

Emotional Disturbance Proactive Approaches to Team Decisions



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Eligibility:

Emotional Disturbance 34 CFR 300.8 (c) (4) (i)

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- a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:
 - 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 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.
 - Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.

“...over a long period of time”

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A period of two to nine months, assuming preliminary interventions have been implemented and proven ineffective during that period.

See Letter to Anonymous, 213 IDELR 247 (OSEP 1989).

- not intended for a student who is temporarily reacting to a situational trauma

...”to a marked degree”

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- Significantly greater frequency and intensity than demonstrated by peers
- Persistent and generalized across environments
- Extended over time and situations

Emotional Disturbance and DSM

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“Emotional Disturbance” ≠ DSM or medical model

What does this mean?

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"

A specific diagnosis is not necessary

Assessments

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**WHAT SHOULD WE USE?
WHEN SHOULD WE USE?
HOW SHOULD WE USE?**

ASSESSMENT

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During the initial evaluation or a reevaluation if the area of concern is adversely impacting the students ability to access the curriculum and the student is not making effective progress and/or symptoms have increased in intensity and/or duration we should assess the following areas:

1. Cognitive Assessment - in order to determine if symptoms are associated with cognitive abilities/profile.
2. Social-Emotional: BASC (Behavior Assessment Scale for Children), Conners, BRIEF (Behavior Rating Inventory of Executive Functioning), SSIS (Social Skills Improvement System), Vanderbilt, RASSI (Reynolds Adolescent Adjustment Screening Inventory), M-PACI/MACI (Millon Adolescent or Pre-Adolescent Clinical Inventory), Children's Aggression Scale, CAT (Clinical Assessment of Attention Deficit), etc. What tools are in your schools arsenal?

Assessment - continued

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Best Practice in Assessment:

- a. Multiple methods - one completed questionnaire does not equal a disability; is there uniformity between the different assessment tools?
- b. Is the information from home similar to the information from school? If not, we will need to look at the motivation of the behavior. Usually a disability manifests throughout all environments; not just in one.
- c. Remember the information from Attorney Tobin:

Assessment - continued

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The “disability must be:

- a. Persistent and generalized across environments.
- b. Extended over time and situations.
- c. Significantly greater frequency and intensity than demonstrated by peers.

Case Studies

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Springer v. Fairfax County School Board, 27 IDELR 367 (4th Cir. 1998)

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- 11th grade Student was stealing, sneaking out of his house, skipping school, and using marijuana and alcohol.
- Student broke school rules and had a high rate of absenteeism.
- Student continued to score well on standardized tests.
- Evidence showed Student's grades suffered due to skipping class and failing to complete assignments,

Springer, continued

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- Several separate evaluations of Student uniformly supported the conclusion that Student was "socially maladjusted" and had a "conduct disorder"
- Evaluation showed young man used to being able to figure out how to get his own way.
- He didn't want to do work, so he didn't. He didn't like going to class, so he didn't do that.
- Evaluation concluded that Student was in complete control of his actions, which distinguished him from emotionally disturbed individuals, who may be "in such pain and in such difficulty that they cannot get to their goals."

Springer, continued

- Even if they had been able to demonstrate that Student exhibited one or more of the five qualifying characteristics for a long period of time and to a marked degree, Student failed to establish the critical causal connection between this condition and the educational difficulties he experienced
- Prior to 11th grade, Student made steady educational progress
- Precipitous drop in Student's grades directly attributable to his truancy, drug and alcohol use, and delinquent behavior rather than to any emotional disturbance.

Letter to Anonymous, 213 IDELR 247 (OSEP 1989)

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- 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.
- If there is no adverse impact on educational performance, there should not be eligibility

G.H. v. Great Valley Sch. Dist., 61 IDELR 63 (E.D. Pa. 2013)

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- Student exhibiting violent tantrums at home was not eligible for IDEA services as a child with an emotional disturbance, according to a District Court.
- Pointing to the student's solid academic performance and generally good behavior at school, the court concluded that her behavioral problems did not adversely affect her educational performance.

Top Ten Things to Know About MDRs



1. Why Are We Holding an MDR?



- Student has an IEP or 504 Plan or school has knowledge that student may be a student with a disability
- A decision to change the placement of a student with a disability because of a violation of a student code of conduct has taken place or is about to take place

2. What Is a Change In Placement?



- **Change of placement**
 - Removal for more than 10 consecutive school days during this school year
 - Removal for more than 10 cumulative school days during this school year for behavior that constitutes a pattern

- **School District decides if there is a pattern**

3. Who Is Present at an MDR?



- The student's parent(s) or legal guardian(s)
- Relevant members of the student's IEP Team, including the building administrator, teachers, evaluators, other appropriate staff
- It is very important that ALL parties are present



4. What do we do at an MDR?



- Describe the behavior subject to disciplinary action
 - Include setting events, antecedents, details of the behavioral incident, and immediate consequences
 - List witnesses and include all relevant details
- Review, in terms of the above behavior, all relevant information in the student's file
 - IEP
 - Evaluations
 - Teacher Observations
 - Information from parents or outside providers
 - ANY RELEVANT INFORMATION, including any outside assessment handed to the MDR Team at the MRD meeting
 - It is VERY important not that the team does not limit their review to the student's IEP or diagnosis

5. What Questions Must We Answer at an MDR?

- **If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or**
 - DIRECT nexus
 - Consider whether the student has shown a history of voluntary control of the behavior in question
 - Consider if the student, in an escalated emotional state, can recall the knowledge or to produce the skill
- **If the conduct in question was the direct result of the district's failure to implement the student's IEP**
 - If a Positive Behavior Support Plan or a tiered intervention/support was mentioned in the IEP, was it being implemented as designed
 - Review specially designed instruction, related services, and supports for school personnel as specified in the student's IEP. Were they being provided?
 - Do NOT consider whether child knows right from wrong, or whether the IEP was appropriate.

6. What Are Our Next Steps If There IS Manifestation?



- If the answer to either Question #1 or #2 is YES, then:
 - RETURN Student to his school environment
 - Conduct an FBA or update recently completed BIP or FBA if the function of the behavior has changed, **OR**
 - Discuss with Parents whether they will **AGREE** to a change of placement
 - If Parents agree, may change placement

Behavior Plans



- Law requires Team to consider the use of **positive behavioral interventions** and supports
- Must meet the student's specific needs and be
 - based upon data
 - specific
 - flexible
- Consider adding circumstances when law enforcement will be contacted

Functional Behavioral Assessments



- FBA recommended and scheduled
- An FBA and BIP review *must* be undertaken if the conduct is a manifestation
 - However, the team should consider both where warranted by the conduct, even if not a manifestation of disability
 - The FBA is meant to be used “proactively” and “as appropriate”
 - Parental consent required

7. What Are Our Next Steps If There Is NO Manifestation?



- If the answer to Question #1 and #2 is NO, then:
 - Discipline **in the same manner and for the same duration** as the children without disabilities.
 - Conduct an FBA, as appropriate

9. How Do we Conclude the MDR?



- Make a FINDING
- No one has veto power
- Do not take a vote
- If no “consensus,” the District decides if there is/ is not manifestation
- If no manifestation, may hold disciplinary hearing
- Issue an N1



10. Are There Any Special Circumstances?



- When an incident at school or a school function involves:
 - the possession of weapon;
 - the possession or use of illegal drugs; or
 - infliction of **serious** bodily injury upon another person
- The district may move a student to an Interim Alternative Education Setting (IAES) for up to 45 days without regard to whether the behavior is determined to be a manifestation of the student's disability
- The team determines the IAES

Case Study

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YOU BE THE JUDGE!



Facts

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ZB is a 17 year old student who is eligible for IEP for severe ADHD.

Z.B.'s teachers generally agree that Z.B. is easily distracted, sometimes off-task, and was not engaged in the learning process.

Z.B.'s teachers agree that he has good interpersonal skills and peer relationships and is respectful of teachers.

The conduct

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CONDUCT: Z.B. was roughhousing in the school hallway between classes. Z.B. was with his girlfriend, R, when he pretended to fight R., then pushed her against a locker and pretended to hit her.

A teacher who did not know Z.B. or R., ordered them to stop and told Z.B. to release his girlfriend. ZB continued with R down the hall and had her in a headlock.

Teacher went to stop them and ZB pushed teacher away and twisted his arm and said “Let’s go.” or “Let go.” Teacher suffered shoulder sprain and missed work.

The charge

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Student charged with simple assault upon staff and not listening to a teacher directive.

School proposed out of school suspension.

What the MDR team reviewed

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The Team included team chair, 2 teachers, parents, and school psychologist.

The team reviewed the following:

1. computerized records file
2. attendance
3. disciplinary reports
4. information from parent that medication recently changed

In order to get a picture "of the child as a whole."

What say you??

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- 1. Were there the right group of team members?**
- 2. Did the team consider the correct information?**
- 3. Was their decision correct?**

The team's finding

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The team discussed that physical aggression is not a symptom of ADHD, no one had observed aggressive behavior from Z.B. during that school year, and the behavior in question -- aggressive assault -- was not typical of him.

The team chair acknowledged that hyperactivity and impulsivity are symptoms of ADHD and failing to follow directions could be related to those traits.

The team did not discuss whether Z.B.'s disability included impaired judgment or reasoning, but the team's consensus, including Z.B.'s parents, was that Z.B. could generally identify appropriate and inappropriate behaviors.

HELD: Not a manifestation of disability. Parents did not agree with team's decision.

Hearing Officer's finding

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The HO found the District did not properly decide MDR.

1. No one from the District was willing to determine the facts and circumstances relating to the ZB's behavior during the incident and why the behavior may have occurred.
2. The Hearing Officer found fault with the conclusion that the behavior in question was not a manifestation of Z.B.'s disability "based on the broad, general determination that ZB's conduct in this case did not fit within the general characteristics/usual symptoms of ADHD.
3. The district's reasoning was insufficient because IDEA standards do not limit a manifestation determination to such considerations of typicality but rather require "specific consideration" of whether the behavior arose from, or was substantially related to, the particular student's disability.

Court's decision

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Court agreed with Hearing Officer, finding that the District did not consider:

1. Z.B. may exhibit more uninhibited behaviors, including aggression, when his ADHD is not well-controlled by medication.
2. The decreasing effects of Z.B.'s medication toward the end of the school day affected his behavior during the incident, holding that the MDR did not give Z.B.'s parents "a real opportunity to make that point.
3. All the team considered was that ZB engaged in "aggressive behavior."

The “oh no” moment....

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DAMAGING TESTIMONY FROM THE TEAM CHAIR:

"To be quite honest, we looked at it more from a global picture. We didn't [dive] into the specifics. We weren't looking at what occurred during that specific incident. We were looking at does [Z.B.'s] disability have anything to do with aggressive behaviors? And the team absolutely did not feel that."

BRISTOL TOWNSHIP SCHOOL DISTRICT v. Z.B., by and through his parents, K.B. and R.B.
U.S. District Court, Eastern District of Pennsylvania, J116 LRP 1736, January 14, 2016

Questions and Answers

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