

THE MENTALLY ILL STUDENT: CHILD FIND, ELIGIBILITY AND FAPE OBLIGATIONS

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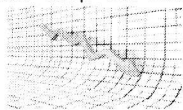
A Few Statistics

- Four million children and adolescents in this country suffer from a serious mental health disorder that causes significant functional impairments at home, at school, and with peers.
- Half of all lifetime cases of mental disorders begin by age 14.



Statistics (cont)

- Approximately 50% of students age 14 and older who are living with a mental illness drop out of school. This is the highest drop out rate of any disability group.



Diagnosis Alone Does Not Equate to Disability

- Must have an adverse impact.
- Single area where schools may be remiss in their child find obligations.
- Schools should evaluate these students early in the process.
- Evaluations are the key to identifying the problem and developing a solution.



Child Find Triggers for the Mentally Ill Student

- *Upper Merion School District*, 110 LRP 40308 (SEA PA 2010) – a student diagnosed with ADHD and a pattern of truancy and poor marks was sufficient to suspect a need for special education services.
- *Long v. District of Columbia*, 56 IDELR 122 (D.D.C. 2011) – a school district's child find duty was triggered when a private psychologist diagnosed the student with a learning disability.
- *E.J., Tom J. and Ruth J. v. San Carlos Elementary Sch. Dist.*, 56 IDELR 159 (N.D. Cal. 2011) – a district properly and timely responded to parents' concerns by convening a student study team when it learned that a private psychologist diagnosed the student with Asperger's syndrome, adjusting the student's accommodations and, when accommodations alone proved insufficient, conducting a special education evaluation.

Child Find Triggers for the Mentally Ill Student

- *D.G. v. Flour Bluff Indep. Sch. Dist.*, 56 IDELR 255 (S.D. Tx. 2011) – a student's diagnosis with ADHD and behavioral problems should have prompted the school district to evaluate the student for special education eligibility, especially as 504 accommodations that had been in effect had no impact on the student's behavior.
- *Eschenasy v. New York City Dept. of Educ.*, 604 F.Supp.2d 639 (2009); *New Paltz Cent. School Dist. v. St. Pierre ex rel. M.S.*, 307 F.Supp.2d 394 (2004) – a student who stole, broke school rules, obtained a tattoo and body piercings, made inappropriate friends on the internet, began using drugs, and ran away from home, failed a number of her classes and began cutting herself and purging is a student was on significant medications and was hospitalized.

Child Find Triggers for the Mentally Ill Students

- Notice of hospitalization
- Behaviors of concern
- Parent presentation of private evaluation
- Withdrawal from school
- Poor student attendance/significant tardies
- Police and court involvement
- Notice of juvenile detention
- Frequent nurse/social work/counselor visits
- Decline in classroom participation/work completion

Evaluations

- You have a child find obligation.
- The student doesn't have to be failing
- Good grades are only one indicator of appropriateness of a program.
- It can address problems before they become too severe.



Child Find Obligations After Withdrawal

- The IDEA's child find provisions did not divest the District of its responsibility to classify a student and provide her with services after she was unilaterally withdrawn from the District. *J.S. v. Scarsdale Union Free School Dist.*, 826 F.Supp.2d 635 (2011)

Evaluations

- Evaluate in all areas of suspected disability
- Use an independent evaluator if necessary
- Good use of resources.
- Evaluator should be familiar with students with mental health issues and be able to assess the student and involve the parents and school.
- Evaluator should be familiar with school based interventions.

Eligibility

- Options
- Emotional Disturbance
- Other Health Impairment

Practice Tip: Be sure to go over the criterion in an IEP meeting. This is helpful in clarifying needs.



Eligibility Considerations for the Mentally Ill Student

- J. D., G.D. and M.D. v. Wissahickon Sch. Dist.*, 56 IDELR 294 (E.D. Penn. 2011) – academic progress cannot serve as the sole “litmus test” for eligibility. The school district had an obligation to look beyond the student’s cognitive potential and academic progress to address the attentional factors and behaviors that had been identified as impeding the student’s progress.
- WG & MG ex. Rel. KG v. New York City Department of Educ.*, 56 IDELR 260 (S.D.N.Y. 2011) – a student who stopped attending schools, was involved in conflict with peers and parents, abused alcohol and marijuana and was arrested several times was not found to be a student with an emotional disability as the court found that the student’s challenges were the product of conduct and related disorders and a narcissistic personality trait combined with substance dependence and social maladjustment without any independent emotional disability.

Eligibility Considerations for the Mentally Ill Student

- *Nguyen v. District of Columbia*, 54 IDELR 18 (D.D.C. 2010) – a 17 year old student with depression and a mood disorder, combined with truancy and severe drug use was not eligible as a student with an emotional disability as there was no evidence linking the student's truancy to an emotional disability. The court determined that any attempt to link the two would be speculative.
- *Eschenasy v. New York City Dept. of Educ.*, 604 F.Supp.2d 639 (2009) - In considering ED eligibility, a court noted that the student repeatedly misbehaved in school by cutting class, taking drugs, and stealing. The student also engaged in hair pulling and cutting herself, was diagnosed with a mood disorder, diagnosed with borderline personality features and attempted to commit suicide. The fact that she also was diagnosed with conduct disorder did not preclude her from qualifying under the IDEA.

Eligibility Considerations for the Mentally Ill Student

- *New Paltz Cent. School Dist. v. St. Pierre ex rel. M.S.*, 307 F.Supp.2d 394 (2004) -- a student was eligible as a student with an emotional disorder citing the three failing grades the student received in the 9th grade, his overall GPA decline, lack of evidence of learning disability or other sensory or health defect, and inappropriate, defiant and disobedient behavior at home and in school. Additionally, the hearing officers and court found that M.S. exhibited signs of a pervasive mood of unhappiness and depression. The school psychologist testified that M.S. was "extremely angry in school" and that he "suffered emotionally after his parents' divorce. That the student also changed his peer group and became involved in drugs did not preclude a finding of eligibility.

Eligibility Considerations for the Mentally Ill Student

- IEP teams must consider factors in addition to a student's academic performance such as attendance, social skills, coping skills and behavior regulation
- Although a student may engage in behaviors suggestive of social maladjustment or a conduct disorder, the student may be eligible if there are other underlying mental health issues and behaviors
- A student's use of drugs does not disqualify the student from being eligible

Developing IEPs for the Mentally Ill Student

- When developing IEPs for students with emotional issues, the team should include provisions related to:
 - Promoting attendance through behavior goals or strategies and/or a BIP
 - Social skill goals
 - Social language goals
 - The essential components of an FBA – based upon data analysis over time (i.e. situations in which the behaviors are exhibited, the consequences of the behaviors, and the most likely purpose or function of each behavior)

Developing IEPs for the Mentally Ill Student

- Behavior goals and strategies and/or a BIP
- Coping skill goals
- Individual and group therapy (significant amounts and perhaps using specific strategies or methods)
- Family therapy or services
- Accommodations such as extended time, preferential seating, use of a scribe

Developing IEPs for the Mentally Ill Student

- Development of a plan to address ongoing absences to help student keep up, including tutoring services
- Assignment of an aide or escort in school
- Opportunities for credit recovery or alternative programs
- IEP team should consider the size of the building and size of the classroom and their impact upon the student

Behavior Intervention Plans

- Very important
- Data driven
- Current data is crucial



Continuum of Placements

- FAPE trumps LRE : Beth B. v. Van Clay (Seventh Circuit)
- See 34 CFR 300.115

As the district court properly noted, the FAPE determination is at the threshold of the placement inquiry. Only with the subsequent LRE analysis does the question of the educational benefit to Beth in the regular classroom arise; in that context, the Rowley language does not apply.

Therapeutic Placements

- Must be based on current identified needs.
- Can be either a day school or residential placement.
- Homebound is not a long term special education placement



LRE

- Children with disabilities should not be placed in special classes, separate schools, or otherwise removed from the regular education environment unless " the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR .114.

Placements

- Unilateral Placements by parents
- ISBE approved placements
- School districts cannot place at non-ISBE approved placements. However, hearing officers can.
- 10 day notice or notice at the IEP is necessary.
- Failure to provide a 10 day notice is not an absolute bar to reimbursement.

Private Placements

- Primarily oriented toward providing the student an education. Dale M.(Seventh Circuit).
- Tough standard for parents particularly in residential cases.
- Split among the Circuit courts on this issue.



Placement Issues for the Mentally Ill Student

- *Eschenasy v. New York City Dept. of Educ.*, 604 F.Supp.2d 639 (2009) – a court cited a student's pattern of eloping from school as evidence of a need for a program which could "contain" the student.
- *New Paltz Cent. School Dist. v. St. Pierre ex rel. M.S.*, 307 F.Supp.2d 394 (2004) – a court pointed to a student's need for cognitive-behavioral and confrontational therapies in support for a private program.
- *Ruffin v. Houston Independent School Dist.*, 459 Fed.Appx. 358 (2012) -- a court upheld a public school placement because the student's IEPs addressed his needs for behavior support, academic support, counseling and social skill development.

Placement Issues for the Mentally Ill Student

- *M.H. v. New York City Dept. of Educ.*, Not Reported in F.Supp.2d (2011) – a court upheld an IEP for student suffering from anxiety which placed the student in a public school setting and provided for two 40 minute therapy sessions, all mainstream academic classes, extended time and alternate locations for tests and the four annual goals to be evaluated by the counselor and teacher: (1) learn to be more realistic and less perfectionistic with respect to her social interactions; (2) do the same with respect to academic tasks; (3) develop strategies to help her cope with social interactions; and (4) develop organizational strategies that allow her to manage her obligations without falling into perfectionism.

Placement Considerations for the Absent and/or Mentally Ill Student

- In considering appropriateness of placements for an ED student, courts have considered:
 - The need for structure
 - The need for intensive therapy
 - The need for containment
 - The need for positive feedback
 - The need for specialized therapies

Reasons for Residential

- Failure to make progress in less restrictive settings.
- Transition
- Aggression and safety issues related to school.
- No bright line rule
- Cases are very fact specific



	QUESTIONS?