

ED, EBD, ODD, SOCIALLY MALADJUSTED:

WHAT'S THE DIFFERENCE AND WHY DOES IT MATTER?

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I. INTRODUCTION

This presentation was developed to address one of the most difficult – and least understood – issues in the field of special education today. Public schools are increasingly confronted with students who exhibit behavior problems that disrupt the learning environment for themselves, other students and staff. Parents of these students often claim that the source of their child’s misbehavior is a “disability” that is the explanation, or even the excuse, for the student’s actions. School staff remains frustrated with what they see as weak parenting and a societal toleration for bad behavior and a lack of respect for teachers.

There are two avenues for parents and educators seeking to classify a student as “disabled” due to behavior problems. The first choice is usually via the IDEA, under the categories of “ED” (“emotional disturbance”) or “OHI” (“other health impaired”). It should be difficult to become labeled “emotionally disturbed” pursuant to the IDEA, due to the restrictiveness of the federal eligibility criteria. In fact, according to the most recent statistics published by the U.S. Department of Education, approximately 8 percent of all special education students are identified as “emotionally disturbed” pursuant to the IDEA. The second eligibility option is via Section 504 of the Rehabilitation Act of 1973, where no specific diagnostic criteria are required. Rather, a student may qualify for Section 504 protections if she has a mental “impairment” that substantially limits a major life activity, such as learning. These “impairments” may include any type of mental

health diagnoses, such as depression, oppositional defiant disorder (ODD), or generalized anxiety disorder.

It is the presenter's opinion that far too many students are determined to be eligible under both the IDEA and Section 504, and that eligibility for many of these students is the result of controllable behavior at school and at home. It is time for school attorneys and educators to take an analytical look at the purpose of these laws, the application of the eligibility criteria for each law, and the factors important to courts and administrative law judges in reviewing eligibility determinations.

II. EMOTIONALLY DISTURBED VS. SOCIALLY MALADJUSTED: A CLINICAL ANALYSIS

A. IDEA

One of the difficulties in this area lies in determining the distinction between an "emotional disturbance" and a "social maladjustment." The IDEA does not define "social maladjustment," but students with this condition are clearly and specifically excluded from coverage under the Act. 34 CFR 300.7(c)(4). In fact, students with "social maladjustment" have been excluded from coverage in the ED category since the inception of the Act in 1975. Likewise, the *Diagnostic and Statistical Manual, 5th Edition (DSM-5)*, does not contain a precise definition of the term "social maladjustment." Rather, state education agencies and courts have been left to interpret the meaning of the statutory exclusion for "social maladjustment." Over the past 32 years, numerous advocacy groups have in vain lobbied Congress to include a definition of "social maladjustment" in the law. So the issue remains a viable one that courts and school agencies have continued to struggle with in addressing student misbehavior. It is the presenter's opinion that "social maladjustment" means any type of willful behavior that is within the student's control and that is not related to an emotional disturbance or a mental impairment.

There is significant confusion in the field as to whether every diagnosis made pursuant to DSM-5 criteria constitutes an educational disability or a mental impairment. From the presenter's perspective, Congress clearly did not intend for every type of medical diagnosis to equal an educational disability. For example, the DSM-5 contains diagnostic criteria for several types of sexual dysfunction, drug abuse/addiction, and even caffeine intoxication disorder. The Americans with Disabilities Act specifically excludes drug abuse/addiction from the list of disabilities. Likewise, several courts have refused to recognize conditions like oppositional defiant disorder or conduct disorder as educational disabilities.

The difficulty for attorneys, educators, advocates and parents is in pinpointing the cause of a child's misbehavior at school. Specifically, is the misbehavior caused by a

condition that is beyond the child’s control? Or is the misbehavior a manifestation of the child’s willful choice to disregard school rules? To compound matters, it is rare that a child will be diagnosed with ODD alone. More often, a student carries more than one diagnostic label – e.g., ODD, ADHD and LD. IEP teams and courts continue to grapple with how to separate the characteristics of these categories in determining the causality of a child’s misbehavior at school, or the impact on the child’s academic performance in the classroom.

B. Section 504

If a student does not meet the ED eligibility criteria under the IDEA, or does not require special education and related services under any category, many school officials and parents will “default” to a Section 504 plan. I believe that this is an improper action in most cases. According to the Office for Civil Rights, it *is* possible for a student with behavior problems to be deemed eligible under Section 504 if the student is diagnosed with a “mental impairment” that results in a “substantial limitation” of the student’s ability to learn. *Irvine (CA) Unified Sch. Dist.*, 353 IDELR 192 (OCR 1989). Additionally, the denial of a student’s eligibility as ED due to “social maladjustment” under the IDEA does not preclude eligibility under Section 504. *Id.* The threshold question therefore is whether “social maladjustment” is a “mental impairment.” My research reveals no simple answer to this question. In fact, the term “social maladjustment” is not addressed in the DSM-5. It is the presenter’s opinion that “social maladjustment” is not a “mental impairment” and, therefore, cannot result in eligibility under either Section 504 or the IDEA.¹

The main argument against “social maladjustment” being defined as an “impairment” under Section 504 is simply that there is no such diagnostic label or category in the mental health field. The DSM-IV-TR, used by psychiatrists and psychologists to diagnose mental impairments, does not contain such a condition.

The next issue is whether an “impairment” under Section 504 is the equivalent of a “mental disorder” per the DSM-5? The DSM defines a “mental disorder” as:

“A mental disorder is a syndrome characterized by clinically significant disturbance in an individual’s cognition, emotion 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 disorders unless the deviance or conflict results from a dysfunction in the individual, as described above.” DSM-5, pp. 20.

I would argue that, according to this definition and in the absence of concurrent disabilities, oppositional defiant disorder and conduct disorder would not be considered “mental disorders.” However, I am certain that many experts would disagree with me. So, in the interest of fairness, let’s assume that ODD and Conduct Disorder ARE “mental disorders.” Even so, a medically diagnosed “mental disorder” is not automatically an “educational disability” under Section 504. The key issue is whether, with or without the use of medication and/or assistive devices, these disorders cause a “substantial limitation” in a student’s ability to attend school and to learn. I would argue that a child whose ODD or Conduct Disorder is severe enough to cause a “substantial limitation” in the ability to learn should be eligible under some disability category under the IDEA.

There is also much confusion in the field as to the meaning and application of the “record of” and “regarded as” prongs of the eligibility definition in Section 504. According to OCR, a student’s past impairment cannot be used as a basis for present eligibility under Section 504. *OCR Senior Staff Memorandum*, 19 IDELR 894 (OCR 1992). Further, OCR states that eligibility cannot be based merely on a physician’s statement or opinion, or the parent’s opinion. *Id.* The aforementioned document states, “The opinion of the doctor or the mother is a piece of information to be considered in that decision.” *Id.* Thus, a physician’s letter or report concluding that a student has several diagnosed conditions and is taking several types of medication does not determine Section 504 eligibility. Only a student who is suffering a “substantial” impairment of a “major life activity” that is not being controlled with medication or a device can be eligible for Section 504 protections.

C. Social Maladjustment

So, what IS social maladjustment? Many experts in the mental health and education field define social maladjustment as behaviors that are willful, deliberate, planned, or otherwise within the control of the student. Researchers from the University of Oregon studying this issue have concluded, “Most concerned researchers, practitioners, writers, and agencies who have made serious attempts to tackle this question have concluded that [social maladjustment] can be operationalized as a pattern of engagement in purposive antisocial, destructive and delinquent behavior. *Deconstructing a Definition: Social Maladjustment Versus Emotional Disturbance and Moving the EBD Field Forward*, Merrell and Walker, *Psychology in the Schools*, Vol. 41(8), 2004. There is no evidence that Congress intended to extend the protections of the IDEA and Section 504 to students whose misbehaviors are willful, deliberate, planned, and within the child’s control. Rather, the addition of the “social maladjustment” exclusion in the IDEA indicates that Congress was concerned that the law would be misused to protect these children. *Supra, Merrill and Walker.*

D. Oppositional Defiant Disorder

I believe that one diagnostic parallel to the term “social maladjustment” in the IDEA is “oppositional defiant disorder,” as defined below:

“A pattern of angry/irritable mood, argumentative/defiant behavior, or vindictiveness lasting at least 6 months as evidenced by at least four symptoms from any of the following categories, and exhibited during interaction with at least one individual who is not a sibling... It is not uncommon for individuals with oppositional defiant disorder to show symptoms only at home and only with family members. However, the pervasiveness of the symptoms is an indicator of the severity of the disorder.” DSM-5, pp. 462-463.

A. The diagnostic criteria for ODD (313.81) are as follows:

Angry/Irritable Mood:

1. Often loses temper.
2. Is often touchy or easily annoyed.
3. Is often angry and resentful.

Argumentative/Defiant Behavior:

1. Often argues with authority figures or, for children and adolescents, with adults.
2. Often actively defies or refuses to comply with requests from authority figures or with rules.
3. Often deliberately annoys others.
4. Often blames others for his or her mistakes or misbehavior.

Vindictiveness:

1. Has been spiteful or vindictive at least twice within the past 6 months.

Note: The persistence and frequency of these behaviors should be used to distinguish a behavior that is within normal limits from a behavior that is symptomatic. For children younger than 5 years, the behavior should occur on most days for a period of at least 6 months unless otherwise noted. For individuals 5 years or older, the behavior should occur at least once per week for at least 6 months, unless otherwise noted. While these frequency criteria provide guidance on a minimal level of frequency to define symptoms, other factors should also be considered, such as whether the frequency and intensity of the behaviors are outside a range that is normative for the individuals’ developmental level, gender, and culture.

B. The disturbance in behavior is associated with distress in the individual or others in his or her immediate social context (e.g., family, peer group, work colleagues), or it impacts negatively on social, educational, occupational, or other important areas of functioning.

C. The behaviors do not occur exclusively during the course of a psychotic, substance use, depressive, or bipolar disorder. Also, the criteria are not met for disruptive mood dysregulation disorder.

DSM-5, p. 462.

E. Conduct Disorder

Another diagnostic parallel to the IDEA's definition of "social maladjustment" is "conduct disorder," as defined in the DSM-5:

A repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated, as manifested by the presence of at least three of the following 15 criteria in the past 12 months from any of the categories below, with at least one criterion present in the past 6 months.

Aggression to people and animals

1. Often bullies, threatens or intimidates others.
2. Often initiates physical fights.
3. Has used a weapon that can cause serious physical harm to others (e.g., a bat, brick, broken bottle, knife, gun).
4. Has been physically cruel to people.
5. Has been physically cruel to animals.
6. Has stolen while confronting a victim (e.g., mugging, purse snatching, extortion, armed robbery).
7. Has forced someone into sexual activity.

Destruction of property

8. Has deliberately engaged in fire setting with the intention of causing serious damage.
9. Has deliberately destroyed others' property (other than by fire setting).

Deceitfulness or theft

10. Has broken into someone else's house, building or car.

11. Often lies to obtain goods or favors or to avoid obligations (i.e. “cons” others).
12. Has stolen items of nontrivial value without confronting a victim (e.g., shoplifting, but without breaking and entering, forgery).

Serious violations of rules

13. Often stays out at night despite parental prohibitions, beginning before age 13 years.
14. Has run away from home overnight at least twice while living in parental or parental surrogate home (or once without returning for a lengthy period).
15. Is often truant from school, beginning before age 13 years.

DSM-5, pp. 469-470.

F. Attention Deficit Disorder, With or Without Hyperactivity (ADD OR ADHD)

What about the rising numbers of children being diagnosed with attention deficit disorder or ADHD (ADD with hyperactivity)? Congress clearly intended for ADD and ADHD to be included in the category of “Other Health Impaired” when such disorders resulted in the need for special education and related services. The difficulty with ADD and ADHD is when the student is brought before her IEP team for a “manifestation determination” following a disciplinary infraction. For example, when a student with ADHD is in trouble for fighting at school, is the act of fighting caused by, or substantially related to, the disorder? Is there any scientific literature linking ADD or ADHD to aggressive actions? What behaviors are legitimately linked to the “impulsivity” that is a feature of ADD/ADHD? We will see that a growing number of courts are holding that acts of physical aggression are not related to ADD or ADHD.

1. What is “impulsivity” as it relates to ADD or ADHD?

According to the DSM-5:

The essential feature of attention-deficit/hyperactivity disorder (ADHD) is a persistent pattern of inattention and/or hyperactivity-impulsivity that interfere with functioning or development. Inattention manifests behaviorally in ADHD as wandering off task, lacking persistence, having difficulty sustaining focus, and being disorganized and is not due to defiance or lack of comprehension. Hyperactivity refers to excessive motor activity (such as a child running about) when it is not appropriate, or excessive fidgeting, tapping, or talkativeness. In adults, hyperactivity may manifest as extreme restlessness or wearing other out

with their activity. Impulsivity refers to hasty actions that occur in the moment without forethought and that have high potential for harm to the individual (e.g., darting into the street without looking). Impulsivity may reflect a desire for immediate rewards or an inability to delay gratification. Impulsive behaviors may manifest as social intrusiveness (e.g., interrupting others excessively) and/or as making important decisions without consideration of long-term consequences (e.g., taking a job without adequate information). Manifestations of the disorder must be present in more than one setting (e.g., home and school, work). Confirmation of substantial symptoms across settings typically cannot be done accurately with consulting informants who have seen the individual in those settings. Typically, symptoms vary depending on context within a given setting. Signs of the disorder may be minimal or absent when the individual is receiving frequent rewards for appropriate behavior, is under close supervision, is in a novel setting, is engaged in especially interesting activities, has consistent external stimulation (e.g., electronic screens), or is interacting in one-on-one situations (e.g., the clinician's office). DSM-5, p. 61.

2. Diagnostic criteria for ADD/ADHD:

- A. Inattention: Six (or more) of the following symptoms have persisted for at least 6 months to a degree that is inconsistent with developmental level and that negatively impacts directly on social and academic/occupational activities:

Note: The symptoms are not solely a manifestation of oppositional behavior, defiance, hostility, or failure to understand tasks or instructions. For older adolescent and adults (age 17 and older), at least five symptoms are required.

- a. Often fails to give close attention to details or makes careless mistakes in schoolwork, work or other activities (e.g., overlooks or misses details, work is inaccurate);
- b. Often has difficulty sustaining attention in tasks or play activities (e.g., has difficulty remaining focused during lectures, conversations, or lengthy reading);
- c. Often does not seem to listen when spoken to directly (e.g., mind seems elsewhere, even in the absence of any obvious distraction);
- d. Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the workplace (e.g., starts tasks but quickly loses focus and is easily sidetracked);

- e. Often has difficulty organizing tasks and activities (e.g., difficulty managing sequential tasks; difficulty keeping materials and belongings in order; messy, disorganized work; has poor time management; fails to meet deadlines);
- f. Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (e.g., schoolwork or homework; for older adolescents and adults, preparing reports completing forms, reviewing lengthy papers);
- g. Often loses things necessary for tasks or activities (e.g., school materials, pencils, books, tools, wallets, keys, paperwork, eyeglasses, mobile telephones);
- h. Is often easily distracted by extraneous stimuli (for older adolescents and adults, may include unrelated thoughts);
- i. Is often forgetful in daily activities (e.g., doing chores, running errands; for older adolescents and adults, returning calls, paying bills, keeping appointments).

(2). **Hyperactivity and Impulsivity:** Six (or more) of the following symptoms of hyperactivity-impulsivity have persisted for at least 6 months to a degree that is inconsistent with developmental level and that negatively impacts directly on social and academic/occupational activities:

Note: The symptoms are not solely a manifestation of oppositional behavior, defiance, hostility, or a failure to understand tasks or instructions. For older adolescents and adults (age 17 and older), at least five symptoms are required.

- a. Often fidgets with hands or feet or squirms in seat;
- b. Often leaves seat in situations when remaining seated is expected (e.g., leaves his or her place in the classroom, in the office or other workplace, or in other situations that require remaining in place);
- c. Often runs about or climbs excessively in situations where it is inappropriate (Note: In adolescents or adults, may be limited to feeling restless);
- d. Often unable to play or engage in leisure activities quietly;
- e. Is often “on the go” acting as if “driven by a motor” (e.g., is unable to be or uncomfortable being still for extended time, as in restaurants, meetings, may be experienced by others as being restless or difficult to keep up with);
- f. Often talks excessively.
- g. Often blurts out an answer before a question has been completed (e.g., completes other people’s sentences; cannot wait for turn in conversations);
- h. Often has difficulty waiting his or her turn (e.g., while waiting in line);

- i. Often interrupts or intrudes on others (e.g., butts into conversations, games, or activities; may start using other people's things without asking or receiving permission; for adolescents and adults, may intrude into or take over what others are doing).
- B. Several inattentive or hyperactive-impulsive symptoms were present prior to age 12 years.
- C. Several inattentive or hyperactive-impulsive symptoms are present in two or more settings (e.g., at home, school, or work; with friends or relatives; in other activities).
- D. There is clear evidence that the symptoms interfere with, or reduce the quality of, social, academic, or occupational functioning.
- E. The symptoms do not occur exclusively during the course of schizophrenia or another psychotic disorder and are not better explained by another mental disorder (e.g., mood disorder, anxiety disorder, dissociative disorder, personality disorder, substance intoxication, or withdrawal).

DSM-5, pp. 59-60.

We will see from a review of recent court opinions that there continues to be a significant level of confusion about the manifestations of ADD and ADHD in the school setting. However, more courts are refusing to blame ADD or ADHD for a child's physical aggression or threat of aggression at school.

III. WHAT ARE THE COURTS SAYING ABOUT EMOTIONAL DISTURBANCE?

1. *Devon L. v. Clear Creek Indep. Sch. Dist.*, 68 IDELR 166 (S.D. Tex. 2016). A Texas federal court agreed that the school district made the correct eligibility decision when it agreed that a student with ADHD, anxiety, and depression was emotionally disturbed, but did not meet eligibility requirements for IDEA/ED. The student had made significant academic and behavioral progress after the district exited him from special education. Holding that the student had no need for specialized instruction, the District Court upheld the district's eligibility determination. The judge also found that the eligibility team did not err in giving more weight to its own staff members' opinions about the student's educational needs. "The observations of teachers who spend time daily with [the student] in the educational setting are more reliable regarding educational need than those

outside providers who base their opinions on isolated in-school observations and parent-provided information and documentation," the magistrate judge wrote in her report and recommendation. The student's grades improved in junior year and that the student performed well on college entrance exams, and his social skills had improved to the point where classmates sought him out for assistance.

2. *Home ex rel. R.P. v. Potomac Preparatory Pub. Charter Sch.*, 68 IDELR 38 (D.D.C. 2016). The fact that a D.C. charter school had found a 6-year-old boy ineligible for IDEA services just two months earlier did not excuse its failure to reevaluate the child after he attempted to kill himself by jumping out of a school window. The District Court held that the school's failure to reconsider the child's need for services after multiple incidents of inappropriate and violent behavior amounted to a child find violation. In addition, the school psychologist who evaluated the child expressly stated that an increase in the child's behavioral problems would warrant a reevaluation. Nonetheless, the school did not reevaluate the child after he attempted to jump out the window and informed staff members that he "wanted to die." The judge explained that the suicide attempt in itself amounted to inappropriate behavior under normal circumstances -- one of the IDEA's four criteria for an ED. That incident, coupled with the child's subsequent violence against teachers and classmates, should have prompted the school to reevaluate the child and consider his eligibility for special education and related services.
3. *Memorandum to State Directors of Special Education*, 65 IDELR 181 (OSEP 2015). Noting that it was still receiving complaints that some districts are balking at evaluating students with disabilities who have high cognition, OSEP requested that state special education directors widely distribute to LEAs guidance that it issued in 2013 concerning "twice exceptional" students. OSEP pointed out that *Letter to Delisle*, 62 IDELR 240 (OSEP 2013), although it specifically addressed students with learning disabilities, touched on the same basic point -- that high cognition is not, in itself, a bar to eligibility. In *Letter to Delisle*, OSEP explained that districts may not use cut-off scores as the sole basis for determining the eligibility of a student with high cognition who may qualify on the basis of an SLD. The guidance also explained that eligibility determinations must be made utilizing a variety of assessment tools and strategies and may not rely on any single measure or assessment as the sole criterion for the decision. 34 CFR 300.304(b). OSEP remarked that it continued to receive letters from those working with children with disabilities, particularly students with emotional disturbances or mental illness, indicating that some LEAs may be resisting conducting an initial evaluation on the basis of the student's high cognitive skills. OSEP Director Melody Musgrove asked state special education directors not only to disseminate *Letter to Delisle* to districts, but to "remind each LEA of its obligation to evaluate all children, regardless of cognitive skills, suspected of having one of the 13 disabilities outlined in 34 CFR §300.8."

4. *H.M. by J.M. v. Weakley County Bd. of Educ.*, 65 IDELR 68 (W.D. Tenn. 2015). A federal judge disagreed with an administrative decision in favor of the school district and finding that a frequently truant high school student was "socially maladjusted" rather than "emotionally disturbed." The Court held that the student's lengthy history of severe major depression, which coexisted with her "bad conduct," qualified her as a child with an emotional disturbance. The judge explained that social maladjustment does not in itself make a student ineligible for IDEA services. Rather, the Part B regulations state that the term "emotional disturbance" does not apply to children with social maladjustments unless they also meet one of the five criteria for the disability. Judge Breen observed that the student, who had a history of sexual abuse, had been diagnosed with severe major depression at age 9. Subsequent medical and educational evaluations stated that the student had post-traumatic stress disorder in addition to her recurrent pattern of disruptive and negative attention-seeking behaviors. Judge Breen further noted that the student's depression was marked, had lasted a long time, and affected her performance at school. "[B]ased on the entire record, it is more likely than not that [the student's] major depression, not just her misconduct and manipulation, underlay her difficulties at school," the judge wrote.
5. *Moore ex rel. Bell v. Hamilton Southeastern Sch. Dist.*, 61 IDELR 283 (S.D. Ind. 2013). The student, who had a history of behavioral and discipline problems, and who was diagnosed with depression, engaged in inappropriate types of behavior or feelings under normal circumstances. However, the school district found the student ineligible for special education and related services under the IDEA due to his middle-of-the-road passing grades. After the student committed suicide, the parents sued the district under Section 1983, asserting that the district violated the IDEA by improperly relying on the student's grades and not conducting classroom observations as part of its evaluation. The court agreed that there was a genuine dispute regarding whether the district violated the IDEA procedurally. It pointed out that the district's eligibility determination rested on its view that the student's emotional difficulties did not adversely impact his education because he was maintaining a C average. However, the student's ability was above average. Thus, the district had at least some basis for believing the student's behavioral problems were negatively impacting his performance in class. "[O]n those grounds, [the district's] decision not to classify as disabled a student who admittedly otherwise qualified -- solely on the basis of his supposedly satisfactory grades -- seems unreasonable," U.S. District Judge Sarah Evans Barker wrote. In addition, the district may have failed to conduct in-class observations as part of the evaluation process, in violation of the implementing regulation at 34 CFR 300.310(a). Finally, given the testimony of two psychiatric experts that a change of structure would have benefited the student, a reasonable jury could conclude that the failure to classify the student as ED deprived him of educational opportunity, and thus denied him a FAPE.
6. *G.H. v. Great Valley Sch. Dist.*, 61 IDELR 63 (E.D. Pa. 2013). A teenaged girl whose behavior was markedly different during school from that exhibited at home

was not eligible as an “emotionally disturbed” student pursuant to the IDEA. The girl engaged in violent tantrums at home, but had solid academic performance and generally good behavior at school. Therefore, the court concluded that her behavioral problems did not adversely affect her educational performance. The court acknowledged that the student exhibited, to a marked degree, behaviors required for establishing eligibility under the IDEA as a student with an emotional disturbance. However, the parents could not establish the other eligibility requirement -- that the behavior adversely impacted the child's education. Noting that there was a "distinct divide" between her behaviors at school and home, the court pointed to evidence that she was generally respectful to adults and most of her classmates. She had a few conflicts at school, but according to teachers, it was nothing out of the ordinary. In stark contrast was her behavior at home, where she flew into sometimes violent tantrums, including one in which she grabbed a butcher knife and stabbed a chair. At the same time, however, neither her grades nor her assessment reflected any negative impact at school. Teachers testified that she was self-controlled at school. Moreover, her private therapy exclusively focused on issues at home, including issues related to her being adopted and difficulty getting along with her mother and sister. Finally, while her hospitalizations necessitated a month-long absence from school, that in itself did not demonstrate an adverse educational impact. In fact, her teacher testified that following absences she needed no time to catch up -- testimony that was corroborated by her performance on state assessments.

7. *Lauren G. by Scott G. and Jacqueline G. v. West Chester Area Sch. Dist.*, 60 IDELR 4 (E.D. Pa. 2012). Evidence that the school district knew about a high school student’s truancy and previous psychiatric hospitalizations undermined its claim that it had no knowledge that the student had an “emotional disturbance.” Concluding the district erred in finding the student ineligible for a Section 504 plan, the District Court awarded the parents partial reimbursement for the student's therapeutic residential placement. The evidence showed that a child study team had reviewed the student’s academic records and obtained teacher input, but had failed to consider information about her emotional impairments. "The district ignored [the student's] psychiatric diagnoses, her inpatient and outpatient psychiatric hospitalization, and the fact that she was cutting classes to see the guidance or crisis counselor once or twice a week," the federal judge found. Furthermore, the district informed the parents that it found the student ineligible for Section 504 services just one day after the guidance counselor requested additional information about the student. Determining that the student's depression and OCD substantially limited her learning, the court held that the district's failure to find the student eligible for a Section 504 plan amounted to a denial of FAPE and entitled the parents to tuition reimbursement. However, the court held that the two-year statute of limitations applicable to the parents' Section 504 and IDEA claims limited their recovery to the final five weeks of the student's residential placement.

8. *P.C. and M.C. ex rel. K.C. v. Oceanside Union Free Sch. Dist.*, 56 IDELR 252 (E.D.N.Y. 2011). The parents of a teenager who smoked marijuana on a daily basis throughout seventh and eighth grade could not convince a District Court that their son's anger, anxiety, and poor academic performance was the result of an emotional disturbance that his district failed to address. The court upheld an SRO's determination that the student was ineligible for IDEA services. The court was persuaded by evidence that the student's poor grades coincided with his admitted daily marijuana use, as well as his abuse of alcohol and prescription drugs. The fact that the student's academic performance and interpersonal relationships improved dramatically after he overcame his substance abuse problems indicated that his drug and alcohol use were the source of his earlier difficulties. Moreover, the court observed, an assessment by an independent psychologist characterized the student's depressive behavior as being in the average range. "Indeed, one of [the student's] science teachers at [his preparatory boarding school] stated that he 'always appears to be in a good mood,'" Judge Seybert wrote. The court noted that all of the instances in which the student appeared angry or anxious, became aggressive, or struggled academically occurred while he was abusing drugs and alcohol. Concluding that the student's substance abuse was the cause of his academic and behavioral problems, and not the result of them, the court held that the student did not have an emotional disturbance as defined by the IDEA.
9. *W.G. and M.G. ex rel. K.G. v. New York City Dep't. of Educ.*, 56 IDELR 260 (S.D.N.Y. 2011). A single, minor episode of depression in the 10th grade did not render a high school student eligible under IDEA as having an "emotional disturbance." The court found that the student's poor grades and strained relationships with certain teachers were the result of social maladjustment and substance abuse. The court rejected the parents' claim that the student's behaviors, which included truancy, defiance, and refusing to learn, were the result of his depression. Although the student's evaluators acknowledged that he'd had depression in the past, the court pointed out that the episode was minor and short-lived. More importantly, every mental health professional who evaluated or worked with the student noted that he had oppositional defiant disorder and narcissistic personality traits, and that he simply refused to attend school. In addition, the student had a history of drug and alcohol abuse. Evidence that the student had positive relationships with teachers he liked and performed well in their classes further undercut the parents' claim that the student was unable to maintain interpersonal relationships because of an emotional condition. "Social maladjustment, without any independent emotional disturbance, is at the root of the problems that led to the [out-of-state therapeutic placement] for which [the parents] seek reimbursement," U.S. District Judge Laura Taylor Swain wrote. Finding insufficient evidence of an emotional disturbance, the District Court upheld an SRO's determination that the student was ineligible for IDEA services.
10. *Nguyen v. District of Columbia*, 54 IDELR 18 (D.D.C. 2010). The tenuous connection between a 17-year-old student's depression and his poor performance

in high school undermined his parent's claim that he was eligible for IDEA services. Finding that the student's truancy and drug use were at least partially responsible for his educational difficulties, the District Court held that he was not a "child with a disability." The court rejected the parent's argument that the student had an emotional disturbance. Although the student had been diagnosed with depression, a condition that could affect his ability to attend school, the parent failed to establish a direct link between the student's depression and his poor academic performance. In contrast, the court observed, the evidence showed that the student's truancy and drug use negatively affected his education. As for the parent's claim that the student had a specific learning disability, the court pointed out that the student scored higher than his aptitude level on all but two areas of testing. In the remaining areas, the difference between his ability and achievement was inconsequential. "Small differences between achievement scores and intelligence scores are insufficient to support [a] classification as having a specific learning disability," U.S. District Judge James Robertson wrote. Noting that the discrepancy might stem from the student's poor attendance, the court affirmed an IHO's finding that the student was ineligible for IDEA services.

IV. WHAT ARE THE COURTS SAYING ABOUT ADD, ADHD AND SOCIAL MALADJUSTMENT?

1. *H.M. by J.M. v. Weakley County Bd. of Educ.*, 65 IDELR 68 (W.D. Tenn. 2015). An ALJ's finding that a frequently truant high school student was "socially maladjusted" did not let a Tennessee district off the hook for its failure to provide IDEA services. The District Court held that the student's lengthy history of severe major depression, which coexisted with her "bad conduct," qualified her as a child with an emotional disturbance. U.S. District Judge J. Daniel Breen explained that social maladjustment does not in itself make a student ineligible for IDEA services. Rather, the Part B regulations state that the term "emotional disturbance" does not apply to children with social maladjustments unless they also meet one of the five criteria for the disability. Judge Breen observed that the student, who had a history of sexual abuse, had been diagnosed with severe major depression at age 9. Subsequent medical and educational evaluations stated that the student had post-traumatic stress disorder in addition to her recurrent pattern of disruptive and negative attention-seeking behaviors. Judge Breen further noted that the student's depression was marked, had lasted a long time, and affected her performance at school. "[B]ased on the entire record, it is more likely than not that [the student's] major depression, not just her misconduct and manipulation, underlay her difficulties at school," the judge wrote. The court reversed an administrative decision that found the student ineligible for IDEA services and remanded the case for further proceedings.
2. *W.G. and M.G. ex rel. K.G. v. New York Dept. of Educ.*, 56 IDELR 260, 801 F.Supp. 2d 142 (S.D.N.Y. 2011). Recognizing that a teenager had experienced a

single, minor episode of depression in 10th grade, a District Court nonetheless held that the student did not have an emotional disturbance as defined by the IDEA. The court determined that the student's poor grades and strained relationships with certain teachers were the result of social maladjustment and substance abuse. The court rejected the parents' claim that the student's behaviors, which included truancy, defiance, and refusing to learn, were the result of his depression. Importantly, every mental health professional who evaluated or worked with the student noted that he had oppositional defiant disorder and narcissistic personality traits, and that he simply refused to attend school. In addition, the student had a history of drug and alcohol abuse. Evidence that the student had positive relationships with teachers he liked and performed well in their classes further undercut the parents' claim that the student was unable to maintain interpersonal relationships because of an emotional condition. "Social maladjustment, without any independent emotional disturbance, is at the root of the problems that led to the [out-of-state therapeutic placement] for which [the parents] seek reimbursement," U.S. District Judge Laura Taylor Swain wrote. Finding insufficient evidence of an emotional disturbance, the District Court upheld an SRO's determination that the student was ineligible for IDEA services.

3. *Eschenasy ex rel. Eschenasy v. New York City Dept. of Educ.*, 52 IDELR 66, 604 F. Supp. 2d 639 (S.D.N.Y. 2009). A New York district could not avoid paying for a teenager's placement in a therapeutic boarding school merely by attributing her failing grades to truancy and drug use. Determining that the student had both a conduct disorder and an emotional disturbance, the U.S. District Court, Southern District of New York held that she was a child with a disability. The court acknowledged that the student had been asked to leave her private schools for behavior that included drug use, cutting classes and stealing. Those behaviors suggested that the student was socially maladjusted, and therefore ineligible for special education and related services under 34 CFR 300.8(c)(4)(ii). However, the court pointed out that the student had also engaged in self-injurious behaviors. In addition to attempting suicide, the student regularly cut herself and pulled her hair out. "According to [the student's] father, the hair-pulling and cutting behavior was still continuing during her time at [the boarding school] when this suit was filed," U.S. District Judge Miriam Goldman Cedarbaum wrote. The court found that the student's conduct qualified as inappropriate behavior under normal circumstances, as well as evidence that she had a pervasive mood of unhappiness or depression. The failing grades on the student's transcripts established that her behaviors impeded her ability to learn. Noting that the behaviors had persisted to a marked degree over a long period of time, the court concluded that the student had an emotional disturbance. The court also observed that the student earned good grades while attending the boarding school, and made social and emotional progress. Determining that the boarding school placement was appropriate, the court held that the parents were entitled to tuition reimbursement.
4. *Mr. and Mrs. N.C. v. Bedford Central Sch. Dist.*, 51 IDELR 149 (2nd Cir. 2008). The 2d Circuit affirmed a decision reported at 47 IDELR 95 that a teenager with

behavioral problems was not eligible for special education and related services under the IDEA. Even if the student's inappropriate behaviors matched the criteria for an emotional disturbance, there was no evidence that they had an adverse effect on his educational performance. The court noted that two therapists familiar with the student found that he did not suffer from depression. One therapist opined that the student's behavioral problems at school stemmed from drug use rather than an emotional disturbance. "As the District Court points out, this conclusion is 'more consistent with social maladjustment than with emotional disturbance,'" the 2d Circuit wrote in an unpublished opinion. More importantly, the court observed, the student's emotional and behavioral problems did not appear to have a negative impact on his educational performance. Although the student's GPA slipped between ninth and 10th grades, the 2d Circuit pointed out that the student continued to earn passing grades. In addition, the court found no evidence that the decline stemmed from an emotional disturbance rather than the student's drug use. Because the student did not have an emotional disturbance, the district did not err in finding him ineligible under the IDEA. As such, the parents were not entitled to recover the costs of the student's unilateral private placement.

5. *Babb v. Hamilton County Bd. of Education*, 42 IDELR 9 (Tenn. Ct. App. 2004). The state appeals court ruled the district properly followed the IDEA's stay-put provision over its own zero-tolerance policy when, pending the outcome of his manifestation determination review, it placed the second-grade student with a specific-learning disability and suspected ADHD back in the classroom of the teacher he assaulted. Until the conclusion of the manifestation determination review, the student was to remain in his current educational placement. The student struck his teacher in the face and immediately received a 10-day suspension. At the same time, the district immediately began preparations to expel him in accordance with its zero-tolerance policy. However, the district first conducted a manifestation determination review because, though the student had a history of socially aggressive behavior and was suspected of having ADHD, he had inconsistent test results and had not been officially diagnosed with a disability. At the meeting the team closed his SLD case and noted he did not meet the standards for any disability, but also reopened his case for the suspected ADHD disability. No determination was made at that time. Following the 10-day suspension, the student returned to the same classroom with the same teacher he had assaulted. That same day, he hit his teacher again and also hit the classroom aide. The teacher brought suit against the district and alleged it acted negligently when, following the first assault, it re-placed the student in her classroom. The district defended on grounds it took action in conformity with the IDEA's stay-put provision. The court agreed with the district. It found the district's decision to re-place the student in the teacher's classroom was required under stay-put. Though the team closed his case with regard to SLD, the manifestation determination review was pending due to the team's suspicions the student had ADHD. During the time the manifestation determination review was being conducted, the district was obligated to keep the student in his then current educational placement.

6. *Mars Area Sch. Dist. v. Laurie L.*, 39 IDELR 96 (Pa. Commw. Ct. 2003). The district appealed the review panel's decision that it had to reevaluate the 15-year-old student, whom it had previously identified as other health impaired due to ADHD and ODD, and then determined was socially maladjusted and was not OHI or ED. Because the evidence overwhelmingly supported the district's conclusion, including evidence that his behavior and actions had a specific purpose and goal, the review panel erroneously reversed the IHO's decision upholding the district's classification. The appeals panel also exceeded its authority by ordering the district to evaluate the student for OHI eligibility, on grounds the mother's original request for DP only raised the issue of whether the district had to reevaluate her son to assess whether he had ED. Because the mother did not meet the burden of proving her son was ED, there was no need for an additional evaluation, as the district had recently finished a very thorough battery of tests and assessments. Despite the district's conclusion that the student was ineligible for special education and the IHO's ruling, the student continued to receive services. Due to his escalating poor behavior and increased suspensions, the district placed him in a private facility.
7. *Edwin K. v. Jackson*, 37 IDELR 63 (N.D. Ill. 2002). The court found that "EBD" (emotional/behavioral disability) was the student's primary disability, disagreeing with the parents' claim the district should have attributed their son's behavioral problems to his ADHD. It also ruled the alternative school placement was proper. Several teachers testified the student exhibited passive/aggressive behavior, including defiance and disrespect for authority without a demonstration of physical aggressiveness. Evidence indicated the alternative school could address that type of behavior. A representative from the school indicated the student could be transitioned to another program focusing on his LD once the behavioral issues were addressed. Procedural flaws alleged by the parents, including lack of a BIP, inadequate IEP goals and an improper transition program, did not result in a denial of FAPE, the court determined. However, it ordered the district to include in its IEP the recommendations of the parents' independent evaluator, following an administrative finding that the district failed to identify the specific LDs identified by the IEE. The court awarded the parents reimbursement for their IEE, ordered the district to pay for the student's auditory processing testing, and granted the student eight months of compensatory social work services.
8. *J.S. v. Shoreline Sch. Dist.*, 37 IDELR 253 (W.D. Wash. 2002). Denying reimbursement for a unilateral residential placement, the court determined that, despite previous FAPE denials, the student was receiving FAPE at the time his parents removed him from school near the end of eighth grade. During that year, the district fully evaluated the student in all areas of his suspected disability. Although the parents claimed their son should have been tested for ODD, all observable symptoms in the classroom were logically explained by the ADHD diagnosis and accompanying evaluation. The district also developed an appropriate IEP, which addressed the importance of finishing assignments and provided the student with the necessary organizational tools to do so.

Additionally, it committed no procedural violations that would have denied the student FAPE. Under state law, the student was no longer a resident of the district when his parents enrolled him in the out-of-state residential facility, and, therefore, the district's obligations under the IDEA terminated, including its duty to develop and maintain an IEP.

9. *Colvin v. Lowndes County Sch. Dist.*, 32 IDELR 32 (N.D. Miss. 2000). A U.S. District Court found that a district failed to evaluate a 12-year-old student diagnosed with ADD. While the parents did not show that the student had a disability and was subject to the stay-put provision, evidence established that they asked the district to evaluate the student. The parents stated that the student was diagnosed with ADD and was taking Ritalin. Teachers commented on his inability to concentrate and his poor academic performance. The district knew or should have known that the student had a suspected disability. The court accordingly ordered the district to evaluate the student if and when he was reinstated. The parents of a 12-year-old student with suspected ADD/ADHD claimed that the district violated the stay-put provision and the student's due process rights when it expelled him for possession of a Swiss-army knife. The student was not receiving special education when school officials charged him with possession of the knife on school grounds. Prior to the incident, the parents asked the district to evaluate the student for disability but it never did. The student admitted possession of the knife and turned it over to his teacher without incident. At the disciplinary hearing, the hearing officer found that the student had no serious prior disciplinary infractions and recommended a suspended one-year expulsion, with the student missing only one day of school. The district elected to enforce its zero-tolerance policy and imposed the full one-year expulsion. A U.S. District Court found that the district violated the IDEA and the student's due process rights. While the parents did not show that the student had a disability and was protected by the stay-put provision, the evidence established that they asked the district to evaluate the student. The parents stated on the student's enrollment application that he was diagnosed with ADD and was taking Ritalin. Teachers commented on his inability to concentrate and his poor academic performance. Therefore, the district knew or should have known that the student had a suspected disability. The court, accordingly, ordered the district to evaluate the student if and when he was reinstated. The district also failed to consider the specific circumstances of the case before it expelled the student. The district blindly applied its zero-tolerance policy without reviewing the facts of the case. The court remanded the case to the district for reconsideration of the appropriate penalty under the proper legal standard.
10. *Springer v. Fairfax County Sch. Bd.*, 27 IDELR 367 (4th Cir. 1998). The parents of a student who failed the 11th grade unilaterally placed him at a private school and requested the district fund the student's placement. According to the parents, the student qualified for special education due to a serious emotional disturbance. The district concluded the student did not have a SED and refused to fund the private placement. At due process, a level I hearing officer agreed with the

parents, and granted the request for reimbursement. On appeal by the district, a level II hearing officer reversed. A district court upheld the level II decision and the parents appealed to circuit court. The circuit court agreed with the district court, finding the student did not meet the eligibility criteria for SED. The student's misbehavior, which included truancy, drug use and theft, was not consistent with SED, it was consistent with his diagnosed social maladjustment. A diagnosis of social maladjustment alone does not qualify a student as SED. The circuit court noted that none of the psychologists who evaluated the student concluded he was SED, not even the parents' expert. The student maintained satisfactory relationships with teachers and peers, and did not manifest "pervasive" unhappiness or depression. Further, the student's educational difficulties were the result of his misbehavior, not a SED. Accordingly, the student was not eligible for special education and the district was not required to reimburse the parents for the costs of the unilateral private placement. The parents' objection to the district court's refusal to admit the testimony of a certain expert witness was rejected by the circuit court. There was no evidence this witness was unable to testify at the administrative proceedings, and the witness was not going to furnish new evidence. The district court decision was upheld.

V. MANIFESTATION DETERMINATIONS AND THE CAUSAL CONNECTION?

1. *In re: Student with a Disability*, 70 IDELR 85 (SEA D.C. 2017). An MDR team for a charter school leaned too heavily on evidence that a student with ED and ADHD paused to reflect before jettisoning a stapler at a teacher. Noting that the student's ED caused him to have angry outbursts when frustrated, the IHO concluded that the team incorrectly found that the behavior wasn't a manifestation of a disability. The District of Columbia student was reportedly upset at the time of the incident because he wasn't being allowed to call his parent. However, the MDR team determined that the conduct wasn't a manifestation of a disability and suspended the student. The parent filed a due process complaint alleging that the team's decision denied the student FAPE. Conduct is a manifestation of a disability, the IHO explained, if it "was caused by, or had a direct and substantial relationship to, the child's disability." 34 CFR 300.530(e). The IHO acknowledged the school MDR team members' conclusion that, before throwing the stapler, the student paused, arguably showing that he was making a conscious choice. Nevertheless, the hearing officer pointed out that the student's disabilities were characterized by extreme, aggressive behavior, especially when the student didn't get what he wanted. The student was in that same frame of mind, the IHO reasoned, when he threw the item. "At a minimum, the incident bore 'a substantial relationship to' [the student's] disabilities, which manifest in part by being out of control of ... emotions, excessively angry, confrontational, and aggressive," the IHO wrote. Finally, while the charter school reversed the MDR team's decision in March, until that occurred the student continued to engage in adverse behaviors and receive discipline, the IHO noted. Therefore, the MDR impeded the student's right to FAPE, the IHO concluded. In addition, the IHO found that the student's

placement was inappropriate given the student's behavioral problems. To address the violations, the IHO ordered the school to fund the student's private placement.

2. *Sequoia Union H.S. Dist.*, 117 LRP 11723 (SEA Cal. 2017). It was more likely that racial and political tensions in the aftermath of the presidential election led a teen with OHI to attack a classmate in the cafeteria, rather than her disability -- at least according to a California ALJ. Concluding that the assault was premeditated, the ALJ rejected the parent's contention that the student's anti-seizure medication was to blame. The teen had been taking the medication for four years for Moyamoya disease, a cerebral vascular condition. She assaulted the victim the day after the presidential election, believing the student was racist. The district commenced expulsion proceedings and conducted an MDR. Relying on a student's doctor's statement that there was a "slim chance" the medication caused the violence, the MDR team concluded that the incident wasn't a manifestation of a disability. The parent filed a due process complaint under the IDEA alleging that the medication caused the incident and the MDR team reached the wrong conclusion. A student's conduct is a manifestation of a disability if it was caused by, or had a direct and substantial relationship to, the child's disability; or was the direct result of the failure to implement the IEP. 34 CFR 300.530(e). The ALJ pointed out that, according to the doctor, on the rare occasions when the medication triggered aggression, that aggression was impulsive. Here, the ALJ noted, the student conceived of the attack when she arrived at school in the morning and continued to search for the victim until she found her at lunchtime. According to video of the incident, the student calmly removed her glasses, folded them, and handed them to a friend before attacking the student. "The assault was not at all impulsive; instead it was considered for hours, planned, and then executed," the ALJ wrote. That was entirely consistent with the MDR team's conclusion that it bore no substantial relationship to her medication, the ALJ found. The ALJ also pointed out that the student had never engaged in any remotely similar incident at school in the past, but had been generally well behaved.
3. *Morgan Hill Unified Sch. Dist.*, 117 LRP 11721 (SEA Cal. 2017). An MDR team didn't violate the IDEA by failing to connect a California student's drug use and other code of conduct violations to either his SLD or undiagnosed anxiety and depression. An ALJ ruled that the parent failed to establish that the student suffered from anxiety or depression, that the MDR team was aware of that fact, or that any of the conditions were linked to his disciplinary infractions. The district imposed suspensions for behaviors including intoxication, obscene acts, and inappropriate use of electronic devices. The MDR concluded that the conduct wasn't a manifestation of the student's SLD. None of the participants, including the parent, mentioned that the student had anxiety or depression. The parent filed a due process complaint alleging that the MDR team violated the IDEA by failing to conclude that the student's conduct was the result of a disability. She asserted that the student suffered from undiagnosed depression and anxiety and that the district should have known about it. A student's misconduct is a manifestation of a

disability, the ALJ explained, if it is caused by or has a direct and substantial relationship to a disability. 34 CFR 300.530(e)(1). The ALJ pointed out that the MDR team had no reason to believe the student was depressed or anxious, much less that those conditions were directly connected to his behavior. The parent, the ALJ observed, admitted that her son had never been diagnosed with either condition. While she claimed at the due process hearing that the student once attempted suicide, she never reported the alleged incident. Moreover, the district's psychologist testified at the hearing that the student exhibited no signs of depression. Nor did the parent describe any behaviors consistent those conditions, the ALJ noted. "Rather, Parents expressed concern over Student going to the park to meet friends; holding items he should not, for his friends; not doing home work; and use of intoxicants," the ALJ wrote.

4. *Prince William County (VA) Pub. Schs.*, 116 LRP 45181 (OCR Va. 2016). Although a case manager's email suggested that she assumed there was no link between a ninth-grader's disability and a crime he allegedly committed, OCR nevertheless found that the Virginia district didn't predetermine the MDR's outcome. Reasoning that the MDR team reviewed relevant information at the meeting and didn't discuss the student before the meeting, OCR rejected the parent's Section 504 claim. The parent alleged that the case manager emailed that: "[a]fter the MDR tomorrow we will have to do a quick IEP for services." She also claimed the principal told her before the meeting that he didn't think the conduct was a manifestation of a disability. OCR noted that an MDR must be conducted by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. OCR conceded that the case manager's email was some evidence that the decision was made before the meeting, since the IEP team in this case would have needed to determine educational services only if the student's conduct wasn't a manifestation of his disability. However, OCR appeared to accept the case manager's explanation that she was new to the process and that she merely misspoke in the email. Moreover, OCR pointed out that the MDR team reviewed the student's records, including incident reports and his IEP, and considered the parent's input. That supported the conclusion that the district made its determination at the meeting. Finally, there was no other evidence that members made up their minds before the meeting. "OCR found no evidence that the School staff communicated before the MDR regarding the Student, and there is no evidence that other members of the IEP team present at the MDR made assumptions about the outcome," OCR Supervisory Attorney Michael Hing wrote.
5. *Maple Heights City Sch. Bd. of Educ. v. A.C. ex rel. A.C.*, 68 IDELR 5 (N.D. Ohio 2016). An SRO correctly accorded due deference to an IHO's credibility determination that gave greater weight to one expert over another in an MDR case involving a 13-year-old with ED who was facing discipline for marijuana possession and stealing a classmate's iPod. The court dismissed an Ohio district's claims that the SRO improperly disregarded evidence based on evidence that the parents' expert had strong credentials and conducted a more sedulous review.

With respect to both incidents, the district found that the behavior was not a manifestation of the student's disability. The parents disagreed and filed a due process complaint. The IHO heard testimony from two experts, one of whom concluded that the behavior was not a manifestation while the other decided oppositely. The IHO deferred to the latter, explaining that this expert had weightier credentials than the pro-district expert. The SRO found no reason to disturb the IHO's credibility determination, noting that the fact-finder was in the best decision to make such a determination. The district appealed to District Court. The court explained that at issue was whether the procedural requirements outlined in the IDEA were met and noted that it must afford due weight to the state due process proceedings. Finding no error in the SRO's conclusion, the court held that the IHO's finding that the student's marijuana possession and theft were a manifestation of her disability would stand. It explained that the two witnesses' testimonies were "diametrically opposed." Additionally, the court explained that the expert the IHO found more credible conducted "a much more thorough review" and was a clinical psychologist. This expert concluded that the student's disability led her to make decisions without considering consequences, the court noted. On the other hand it pointed out, the district's expert was a behavioral specialist and educational consultant, and her report missed "numerous mathematical errors" on data sheets provided by a teacher. Finding no error on which to disregard the IHO's or SRO's findings, the court let stand the conclusion that the student actions were a manifestation of her ED.

6. *Earle Sch. Dist.*, 68 IDELR 59 (SEA Ark. 2016). Although an Arkansas district's special services director may have viewed a student's disrespectful behavior as just another instance of the teenager doing whatever he wanted to do, that was no excuse for treating an MDR as a mere formality. Based in part on the district's inappropriate MDR, the IHO found that the district deprived the student with ADHD and a history of defiant behavior of FAPE. The teen had rhombencephalosynapsis, a condition in which the cerebellar hemispheres are fused. According to an outside neuropsychological report, the condition could cause behavioral problems. After the student used profanity toward staff members, the district sought to suspend him and determined that his behavior wasn't a manifestation of a disability. The district's director of special services, who led the MDR, later explained that it was her impression the student was acting willfully. The student's mother filed a due process complaint claiming the district denied the student FAPE. An MDR team must determine whether the conduct in question was caused by or had a direct and substantial relationship to the disability or was the direct result of an implementation failure. 34 CFR 300.530(e)(1). The IHO remarked that the district treated the MDR as a "formality," rather than a genuine examination of the student's disabilities and their connection to the underlying conduct. The MDR team didn't even have a copy of the IEP, the IHO observed. Nor did the team adequately consider the doctor's evaluation report that shed light on the complexities of the student's disabilities and their potential to trigger seemingly willful misconduct, she noted. "In fact, there is no indication that anything in Student's special education file was

reviewed," the IHO wrote. The IHO also pointed out that the district didn't alert the parent to the purpose of meeting and then prevented her from contacting her lay advocate.

7. *C.C. by Cripps v. Hurst-Eules-Bedford I.S.D.*, 67 IDELR 254 (5th Cir. 2016). A Texas district did not violate the IDEA by failing to reevaluate the interim alternative educational setting of a middle school student after juvenile authorities decided not to prosecute him for photographing a classmate sitting on the toilet. Concluding that the U.S. District Court, Northern District of Texas committed no reversible error by entering judgment in favor of the district, the 5th U.S. Circuit Court of Appeals, in an unpublished decision, affirmed the District Court's decision reported at 65 IDELR 195. Determining that the student with ADHD and an SLD had committed a felony when he improperly photographed his classmate without consent, the district placed him in a 60-day IAES. It thereafter determined that his misconduct was not a manifestation of his disabilities. The parents asserted that the decision of juvenile justice authorities not to prosecute the student should have prompted the district to reassess the student's need for an IAES. Explaining that the authorities' decision to forego criminal prosecution had no bearing on the student's removal to the IAES, the District Court affirmed an administrative decision, reported at 114 LRP 25854, in the district's favor. The key question, according to the District Court, was whether the district enforced its disciplinary policies in a nondiscriminatory manner. U.S. District Judge John McBryde explained that once the district determined that the student's actions were unrelated to his disabilities, it could discipline him along the same lines as it would a nondisabled student. Noting that state law mandated a disciplinary alternative education program for such conduct and that the student code of conduct required that the IAES placement be for 60 days, Judge McBryde held that the 60-day IAES placement was appropriate. The 5th Circuit upheld the District Court's ruling.
8. *Lancaster Elementary Sch. Dist.*, 49 IDELR 53 (SEA CA 2007). An administrative law judge rejected a parent's argument that frustration with schoolwork led her son to bring marijuana and tobacco to school. The ALJ agreed with the IEP team's determination that the possession of illegal drugs was not caused by, or related to, the boy's learning disability.
9. *Fulton County Sch. Dist.*, 49 IDELR 30 (SEA GA 2007). A school district improperly limited the scope of the manifestation determination by refusing to consider the effects of a student's oppositional defiant disorder on his threat to kill a teacher. The student's IEP listed his behavior as the main area of concern, and recorded "ODD" as the basis for his classification as "other health impaired."
10. *Traverse City Area Pub. Schs.*, 106 LRP 791 (SEA MI 2005). A ninth-grade student, who wrote several classmates' names on the bathroom wall stating that they would all die three days later, did not write the death threat as a result of his disabilities: OHI and learning disability. An IHO found that the district's

manifestation determination review was appropriate and correctly determined that the student's actions were not a manifestation of his disability. Although his parent argued that the student's action was borne out of impulse, there was sufficient testimony by district personnel to show that the student planned the writing of the list by deciding to get a pass to the bathroom during class and included his own name on the list to deflect suspicion from him. And, he indicated he knew what the consequences of the action would be because he stated he could be suspended or even have charges filed against him.

11. *Selma City Bd. of Educ.*, 44 IDELR 105 (SEA AL 2005). A 12-year-old with ED, who had a behavioral intervention plan included in his IEP, was able to control his actions when he fought with a student after school. Therefore, the manifestation determination review that found the student's behavior was not a manifestation of his disability was correct. His parent did not show that the student's disability affected his ability to distinguish right from wrong, nor did she show that his disability impaired his ability to restrain himself. The student acknowledged that his behavior was inappropriate, and he actively chose whom to fight with and whom to refrain from fighting with. Also, the student had not engaged in any fights since being placed in the alternative school. The IHO decided the district's determination was correct and its alternative school placement was appropriate as discipline.
12. *Miami-Dade County Sch. Dist.*, 44 IDELR 492 (SEA FL 2005). A sixth-grader with specific learning disabilities who responded in a defiant and disruptive manner when directed to stop passionately kissing a girl in the parking lot and to stop attempting to start a fight with a girl outside the school cafeteria, was appropriately suspended and placed in an alternative setting. The IHO determined that the district properly held a manifestation hearing and determined that the student's behavior was not a manifestation of his disability. And it was interfering with his ability to access his education. The alternative placement the district decided upon after due consideration was a smaller school with three administrators, smaller classes, more counseling resources and a better behavior management program.
13. *Tuscaloosa City Bd. of Educ.*, 44 IDELR 81 (SEA AL 2005). The student's act of starting a fire in his classroom was not a manifestation of his disability, the IHO ruled. The IHO determined that the district complied with the IDEA when, following the fire, it held a manifestation determination meeting. The student sprayed air freshener on an open cigarette lighter flame and created a fire in the classroom. During the manifestation determination hearing, the IEP committee determined that his IEP placement was appropriate, as was his special education aids and services. The committee also found that the behavior intervention strategies that were provided to him were consistent with his IEP and placement. Thus, the IHO determined that the committee appropriately reached the conclusion that his disability did not impair his ability to understand the impact and consequences of his behavior.

14. *Sacramento City Sch. Dist.*, 44 IDELR 101 (SEA CA 2005). A middle school student was improperly disciplined for behavior that may have been related to his ADHD, OCR found. The eighth-grader's teachers noted he had difficulty focusing, was very talkative and often off task. The parents disagreed with each other about whether the student had ADHD, but the district noted that the disorder was suspected. A clinical psychologist submitted a report to the district that the student had mild-to-moderate ADHD, but should be reevaluated. And, although the principal requested the counselor to set up a meeting to develop a Section 504 plan for the student, neither followed through. The student was suspended for pushing a teacher and was not allowed to attend a field trip. Thereafter, a Section 504 meeting was held, but because the team did not agree to its provisions, a plan was not developed. And, although the officer presiding over the student's discipline reviews took no further action after learning the student was in the 504 process, the district placed him on a behavior contract regardless. Because of failing several subjects, the student was not allowed to graduate with his class and was recommended for summer school, but was removed after violating his behavior contract. At the beginning of his ninth-grade year, a 504 team met and, after learning that an evaluation confirmed his ADHD, recommended he be promoted to high school and placed on a 504 plan. OCR found the district should have suspected the student had a disability and evaluated him prior to disciplining him. The district agreed to determine whether it should remove the disciplinary actions from the student's record, train its staff on the requirements of Section 504, and determine whether compensatory educational services would be appropriate for the student.