



The Difficult Issue of When A Student's Mental Health Condition Intertwines with the Student's Education: A Legal and Clinical Examination

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Overview

- To what extent are schools responsible under disability law to address students' mental health?
- How can IEP Teams help?
- What can you do in terms of training and redirecting your staff resources?
- Reflections



The Basics

- Note that the Education Code requires that IEPs address the “Academic developmental and functional needs of the Student.” (Education Code section 56341.1.)
- The requirement that you have counseling/social worker services are based on the Federal Regulations. (34 C.F.R. § 300.34(c)(2).)
- Those services are related services. Therefore, the IEP Team must make those services available when they are required to allow a Student to receive educational benefits. (Alvord Unified School District (OCR September 13, 2014) 114 LRP 48617.)



The Responsibility of School Districts

- School Districts are not legally responsible for providing medical treatment. That would include any mental health services that constitute mental health services. (34 C.F.R. § 300.34.)
- But please be careful! Better yet, disregard what I just said. Several cases have stated that psychotherapy can be a related service. (Riverside County Office of Education (2014) 64 IDELR 155; Oakland Unified School District (2014) 114 LRP 49754.)
- For example: In a case of a Student with Anorexia, simple encouragement by school staff to eat more may not be enough. (Alameda Unified School District (OCR 2016) 68 IDELR 24. [Counselor should have evaluated the Student].)



The Responsibility of School Districts

- What is a behavior caused by? A disability vs. socially maladjusted behavior?

This is my perspective as supported by the literature:

“According to the third revised edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III-R) of the American Psychiatric Association, antisocial behavior forms the clinical content and foundation for the syndrome classified as *conduct disorder* (see American Psychiatric Association, 1987). Examples of antisocial behaviors that are used to diagnose conduct disorder include “is frequently truant,” “frequently initiates physical fights,” “has been physically cruel to other people,” “cheats with others in games or in school work,” and “has deliberately destroyed property of others.” (See Kazdin, 1987, for a complete listing of symptoms.) Children and youth exhibiting this behavior pattern also frequently steal and lie about their activities in order to attain goals or rewards, at others’ expense, break rules, and avoid accountability for their actions.

If three or more of these antisocial behaviors are exhibited consistently at higher than normal levels over a six-month period, then a diagnosis of conduct disorder is indicated. (Richters & Cicchetti, 1993). This syndrome, or diagnostic category, is defined as “clinically severe antisocial behavior(s) in which the everyday functioning of the individual is impaired, as defined by parents, teachers and others” (Kazdin, 1987, p. 22). In schools, antisocial behavior and conduct disorder are commonly referred to by educators as *social maladjustment*. Children and youth with these behavioral characteristics and patterns historically have been excluded from special education eligibility as defined by P.L. 94-142 and its reauthorization, the Individuals with Disabilities Education Act (IDEA).”

(Antisocial Behavior in School: Strategies and Best Practices, Walker, Colvin, Ramsey, 1995.)



The Responsibility of School Districts

What is a Disability? Consider this:

“Use of the DSM-V in Forensic Settings

When the DSM-V categories, criteria, and textual descriptions are employed for forensic purposes, there are significant risks that diagnostic information will be misused or misunderstood. These dangers arise because of the imperfect fit between the questions of ultimate concern to the law and the information contained in a clinical diagnosis. In most situations, the clinical diagnosis of a DSM-V mental disorder is not sufficient to establish the existence for legal purposes of a ‘mental disorder,’ ‘mental disability,’ ‘mental disease,’ or ‘mental defect.’ In determining whether an individual meets a specified legal standard (e.g., for competence, criminal responsibility, or disability), additional information is usually required beyond that contained in the DSM-V diagnosis....

Moreover, the fact that an individual’s presentation meets the criteria for a DSM-V diagnosis does not carry any necessary implication regarding the individual’s degree of control over the behaviors that may be associated with the disorder. Even when diminished control over one’s 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 behavior at a particular time. ...”

(DSM-V-TR, p. xxxii-xxxiii; emphasis added.)



The Responsibility of School Districts (Cont'd)

Parents on Behalf of Student v. San Dieguito Union High School District, OAH Case No. 2017110183

- 16 year old male Student with “complex” emotional needs.
- Student’s primary educational problem was school attendance. He would “freeze or shut down.”
- When he did attend school, he was polite and receptive to instruction.
- School District provided Student with an array of supports including “Wrap Around Services.”
- District personnel came to conclusion that motivation was the problem rather than disability.



The Responsibility of School Districts (Cont'd)

- Parents unilaterally placed Student at Discovery Ranch in Utah. This is what ALJ found:

“Finally, District’s argument that Parents should have kept trying to get Student to shadow at a nonpublic day school for an indefinite period of time, rather than send him to Discovery Ranch, was not reasonable or consistent with applicable law. Students are not required to languish indefinitely without an educational program because a school district is averse to providing placement at a residential treatment center. Here, Student met the necessary legal requirements for placement at a residential treatment center; including that Student’s disability was intertwined with his education and a residential treatment center was necessary for Student to benefit from special education.” (Clovis, supra, 903 F.3d 635 at p. 643.)



The Responsibility of School Districts (Cont'd)

- But what did the Clovis Unified School District v. CA Office of Administrative Hearings (9th Cir. 1990) 903 F.3d 635, case actually say?
- Case concerned what party or agency was responsible for placement of a child with a serious emotional disturbance in a hospital. Note that this was under the Education for All Handicapped Children Act. This was the Court's conclusion:

“Michelle was hospitalized primarily for medical, i.e. psychiatric, reasons, and therefore the District Court erred when it determined hospitalization to be a “related service” for which Clovis was responsible under the Act.

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The Responsibility of School Districts (Cont'd)

Clovis Unified School District v. CA Office of Administrative Hearings

The psychotherapeutic services Michelle received at King's View may be qualitatively similar to those she would receive at a residential placement, and it is clear that some psychological services are explicitly included within the definition of related services under the Act when pupils need such services to benefit from their special instruction. However, the intensity of Michelle's program indicates that the services she received were focused upon treating an underlying medical crisis. Where, as here, a child requires six hours per day of intensive psychotherapy, such services would require "medical" in that they address a medical crisis."



The Responsibility of School Districts (Cont'd)

- The Opinions of More Recent Decisions: M.S. etc et al. v. Los Angeles Unified School District (9th Cir. 2019) 119 LRP 1749
- School District denied a FAPE to a 17-year old female Student who had been residentially placed by the L.A. County Department of Children and Family Services due to allegations of abuse and incapacity of the caretaker. ALJ found the District was not required to consider residential placement under those facts. The Federal District Court reversed. The Court observed:

“The IDEA “explicitly imagines that each child with special needs will receive an appropriate education through the collaborative process between the [District] and the parent(s),” and it “would run contrary to the spirit of the IDEA to conclude that the [District] is permitted to make some substantive choices about the child’s educational needs unilaterally” -- such as a determination regarding her need (or lack thereof) for an educationally-related residential placement -- simply “because it has made some other threshold amount of conclusions in consultation with the parent(s).” E.H. v. New York City Dep’t of Educ., ___ F. Supp. 3d ___, No. CV-15-3535, 2016 WL 631338 (S.D.N.Y. Feb. 16, 2016)

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The Responsibility of School Districts (Cont'd)

- M.S. etc et al. v. Los Angeles Unified School District

Ultimately, “[t]he clear implication” of the District’s central argument in this appeal is “that no matter how strong the evidence presented by [M.S.’s attorneys or caretakers], the [District] still would have refused to provide” for a residential placement based upon M.S.’s educational needs because, in the District’s view, DCFS had effectively discharged it of the duty to do so. Deal v. Hamilton Cty. Bd. of Educ., 392 F.3d 840, 858 (6th Cir. 2004) “This is predetermination.” Id.



The Responsibility of School Districts (Cont'd)

- River Springs Charter School (January 14, 2019) 119 LRP 1450
In a split Decision, an ALJ found that a Charter School did not deny a 13-year old female Student a FAPE by not offering goals and services in several areas, including educationally related mental health and social skills.
- Santa Monica-Malibu Unified School Dist. (November 30, 2018)
118 LRP 49225
In a case concerning a 17-year old female Student, an ALJ found that Student should have been placed in a residential treatment center for several mental health issues including, major depressive disorders, anxiety disorder, ADHD and ODD. The ALJ stated in part:
“Instead of relying on valid information provided by mental health professionals, Santa Monica-Malibu hand selected certain test scores and interviews to determine Student’s mental health issues were not significant, rather than consider the entire picture of what was happening to Student. Ms. McMillon, in particular, took a rather simplistic approach to determine Student was not in need of significant mental health services.
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The Responsibility of School Districts (Cont'd)

Santa Monica-Malibu Unified School Dist.

In essence, if Student's grades were good, and she was not acting out at school, she was appropriately accessing her education. Santa Monica-Malibu determined Student's behavior was just a manifestation of social maladjustment, which could be appropriately addressed with school-based counseling one hour a week. Not only did Santa Monica-Malibu ignore the information provided by Student's mental health professionals, they ignored the factors that skewed Ms. McMillon's recommendations."



The Responsibility of School Districts (Cont'd)

Edmonds School District v. A.T. a minor child, et al. (U.S.D.C. W.D. Wash. 2017) 299 F.Supp 3d 1135

- Court stated that a teen-age student with diagnoses of ADHD and/or ODD could receive reimbursement for a residential treatment center in Provo Utah, even though Court noted that a student cannot recover for a placement based on purely medical needs. The Court noted that “[t]here is no bright line that makes residential placement inappropriate under the IDEA ...”



The Responsibility of School Districts (Cont'd)

- Be aware of three cases:
 - G.R. v. Dallas School Dist. C.D. Or. 2011) 823 F.Supp 2d 1120
 - [Student reluctantly placed after pleading guilty to a sexual abuse case was found to have been placed due to the requirement of sex offender treatment rather than educational needs.]



The Responsibility of School Districts (Cont'd)

- Ashland School District v. R.J. (9th Cir. 2009) 585 F.3d 1004
 - [Student with good grades but engaged in “risky behaviors” not entitled to reimbursement for RTC.]
- Ashland School District v. E.H. (9th Cir. 2009) 587 F.3d 1175
 - [Student repeatedly hospitalized for suicidal ideation was placed in RTC for medical and not educational difficulties.]



How Can IEP Teams Help?

- Take in as much data as possible.
(The Pros and Cons of Assessments)
- Keep Endrew F. in mind. That is to ask what are the child's "circumstances."
- Use your school psychologists, behavior specialists and ERMS providers.
- Avoid using too much "hearsay."
- Try to show your work. (The pros and cons of "showing your work.")



How Can IEP Teams Help?

The Difficult Issue of Goals for Mental Health Issues:

“Section 1414(d)(1)(A)(i)(II)

(II) a statement of measurable annual goals, including academic and functional goals,⁷⁷ designed to –
(aa) meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and
(bb) meet each of the child’s other educational needs that result from the child’s disability;... (Special Education Law, 2nd Ed., Wright, 2006.)

⁷⁷ To learn how to write IEPs that are Specific, Measurable use Action words, are Realistic and Time specific, read Chapter 11, SMART IEPs, in *Wrightslaw: From Emotions to Advocacy.*”



How Can IEP Teams Help?

The Difficult Issue of Goals for Mental Health Issues

- Remember, goals must be measurable and in all areas of educational need.
- Some thoughts about mental health goals for IEPs.
 - Query: Are they needed at all?
- If team determines these are necessary, make them objectively measureable.
 - Let's talk about some examples.



How Can IEP Teams Help?

We need to help the Courts:

Parent on Behalf of Student v. Castro Valley Unified School District and related Cross-Action OAH Case Nos. 2015010039 and 2015020202

This case involved a 15 year-old male student who was eligible under the category of Emotional Disturbance (Anxiety).

- He was not found eligible for Special Education services until high school.
- Student's academics were affected. But, maladaptive behaviors were primarily at home.
- School created goals in areas to address the results of the school-based anxiety.
- But, ALJ ruled that by not having a goal "targeting anxiety," the District denied the student a FAPE and ordered partial reimbursement for a RTC.
- Let's talk about this case for a while.



What Can You Do In Terms of Training?

Top Five Defensible Strategies for Delivery of ERMHS

1. Train staff on evidence-based interventions.
(www.interventioncentral.org)
2. Be prepared to identify and defend evidence-based interventions.
3. Discuss realistic outcomes based on evidence and professional experience.
4. Avoid “over-stigmatizing” mental health phenomenon.
5. Focus on the individual student when discussing what “symptom” improvement will look like (e.g. Avoid generic goals and services).



What Can You Do In Terms of Training?

- Ethical Considerations for School Mental Health Providers
- HIPPA vs. FERPA
- Consent for Treatment – Must address the limits of confidentiality, how information disclosed during counseling will be utilized by the provider, the IEP Team, school staff members and outside service providers.
- Consent for Release/Exchange of Information: Critical to providing ethical treatment of adolescents and children.
- Privacy of the Student: Reporting out on student progress does not require disclosure of the intimate details disclosed during therapy sessions.



Reflections

Have a great conference!



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A photograph of a classroom with rows of desks and chairs, overlaid with a semi-transparent blue filter. The text is centered over this background.

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