropriately, to participate in group learning and class discussions, and to interact with teachers and peers both in and outside of class are all skills that are fundamental to the educational experience." Although the student made academic gains with tutoring, she had become "tremendously isolated" and was unable to attend school. The district's reliance on her historic academic performance failed to take into account that she had developed anorexia, PTSD, depression, and possible agoraphobia. The hearing officer found that the student qualified under the definition of ED and ordered the district to convene an IEP meeting to develop a program that incorporated the recommendations of the student's psychiatrist.
- d. Need for special education and related services. In *In re. Student with a Disability*, [56 IDELR 148](#) (SEA NY 2011), a state review officer recognized the severity of an 11th-grader's depression, anxiety, and eating disorder, but nonetheless determined that the student was ineligible for IDEIA services. The review officer found that the student's emotional conditions did not adversely affect her educational performance. Not only did the student earn straight A's in her therapeutic residential placement, but she did so without any specialized instruction or modifications to the general education curriculum. The SRO observed that the student's residential placement, arranged after her second suicide attempt, was intended to address her social and emotional difficulties rather than her learning needs. The hearing officer explained, that while the student's medical/psychiatric conditions were extremely serious, they did not adversely affect her educational performance to the extent that the student required special education and related services in order to learn, or that the student was unable to attend school or access the general curriculum without modification of the content, methodology, or delivery of instruction. Accordingly, the review officer agreed that the parent was not entitled to reimbursement for the costs of the student's residential program.

3. **Duration and severity of characteristics**

- a. OSEP has stated that a generally acceptable definition of "a long period of time" is a range between from two to nine months, assuming preliminary interventions have been implemented and proven ineffective during that period. Letter to Anonymous, [213 IDELR 247](#) (OSEP 1989). See also R.B. by F.B. v. Napa Valley Unified Sch. Dist., [48 IDELR 60](#) (9th Cir. 2007) (because a child made significant improvements in her classroom behavior once she adjusted to her placement, her inability to maintain peer relationships did not persist for a long period of time).
 - b. OSEP has also taken the position that the phrase "to a marked degree" generally refers to the frequency, duration or intensity of a student's behavior in comparison to the behavior of his peers and can be indicative of either degree of acuity or pervasiveness. Letter to Anonymous, [213 IDELR 247](#) (OSEP 1989).
4. **Inability to learn that cannot be explained by intellectual, sensory, or health factors.**
 5. **Inability to build or maintain satisfactory interpersonal relationships with peers and teachers.**
 - a. Examine whether psychological or mental health conditions are impeding a student's ability to interact or adapt successfully to a school environment.
 - b. The fact that a student has a turbulent relationship with his parents or engages in problem behaviors at home will not in itself qualify the student as a child with an emotional disturbance. Avon Bd. of Educ., [38 IDELR 229](#) (SEA CT 2003); In re Kristina Louise C., [507 IDELR 265](#) (SEA WA 1985). Assuming there is no adverse impact in educational performance and undue disruption in school, a student's out-of-school behavior is typically not a basis for eligibility. See, e.g., Letter to McNulty, [213 IDELR 108](#) (OSEP 1987); York Sch. Dept., [107 LRP 53866](#) (SEA ME 2007); Canton Bd. of Educ., [106 LRP 10887](#) (SEA CT 2005), Fauquier County Pub. Sch., [20 IDELR 579](#) (SEA VA 1993).
 - c. However, when educational performance is considered to include a child's ability to adapt successfully to a school environment, students whose psychological conditions impede their ability to interact with others, like peers and teachers, are more likely to be

considered eligible as Dighton-Rehoboth Reg'l Sch. Dist., [45 IDELR 146](#) (SEA MA 2006).

6. Inappropriate types of behavior or feelings under normal circumstances.

- a. Consider internalizing and externalizing behaviors.
- b. Consider relationship with other disabilities.
- c. According to the 8th U.S. Circuit Court of Appeals, "[r]ead naturally and as a whole, the law and the regulations identify a class of children who are disabled only in the sense that their abnormal emotional conditions prevent them from choosing normal responses to normal situations." Independent Sch. Dist. No. 284 v. A.C. by C.C., [35 IDELR 59](#) (8th Cir. 2001).
- d. Consider whether the child's reactions to everyday occurrences, such as teasing or frustration, are appropriate when considered in relation to how the child's peers would react. A student would not qualify as having an emotional disturbance unless his behavioral problems were "unusually serious as compared to the majority of his peers" and presented "a significant impediment to learning." Hoffman v. East Troy Comm Sch. Dist., [29 IDELR 1074](#) (E.D. Wis. 1999) Manhattan Beach Unified Sch. Dist., [34 IDELR 249](#) (SEA CA 2001).
- e. According to OSEP, inappropriate behavior under normal circumstances is behavior that is atypical for the student and for which no observable reason exists. Letter to Anonymous, [213 IDELR 247](#) (OSEP 1989). OSEP explained that "the essential element appears to be the student's inability to control his/her behavior and conform his/her conduct to socially acceptable norms."
- f. Consider the behavior in context.
 - i. In one case, the student, who had been the victim of a long history of sexual abuse, began to exhibit deteriorating behavior and began to self-medicate with marijuana use. The hearing officer determined that the student's "behavior and feelings were not 'inappropriate under normal

circumstances' because the traumatic events in [the student's] life made his 'circumstances' anything but normal." N.C. v. Bedford Central School Dist., 473 F. Supp. 2d 532 (S.D.N.Y 2007).

- ii. In another case, Lakeside Joint Sch. Dist., [110 LRP 24088](#) (SEA CA 2010), the ALJ found that a 12-year-old's reasonable fear of being assaulted by specific individuals at school was not enough to make him eligible as a child with an emotional disturbance. Although the student was diagnosed with reactive attachment disorder and PTSD, he reacted as most peers would have to an assault at school and threats from a parent. The parents claimed the student had a tendency to develop fears associated with personal or school problems, but the ALJ observed that students eligible based on that characteristic have abnormal emotional conditions that prevent them from choosing normal responses in normal situations. The student was not afraid of students or schools generally, but of specific individuals at a single campus. "If student's interpretation were correct, any student with a serious, continuing, and reasonable fear of violence on a troubled campus would be potentially eligible for special education," the ALJ wrote. The ALJ also noted that the student's fear was not long-lasting and did not impact his education. Rather, his academic difficulties were caused by his parents' decision to withdraw him from school, not his fear.

7. **General pervasive mood of unhappiness or depression** – A student is not required to meet the DSM criteria for major depression in order to have "a general pervasive mood of unhappiness or depression." See, e.g., Los Angeles Unified Sch. Dist., [107 LRP 27850](#) (SEA CA 2007) However, the lack of such a diagnosis may raise an issue about whether the student is depressed enough to qualify for services based on a pervasive mood of unhappiness or depression. See, e.g., Conejo Valley Unified Sch. Dist., [507 IDELR 213](#) (SEA CA 1985).
8. **A tendency to develop physical symptoms or fears associated with personal or school problems.**
9. **Exclusions**

- a. Social Maladjustment.
 - i. 34 CFR §300.8 (c)(4)(ii) provides that ED does not include children who “are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.”
 - ii. See *Eschenasy ex re. Ecshenasy v. New York City Dep’t of Educ.*, 52 IDELR 66, (S.D.N.Y 2009). The school district concluded that a teenager who cut classes, stole and took drugs was socially maladjusted, and therefore ineligible for special education and related services. The Court disagreed and found that while some of her behaviors suggested social maladjustment, she also engaged in self-injurious behavior (cutting and hair pulling) and attempted suicide, which qualified as inappropriate behavior under normal circumstances. The Court further found that she had a pervasive mood of unhappiness or depression that persisted over a long period of time and to a marked degree and that her failing grades established that her behaviors impeded her ability to learn.
 - iii. Consider 504 - See. *Irvine (CA) Unified Sch. Dist.*, [353 IDELR 192](#) (OCR 1989) (while the district had found the student ineligible for classification as seriously emotionally disturbed under IDEA, that determination was not dispositive as to whether he was disabled and entitled to Section 504 services. To be Section 504 eligible, the student had only to establish that his social maladjustment was a mental impairment, which substantially limited a major life activity, such as his ability to learn or attend school).
 - iv. Defining Social Maladjustment
 - a) The U.S. Department of Education has refused requests to define this term. The commentary to the current regulations states, "there is no consensus" on a definition. 71 Fed. Reg. 46550.
 - b) There is no diagnosis code in the DSM-5, but some speculate whether social maladjustment can be

equated with a Conduct Disorder (CD) or Oppositional Defiant Disorder (ODD).

- c) What is a Conduct Disorder? CD is characterized by a frequent and persistent pattern of behavior in which the basic rights of others or age appropriate societal norms are violated. These behaviors fall into the following groupings: aggression that causes or threatens to cause physical harm to people or animals, nonaggressive conduct that causes property loss or damage, deceitfulness or theft, and serious violations of rules.
 - d) What is an Oppositional Defiant Disorder? ODD is characterized by frequent and persistent pattern of angry/irritable mood, argumentative/defiant behavior, or vindictiveness. Typical behaviors include frequent arguments with adults, disregard of rules, refusal to comply with the requests of adults, loss of temper, vindictive or spiteful acts, and displays of anger or resentment.
- v. Drug Use - Some courts and hearing officers have concluded that mood, behavior or academic problems related solely to drug abuse would not qualify a student as a child with an emotional disturbance. See, e.g., *Mr. and Mrs. N.C. v. Bedford Cent. Sch. Dist.*, [51 IDELR 149](#) (2d Cir. 2008, unpublished) (determining that a student's behavioral problems at school stemmed from drug use rather than an emotional disturbance; *Child v. Sequoia Union High Sch. Dist.*, [559 IDELR 133](#) (N.D. Cal. 1987)). Others have looked at the origin of the drug use (ex. self-medication for depression/anxiety) and found that the criteria for ED was established. See *Fort Bend Independent School District V. Z.A.*, [62 IDELR 231](#) (S.D. Tex. 2014)
- b. **Request and review mental health records.** In *Richardson ex rel. W.R. v. District of Columbia*, [50 IDELR 6](#) (D.D.C. 2008), the court held that the District did not violate the IDEIA when it found that a boy with academic and behavioral problems was not eligible for special education. Because the multidisciplinary team did not have

access to the student's private psychiatric records, it could not determine that he had an emotional disturbance.

c. **Request consultation with private therapist/providers.**

D. Programming – IDEIA Emphasis on Proactive Approach to Managing Behavior

1. Address social, emotional, behavioral needs in the IEP.
2. Evaluate and document patterns of misbehavior.
3. Be creative about different methods to manage the student’s behavior
 - a. Implement PBIS.
 - b. Consider discipline that does not implicate IDEIA procedural safeguards. (reprimands, written warnings, and in-school suspensions, Sat. school, etc.).
4. Conduct thorough FBAs.
 - a. Consider whether a behavior specialist is needed to conduct the FBA.
 - b. Ensure the process includes information from private mental health professionals who are working with the student
5. Create or revise the BIP.
6. Consider need for a change of placement, including need for residential placement. Document the determination and proposal through an IEP and Prior Written Notice.
7. Consider the implications of a referral to law enforcement.
8. Provide services to enable the student to develop skills to mitigate the behavioral challenges presented by the mental health disorder.

E. Manifestation Determinations – A School Psychologist’s Role

1. When a District is conducting a Manifestation Determination Review for the purposes of discipline, the law requires all relevant information in the student’s file to be considered. 34 C.F.R. § 300.503(e)

- a. This information specifically includes:
 - i. The child's IEP
 - ii. Any teacher observations
 - iii. Any relevant information provided by the parents.
- b. See *In re. Student with a Disability*, 53 IDELR 173 (SEA WA 2009). A middle school student with an emotional disorder vandalized the home of the school principal during summer break. The District members of the team believed the vandalism differed from the student's in-school behaviors. The parent presented information from the student's therapist that the student had PTSD as result of his older brother's suicide and reported that the vandalism incident occurred on the one-year anniversary of the brother's death. The parent argued that the behavior was a manifestation of the disability. The ALJ concluded that the team failed to consider all the relevant information in the students file and gave insufficient weight to this therapist's testimony directly linking the vandalism to the recurrence of his trauma.

2. **Questions for the Team** – 34 C.F.R. § 300.530(e) The team must decide (yes/no) the answers to the following questions:

- a. Was the conduct in question caused by the disability?
- b. Did the conduct in question have a direct and substantial relationship to the disability?
- c. Was the conduct in question a direct result of the LEA's failure to implement the IEP?

3. **Dangerous Students**

- a. LEAs that believe that maintaining the current placement of a child is substantially likely to result in injury to the child or to others may request a hearing. 20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a). See also Letter to Huefner, 47 IDELR 228 (OSEP March 8, 2007). The LEA bears the burden of persuasion in such a hearing. 71 F.R. 46540, 46723 (Aug. 14, 2006). The hearing officer may order a change in placement of the child, including ordering the child to be placed in an appropriate IAES for not more than 45

school days, if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. 34 C.F.R. § 300.532(b)(2)(ii).

- b. The LEA can seek additional 45-day placements in an IAES if it believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. 34 C.F.R. § 300.532(b)(3).

III. Suicidal Ideation and Self-Harm

- A. Under the IDEA and Section 504 of the Rehabilitation Act of 1973, districts have an *affirmative* obligation to identify children who may qualify as students with disabilities, and who may therefore be in need of special education and related services.
- B. Districts may not rely solely on parents to refer a student with a suspected disability for evaluation. Therefore, if the District is aware of a student’s suicidal ideation or self-harm behavior, it should consider whether it is on notice that the student is a suspected student with a disability.

1. Identification under Section 504

- a. The entire text of the statute: “No otherwise qualified individual with handicaps in the United States... shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial Assistance...”
- b. A child qualifies as a person with a disability under Section 504 if they have a **physical or mental impairment** (e.g., depression, anxiety) that **substantially limits** one or more **major life activities**
- c. The definition of major life activity was expanded by the 2008 and includes, but is not limited to, such activities as caring for oneself, sleeping, learning, concentrating, thinking, communicating.
- d. A student with a disability under Section 504 *may* qualify for accommodations.
- e. All students with a disability under Section 504 are protected from discrimination on the basis of their disability.

2. Identification under IDEA

- a. A child is a student with a disability under the IDEA if they:
 - i. Fall under at least one of the IDEA’s categories of disabling conditions; it is an exhaustive list
 - ii. Such condition(s) adversely affects their educational performance (which includes their ability to attend school); and
 - iii. Because of this, the student demonstrates a need for special education and related services.
 - iv. Most pertinent category for this issue – **emotional disturbance**.
 - a) Suicidal ideation often presents with warning signs like talking about exiting, feeling like a burden on others, social withdrawal, self-medicating, excessive absences, engaging in self-harm, excessive sleeping, mood swings, etc.
 - b) Could this meet one or more of the eligibility criteria for emotional disturbance – e.g., “an inability to build or maintain satisfactory interpersonal relationships with peers and teachers,” “inappropriate types of behavior or feelings under normal circumstances,” or “a general pervasive mood of unhappiness or depression”?

C. Discipline and Suicidal Students

1. Discipline of disabled students under IDEA or Section 504 is prohibited for conduct that is related to their disabling condition. So we ask...
 - a. Is the student **currently identified** as a child with a disability?
 - b. If not, is the student considered a “**suspected disabled**” child?
2. For student with disabilities (or who is suspected disabled) for whom discipline would constitute a **change in placement** the district must conduct a **manifestation determination**.

3. **IDEA Disciplinary Exceptions for Weapons**

- a. Whether or not the conduct is determined to be a manifestation of the student's disability, if the conduct meets one of the **special circumstance** safety exceptions which includes weapons (as well as illicit substances or serious bodily injury), the district may remove the student to an interim alternative education setting for up to 45 school days.
- b. To qualify under this exception, a knife must be at least 2.5" in length.