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# ED, EBD, ODD, Socially Maladjusted: What's the Difference and Why Does It Matter?

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# ED v. Social Maladjustment

- The IDEA does not define “social maladjustment,” but it specifically excludes it from the definition of “emotional disturbance.” 34 C.F.R. 300.8(c)(4).

# IDEA Implementing Regulations (2006)

- USDOE refused to add a definition of “social maladjustment” due to a lack of consensus over the definition of the term. 71 Fed. Reg. 46,550 (2006).

# An Operational Definition of Social Maladjustment

- “Social maladjustment” means any type of willful/volitional behavior that is within the student’s control and that is not caused by an emotional disturbance or a mental impairment.

## However ...

- “There is a grey area between normal, voluntary conduct and involuntary physiological response, and that area is where Congress has chosen to locate behavioral problems.” *Independent Sch. Dist. No. 284 v. A.C.*, 35 IDELR 59 (8th Cir. 2001).

# Does Every DSM-5 Diagnosis Constitute an “educational disability”?

- No; consider the fact that DSM-5 contains many diagnostic categories such as sexual dysfunction, drug abuse/addiction, Internet gaming disorder, binge eating disorder, and caffeine intoxication disorder.

# Social Maladjustment = ODD/Conduct Disorder

- The problem of multiple DSM-5 diagnoses (ODD/ADHD/LD/Depression/Anxiety).
- The neurobiological arguments for causality of ODD/Conduct Disorder.

## The 504 Problem ...

- According to OCR, it is possible for a student with misbehavior to be deemed eligible under Section 504 if he is diagnosed with a mental impairment that results in a substantial limitation ...

- *Irvine (CA) Unified Sch. Dist.*, 353 IDELR 192 (OCR 1989)

# Is “Social Maladjustment” an “Impairment”?

- There is no DSM-5 category of “social maladjustment.”
- DSM states, “Socially deviant behavior and conflicts that are primarily between the individual and society are not mental disorders.” DSM-5, p. 20.

## The Crux of the Issue ...

- Are ODD and Conduct Disorder “mental disorders” within the definition of the term by the DSM-5?
- Moreover, wouldn't a student diagnosed with ODD/Conduct Disorder be eligible as ED/EBD/OHI if the behavior is a “substantial limitation”?

# What Is Social Maladjustment?

- 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.

# Social Maladjustment May Be a Disability Under Section 504

- *See Irvine (CA) Unified S.D.*, 353 IDELR 192 (OCR 1989) (A determination that a student is not ED is not dispositive as to whether the student is disabled pursuant to Section 504 and in need of Section 504 services. To establish 504 eligibility, the student has only to prove that his social maladjustment is a mental impairment that substantially limits a major life activity such as learning or attending school).

# What is ODD?

- “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 ...”
  - DSM-5 (p. 463)

## What is ODD? (cont'd)

- Often loses temper;
- Is often touchy or easily annoyed;
- Is often angry or resentful;
- Often argue with authority figures or, for children and adolescents, with adults;
- Often actively defies or refuses to comply with requests from authority figures or with rules;

## What is ODD? (cont'd)

- Often deliberately annoys others;
- Often blames others for his or her mistakes or misbehavior;
- Has been spiteful or vindictive at least twice within the past 6 months.

# What is Conduct Disorder?

- 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 ...
  - DSM-5 (pp. 469-70).

# What is Conduct Disorder? (cont'd)

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

## What is Conduct Disorder? (cont'd)

- Has deliberately engaged in fire setting with the intention of causing serious damage;
- Has deliberately destroyed others' property (other than by fire setting);
- Has broken into someone else's house, building, or car;
- Often lies to obtain goods or favors or to avoid obligations (i.e., "cons" others).

# What is Conduct Disorder? (cont'd)

- Has stolen items of nontrivial value without confronting a victim (e.g., shoplifting, but without breaking/entering, forgery)
- Often stays out at night despite parental prohibitions, beginning before age 13 years;
- 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);
- Is often truant from school, beginning before age 13 years.

# What is ADHD-related hyperactivity/impulsivity?

- Six of more of the following symptoms have persisted for a least 6 months to a degree that is inconsistent with developmental level and that negatively impacts directly on social and academic/occupational activities (and are not solely a manifestation of ODD, defiance, hostility, or a failure to understand tasks or instructions).
  - DSM-5, p. 60

# Symptoms of Hyperactivity/Impulsivity

- Often fidgets with or taps hands or feet or squirms in seat;
- Often leaves seat in situations when remaining seated is expected (e.g., leaves his or her place in the classroom);
- Often runs about or climbs in situations where it is inappropriate (in adolescents, may be limited to feeling restless);
- Often unable to play or engage in leisure activities quietly;

# Symptoms of Hyperactivity/Impulsivity (cont'd)

- Is often “on the go,” acting as if “driven by a motor” (e.g., is unable or uncomfortable being still for extended time, as in restaurants and meetings, and may be experienced by others as being restless or difficult to keep up with);
- Often talks excessively;
- Often blurts out an answer before a question had been completed (e.g., completes people’s sentences; cannot wait for turn in conversations);

# Symptoms of Hyperactivity/Impulsivity (cont'd)

- Often has difficulty waiting in line;
- Often interrupts or intrudes into games, activities, or conversations of others.

# What are the Courts Saying About Emotional Disturbance?

- *Home v. Potomac Preparatory Charter Sch.*, 68 IDELR 38 (D.D.C. 2016).
- *Devon L. v. Clear Creek Indep. Sch. Dist.*, 68 IDELR 166 (S.D. Tex. 2016).
- *Paul T. v. South Huntington Union Free Sch. Dist.*, 65 IDELR 273 (N.Y. Sup. Ct. 2016, unpublished).
- *H.M. v. Weakley County Bd. of Educ.*, 65 IDELR 68 (W.D. Tenn. 2015).

# What are the Courts Saying About Emotional Disturbance? (cont'd)

- *L.J. v. Pittsburg Union Free Sch. Dist.*, 68 IDELR 121 (9th Cir. 2016).
- *Moore v. Hamilton Southeastern Sch. Dist.*, 61 IDELR 283 (S.D. Ind. 2013).
- *G.H. v. Great Valley Sch. Dist.*, 61 IDELR 63 (E.D. Pa. 2013), *amended by*, 114 LRP 37231 (E.D. Pa. 05/14/13).

# What are the Courts Saying About Emotional Disturbance? (cont'd)

- *Lauren G. v. West Chester Sch. Dist.*, 60 IDELR 4 (E.D. Pa. 2012).
- *P.C. v. Oceanside Union Free Sch. Dist.*, 56 IDELR 252 (E.D.N.Y. 2012).
- *W.G. v. New York City Dep't of Educ.*, 56 IDELR 260 (S.D.N.Y. 2011).
- *Hansen v. Republic R-III Sch. Dist.*, 56 IDELR 2 (8th Cir. 2011), *reh'g en banc denied*, 112 LRP 51218 (8th Cir. 03/01/11).

# What are the Courts Saying About Emotional Disturbance? (cont'd)

- *Loch v. Edwardsville Sch. Dist. No. 7*, 52 IDELR 244 (7th Cir. 2009, unpublished), cert. denied, 110 LRP 14134, 130 S. Ct. 1736 (2010).
- *Eschenasy v. New York City Dep't of Educ.*, 52 IDELR 66 (S.D.N.Y. 2009).
- *Richardson v. District of Columbia*, 50 IDELR 6 (D.D.C. 2008).

# What are Courts Saying About ADD/ADHD and Social Maladjustment?

- *Maple Heights City Sch. Bd. v. A.C.*, 68 IDELR 5 (N.D. Ohio 2016).
- *H.M. v. Weakley County Bd. of Educ.*, 65 IDELR 68 (W.D. Tenn. 2015).
- *Richard S. v. Wissahickon Sch. Dist.*, 52 IDELR 245 (3d Cir. 2009, unpublished).
- *M.P. v. N.E. Indep. Sch. Dist.*, 49 IDELR 37 (W.D. Tex. 2007).

# What are Courts Saying About ADD/ADHD and Social Maladjustment? (cont'd)

- *Traverse Area Pub. Schs.*, 45 IDELR 47 (SEA MI 2005).
- *Tesmer v. Colorado High Sch. Activities Ass'n*, 46 IDELR 18 (Colo. Ct. App. 2006).
- *Venus Indep. Sch. Dist. v. Daniel S.*, 36 IDELR 185 (N.D. Tex. 2002).

# Manifestation Determination Reviews

- *Maple Heights City Sch. Bd. v. A.C.*, 68 IDELR 5 (N.D. Ohio 2016).
- *C.C. v. Hurst-Eules-Bedford Indep. Sch. Dist.*, 67 IDELR 254 (5th Cir. 2016, unpublished).
- *Bristol Twp. Sch. Dist. v. Z.B.*, 67 IDELR 9 (E.D. Pa. 2016).
- *Z.H. v. Lewisville Indep. Sch. Dist.*, 65 IDELR 147 (E.D. Tex. 2015).
- *Tipton Co. Schs.*, 110 LRP 49832 (SEA TN 08/30/10).

# Take-Aways

- A DSM-5 diagnosis does not equate to an IDEA or a Section 504 disability.
- Social Maladjustment v. ED: Be Ready to Make a Convincing Argument
- Locate a Great Expert Witness!
- Home behaviors do not dictate school actions.