

# Sound Mind and Body:

## A District's Obligation to Address Trauma and Mental Health Issues

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*This presentation is for informational and discussion purposes only. Nothing herein should be construed as legal advice. Specific facts and circumstances can significantly impact the analysis of law and decisions outlined herein.*

# What we will cover today?

- Emotional Disturbance
- Social Maladjustment
- Traumatic Brain Injury
- OHI

# Emotional Disturbance

A condition exhibiting one or more of the following characteristics over a long period of time and adversely impacting a student's educational performance to a marked degree:

- 34 C.F.R. 300.8(c)(4)

# Emotional Disturbance

- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers;
- Inappropriate types of behavior or feelings under normal circumstances;
  - 34 C.F.R. 300.8(c)(4)

# Emotional Disturbance

- A general pervasive mood of unhappiness or depression; or
- A tendency to develop physical symptoms or fears associated with personal or school problems

- 34 C.F.R. 300.8(c)(4)

# Emotional Disturbance

- A student whose “abnormal emotional conditions prevent them from choosing normal responses to normal situations.”
  - Independent Sch. Dist. No. 284 v. A.C., 258 F.3d 769 (8<sup>th</sup> Cir. 2001)

# Emotional Disturbance

- Emotional disturbance often triggered by traumatic life experience
- Often manifests in the form of anxiety and school avoidant behavior
  - Excessive absenteeism may trigger child-find obligation and duty to conduct psychological evaluation
    - West Lyon Cmty. Sch. Dist., 48 IDELR 232 (SEA IA 2007)
- May necessitate therapeutic setting

# Case Study:

## Hilliard City School District

### Facts:

- Student began to display a pattern of absenteeism, as well as plummeting grades
- District declined to evaluate the student and instead initiated truancy proceedings

- Hilliard City School District, 60 IDELR 58 (SEA OH 2012)

# Case Study:

## Hilliard City School District

### Ruling:

- Parents presented two reports linking student's absenteeism to an anxiety disorder and depression
- As the District had sufficient reason to suspect the student was a child with a disability in need of services, the District violated its child find obligation by failing to evaluate for special education and related services
- District required to provide services to ensure that student did not become overwhelmed at school
  - Hilliard City School District, 60 IDELR 58 (SEA OH 2012)

# Social Maladjustment

- “[S]ocially maladjusted students [are] the kinds of kids that have difficulty taking responsibility for their actions....They know the rules but still continue to want to break them.
  - Hansen v. Republic R-III Sch. Dist., 632 F.3d 1024 (8<sup>th</sup> Cir. 2011)
- Social maladjustment alone is insufficient to justify an emotional disturbance classification
  - 34 C.F.R. 300.8(c)(4)
  - “No consensus” as to definition
    - 71 Fed. Reg. 46,550 (2006)

# Social Maladjustment

- Social Maladjustment:
  - May include issues triggered by drug use, as well as family or social circumstances
    - W.G. v. New York City Dep't of Educ., 801 F. Supp. 2d 142 (S.D.N.Y. 2011)
  - Socially maladjusted student may be eligible for Section 504 plan if same substantially limits a major life activity
    - Irvine Unified Sch. Dist., 353 IDELR 192 (OCR 1989)

# Case Study:

## W.G. v. New York City Dep't of Educ.

### Facts:

- A student began experiencing serious academic problems in the tenth grade while attending a private school
  - Multiple arrests for assault
  - Substance abuse and dependence issues
  - Depression
  - Anxiety
- Student was expelled from school and enrolled in public school for a summer session prior to 11<sup>th</sup> grade
  - Successfully completed summer session
    - W.G. v. New York City Dep't of Educ., 801 F. Supp. 2d 142 (S.D.N.Y. 2011)

# Case Study:

## W.G. v. New York City Dep't of Educ.

### Facts:

- Beginning in the fall of 11<sup>th</sup> grade, the student issues intensified and he began to flea school
  - Exhibiting poor grades
  - Conflicts with teachers
- Parents alleged issues stemmed from depression and unilaterally placed him in a residential therapeutic school

- W.G. v. New York City Dep't of Educ., 801 F. Supp. 2d 142 (S.D.N.Y. 2011)

# Case Study:

## W.G. v. New York City Dep't of Educ.

### Facts:

- Evaluations revealed that the student's poor grades stemmed from oppositional defiant disorder; narcissistic personality traits; and drug and alcohol abuse

- W.G. v. New York City Dep't of Educ., 801 F. Supp. 2d 142  
(S.D.N.Y. 2011)

# Case Study:

## W.G. v. New York City Dep't of Educ.

### Holding:

- Declined to classify student as emotionally disturbed
- Student's issues stemmed from social maladjustment and drug abuse
  - Prior episodes of depression were minor and short-lived
- Student had positive relationships with teachers he liked
  - Undercut claim he was unable to maintain interpersonal relationships

- W.G. v. New York City Dep't of Educ., 801 F. Supp. 2d 142 (S.D.N.Y. 2011)

# Traumatic Brain Injury

- Means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance.
- -Does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma
  - 34 C.F.R. 300.8(c)(12)

# Traumatic Brain Injury

- Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas:
  - Cognition;
  - Language;
  - Memory;
  - Attention;
  - Reasoning;
  - Abstract thinking;
    - 34 C.F.R. 300.8(c)(12)

# Traumatic Brain Injury

- Judgment;
- Problem-solving;
- Sensory, perceptual, and motor abilities;
- Psychosocial behavior;
- Physical functions;
- Information processing; and
- Speech
  - 34 C.F.R. 300.8(c)(12)

# Case Study:

## Warrior Run Sch. Dist.

### Facts:

- An eleventh grade student suffered a concussion after hitting his head on a doorframe in school
  - Returned to school the following day
  - Only restriction was “no contact sports or PE until cleared by [Doctor]”
- Three months later, student suffered a second concussion in school

- Warrior Run Sch. Dist., 64 IDELR 260 (SEA PA 2014)

# Case Study:

## Warrior Run Sch. Dist.

### Facts:

- Pediatric neurologist ordered student not to participate in any mental or physical activity
  - Recommended 504/IEP plan
  - Parents file request to evaluate
    - Concussions have limited students ability to participate in school activities
- District determined student did not require a 504/IEP plan

- Warrior Run Sch. Dist., 64 IDELR 260 (SEA PA 2014)

# Case Study:

## Warrior Run Sch. Dist.

### Holding:

- A head injury alone is insufficient to establish IDEA eligibility
- Condition must adversely impact student's academic performance
  - Student continued to achieve good grades without accommodation
  - No evidence the concussions impacted his academic performance

- Warrior Run Sch. Dist., 64 IDELR 260 (SEA PA 2014)

# Other Health Impaired

- Means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment

- 34 C.F.R. 300.8(c)(9)

# Other Health Impaired

- Which is due to chronic or acute health problems, which adversely impact a child's educational performance, such as:
  - Asthma, ADD/ADHD, Diabetes, Epilepsy, a heart condition, Hemophilia, Lead Poisoning, Leukemia, Nephritis, Rheumatic Fever, Sickle Cell Anemia, or Tourette syndrome
    - 34 C.F.R. 300.8(c)(9)
- Illustrative and non-exhaustive list
  - *Joint Policy Memorandum*, 18 IDELR 116 (OSERS 1991)
- Includes mental, as well as physical health problems

# Functional Behavioral Assessment

- An assessment utilized isolate a target behavior and determine what triggers a student to engage in a specific negative behavior
  - Situational
  - Environmental
  - Behavioral Triggers

# Functional Behavioral Assessment

- Results utilized to develop a behavioral intervention or management plan
  - Useful in developing positive behavioral intervention policies before considering more restrictive placements
  - Revise behavioral intervention plan as needed

# Functional Behavioral Assessment

- If a student is suspended for more than 10 days during a school year, the District must determine if the student's behavior was a manifestation of their disability
  - Requires District to conduct an FBA
    - Develop a behavioral intervention plan for child to address future misbehavior
      - 34 C.F.R. 300.530(f)

# Therapeutic Placements

Not defined in the IDEA, but often includes:

- Small classes
- Emotional/Behavioral Supports
- Can include day schools or residential facilities

# Therapeutic Placements

Residential program may be necessary where “child’s educational needs are inseparable from the child’s emotional needs”

- May include psychiatric hospitalization
- District responsible for room, board, and all non-medical care

-71 Fed. Reg. 46,581 (2006)

# Therapeutic Placements

- “[T]he IDEA requires that a state pay for a disabled student’s residential placement if the student, because of his or her disability, cannot reasonably be anticipated to benefit from instruction without such a placement.”  
- Indep. Sch. Dist. No. 284 v. A.C. 258 F. 3d 769 (8<sup>th</sup> Cir. 2011)

# Therapeutic Placements

- Medical Services:
  - Related service only to the extent they are for evaluative and diagnostic procedures
    - 20 U.S.C. 1401 (26)
  - State law determines whether a service is “medical”
    - Medical if state law requires that a licensed physician provide the service
      - Darlene L. v. Illinois State Bd. of Educ., 568 F. Supp. 1340 (N.D. Ill. 1983)

# Therapeutic Placements

- Student may be provided counseling, psychological, and social work services as a related service
  - 34 C.F.R. 300.34(a)
  - Includes parental counseling and training to assist parents in understanding and addressing child's needs
    - 34 C.F.R. 300.34 (c)(8)

# Outside Provider vs. In-School

- Mental health services may be provided by :

- District staff:

- School Counselor
- Licensed School Social Worker
- School Psychologist

Or

- Third Party Providers:

- Services may be provided by third party providers
  - Public or Private
    - 64 Fed. Reg. 12,478 (1999)
- Services provided at no cost to parents
  - 34 C.F.R. 300.146

# Outside Provider vs. In-School

- Outside Providers:
  - District retains the responsibility of ensuring that the agency, public or private, provides the services outlined in the student's IEP, as well as FAPE generally
    - 34 C.F.R. 300.146; Letter to Maisterra, 114 LRP 45033 (OSEP 3/27/13)
  - Ensure provider is properly certified or licensed
  - Implement monitoring system to ensure student receives required services on a regular basis
    - Check-in with parents

# Outside Provider vs. In-School

- Private entities are not responsible for their violations of the IDEA, failure to provide FAPE, or failure to adhere to a student's IEP
  - St. Johnsbury Acad. v. D.H., 240 F.3d 163, 171 (2d Cir. 2001);  
Ullmo v. Gilmour Acad., 273 F.3d 671, 679 (6th Cir. 2001)
- Absent a contractual agreement to the contrary, a school district will be solely liable for the cost of defending any student challenges under the IDEA act, as well as the cost of any remedial measures awarded to the child

QUESTIONS??