

Legal Memorandum on Trauma, Schools and Poverty

Inquiry into Emotional Disturbance Classification for Children

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February 2017

Introduction

This paper is the third in a series of legal memos presented as part of the Center on Law in Metropolitan Equity's (CLiME) participation in the Trauma, Schools, and Poverty project. To view the previous installments visit the website at www.clime.newark.rutgers.edu.

Question Presented

What is the practical reality of “emotional disturbance” classifications under the IDEA?

Preliminary Answer

The vagueness and ambiguous nature of the “emotional disturbance” classification under the IDEA fails to accurately identify children affected by trauma as well as provide beneficial and effective services for those who do qualify.

Analysis:

Defining “Emotional Disturbance”

Emotional Disturbance (“E.D.”) is defined as a “condition exhibiting [at least one of five] characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance.”¹ A child needs to exhibit one or more of the following characteristics to qualify as E.D.:

- (A) An inability to learn that cannot be explained by intellectual, sensory or health factors;
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (C) Inappropriate types of behavior or feelings under normal circumstances;
- (D) A generally pervasive mood of unhappiness or depression;
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.²

However, the statute has an exclusionary clause, excluding children who are “socially maladjusted.”³ In other words, if a student “cannot form social relations[hips], attend school regularly, or control behavior, yet performs well academically, the child’s disability will not be found to adversely impact [the student’s] educational performance.”⁴ That student would not be classified as E.D. and, thus, not eligible for services under the Individuals with Disabilities Education Act (“IDEA”), even though he or she may benefit from them.⁵

E.D.’s statutory definition is too vague and ambiguous in nature.⁶ For instance, numerous terms in the definition are not defined by the statute or by the U.S. Department of Education. ‘Condition’ is one of these terms. It is interpreted to “refer to certain behaviors exhibited by a single student, which may not occur in other students.”⁷ Furthermore, “long period of time” is

¹ 34 C.F.R. § 300.8(c)(4)(i) (2007).

² 34 C.F.R. § 300.8(c)(4)(i).

³ 34 C.F.R. 300.8(c)(4)(ii). This E.D. definition differs significantly from the one utilized by the Center for Mental Health Services and other child mental health systems. This definition states E.D. is “diagnosable mental, behavioral or emotional disorder of sufficient duration to meet diagnostic criteria [specified under the DSM-IV] that results in functional impairment which substantially interferes with or limits the child’s role or functioning in family, school or community activities.” Moira O’Neill, *Delinquent or Disabled? Harmonizing the IDEA Definition of “Emotional Disturbance” with the Educational Needs of Incarcerated Youth*, 57 HASTINGS L.J. 1189, 1206 (2006).

⁴ Robert A. Garda, Jr., *Untangling Eligibility Requirements under the Individuals with Disabilities Act*, 69 MO. L. REV. 441, 461 (2004).

⁵ *Id.*

⁶ O’Neill, *supra* note 3, at 1201-02.

⁷ Nicole M. Oelrich, *A New “IDEA”: Ending Racial Disparity in the Identification of Students with Emotional Disturbance*, 57 S.D. L. REV. 9, 19 (2012).

not quantified.⁸ “Social maladjustment” is also not defined.⁹ As a result, it is difficult to deduce whether a student should be classified as E.D. and receive the appropriate services.¹⁰

This ambiguity permits States “to develop their own definitions and criteria to assist school districts in determining which students are eligible.”¹¹ Yet, this freedom awarded to States allows for the application of differing interpretations as well as varying criteria.¹² In other words, a student who is classified as E.D. and receives services in one State, may not be qualified if he or she moves to another State.

Trauma Affects on Children

Furthermore, the definition is “too vague to properly address the imperative needs of children who have faced trauma.”¹³ Children who experience some form of trauma generally have a “diminished sense of self-worth, self-blame, feelings of hopeless or lack of self control,” which can result in them shutting down completely.¹⁴

Trauma causes numerous socializing issues in children, such as “disrupting the [child’s] ability to process verbal information and effectively utilize language to communicate.”¹⁵ As mentioned above, children who experience trauma shut down and do so by utilizing language and means to keep others, including their peers and teachers, at a distance.¹⁶

This anti-social behavior can negatively impact a child’s academic ability.¹⁷ The lack of positive social interactions that these children experience can “result in a lack of motivation,” resulting in poor educational achievements.¹⁸ Moreover, attentiveness poses a problem, as children who have experienced trauma are often distracted with negatives thoughts and anxiety and fail to process correctly the lessons they are being taught.¹⁹

Issues Classifying Children as E.D.

However, even though these children experience both social and academic problems as a result of trauma, the lack of specifics in the statute regarding ‘socially maladjusted’ and ‘long period of time’ leads many students to be identified as socially maladjusted instead of E.D.

It is estimated that between 8% and 12% of all children should be classified as E.D. and would benefit from services under the IDEA.²⁰ Nevertheless, “students who are identified as having the prolonged, sever, and educationally debilitating disorders that qualify them to receive special education are fewer than 1% of school-age students.”²¹ These statistics demonstrate that E.D. students are significantly under-identified.²²

Additionally, scholars have discovered that variations in classifying children with E.D. “are due, in part, to the child’s gender.”²³ The majority of E.D. students are males; in fact, males are overrepresented as E.D.²⁴ It is estimated that “boys are nearly 3.5 times as likely to be identified [than] girls . . . with a label [E.D].”²⁵ The under-classification of girls compared to their male peers may, in part, be a result of a state’s ability to implement their own, unique policies regarding the criteria for classifying a child as E.D.²⁶ In most circumstances, “the criteria for

⁸ William Dikel and Daniel Stewart, *Emotional /Behavioral Disorders and Special Education: Recommendations for System Redesign of a Failed Category*, 34 HAMLIN L. REV. 589, 591 (2011).

⁹ *Id.*

¹⁰ Oelrich, *supra* note 7, at 20.

¹¹ Dikel, *supra* note 8, at 592.

¹² O’Neill, *supra* note 3, at 1201-02.

¹³ Dikel, *supra* note 8, at 591, 595.

¹⁴ SUSAN F. COLE, MASS. ADVOCATES FOR CHILDREN, HELPING TRAUMATIZED CHILDREN LEARN: SUPPORTIVE SCHOOL ENVIRONMENTS FOR CHILDREN TRAUMATIZED BY FAMILY VIOLENCE 15 (2009).

¹⁵ *Id.* at 22.

¹⁶ *Id.* at 25.

¹⁷ *Id.* at 15-16.

¹⁸ *Id.* at 27.

¹⁹ *Id.* at 28, 30.

²⁰ Mary M. Wagner, *Outcomes for Youths with Serious Emotional Disturbance in Secondary School and Early Adulthood*, 5 FUTURE CHILD. 90, 94 (1995). See Appendix A for Demographic Characteristics of Youth with E.D. and Youths in the General Population. *Id.* at 96.

²¹ *Id.*

²² O’Neill, *supra* note 3, at 1198. See also Linda A. Reddy and Laura Richardson, *School-Based Prevention and Intervention Programs for Children with Emotional Disturbance*, 29 EDUC. AND TREATMENT OF CHILD. 379, 379 (2006).

²³ Reddy, *supra* note 22, at 380. See also Martha J. Coutinho and Donald P. Oswald, *State Variation in Gender Disproportionality in Special Education: Findings and recommendations*, 26 REMEDIAL AND SPECIAL EDUCATION 7 (2005).

²⁴ Coutinho, *supra* note 23, at 7.

²⁵ *Id.* at 9

²⁶ *Id.* at 12.

eligibility and the measures that schools use to identify students as having [E.D.] . . . do not capture problems related to many internalizing disorders, such as depression and suicide ideation.”²⁷ Internalizing behaviors are associated with E.D. and, as it appears by this under-identification, are experienced frequently by female students.²⁸

As mentioned above, less than 1% of E.D. students are classified as such.²⁹ Nevertheless, the characteristics of these children who qualify under the IDEA and have an implemented IEP do no differ sufficiently from those identified as socially maladjusted. E.D. students generally have poor grade point averages, greater number of absences, higher instances of arrests, and failed more classes than their peers in the general education population.³⁰

Financing E.D. Programs

Under the IDEA, a State is eligible for financial assistance in order to provide Individualized Education Programs (“IEP”) and services to students classified as disabled, including E.D. students.³¹ To receive funding under the IDEA, the State must “submit[] a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets [certain requirements].”³² However, school districts face challenges in receiving those funds. While “reducing the stigma of mental illness, . . . forming interagency partnerships, . . . [and] achieving privacy and parental consent” are all challenges school districts face in “obtaining and using funds for providing mental health services to students,” the main challenge is building a mental health service capable of serving these students.³³

Even though federal funds are available through the IDEA, some school districts do not take the time and effort to create services for E.D. students that meet the minimum requirements for federal funding under the IDEA.³⁴ One argument for why districts do not have stable mental health programs is because the mental health field is subject to changes often.³⁵ For example, in schools with children classified as E.D., it is important that health and social services are integrated in schools and, additionally, “linking them to schools.”³⁶ In order to meet this challenge, districts will likely be required to further the “development of expertise by school personnel; fluency in complex federal, state, and local funding mechanism; interagency collaboration; and commitment to working with families.”³⁷ These complex and time-consuming processes dwindle a school district’s incentive to develop efficient programs.³⁸ However, “schools need to be aware that there are reimbursement options for students they identify as [E.D.] who receive therapy sessions or residential placement.”³⁹

Lack of Appropriate Placement

Students classified as E.D. do, in some regard, receive “accommodations to help them succeed academically.”⁴⁰ The following are important services the E.D. students receives when they are classified under the IDEA and receive a IEP:

- About 75% of E.D. students receive more time to take tests;
- Between 54.2% to 67.3% of E.D. students received more time to complete assignments;
- Between 27.5% to 36.5% of E.D. students were provided learning strategies or study skills assistance.⁴¹

Nevertheless, students classified as E.D. are still performing poorly in school. Scholars hypothesize that the reason E.D. students perform poorly, even though they are classified under the IDEA, is because “[w]ithout a significant association to [another] specific disability,” the

²⁷ *Id.*

²⁸ *Id.*

²⁹ Wagner, *supra* note 20, at 94.

³⁰ *Id.* at 97-98.

³¹ 20 U.S.C.S. § 1412(a).

³² *Id.*

³³ John W. Maag and Antonis Katsiyannis, *School-Based Mental Health Services: Funding Options and Issues*, 21 J. OF DISABILITY POLICY STUDIES 173, 176 (2010).

³⁴ *Id.* at 175.

³⁵ *Id.* at 176.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 175.

⁴⁰ Marilyn Friend, Mary Wagner, William D. Bursuck, Krista Kutash, Albert J. Duchnowski, W. Carl Sumi, and Michael H. Epstein, *Education Students with Emotional Disturbances: A National Perspective on School Programs and Services*, 14 J. OF EMOTIONAL AND BEHAV. DISORDERS 12, 19 (2006).

⁴¹ *Id.*

services that E.D. students receive are not substantial and hardly make an impact.⁴² Several accommodations that are necessary in aiding E.D. students succeed academically are less commonly available.⁴³ These services are “modified tests, assignments, or grading standards and slower-paced instruction.”⁴⁴

Furthermore, it is estimated that 88% of E.D. students in high school have implemented IEPs that resemble the programs and classes of non-disabled students.⁴⁵ In fact, an E.D. student spends an average of “74% of [his/her] time in regular education classes” and one-third of all E.D. students spend their entire school day in regular education classes.⁴⁶

Minimal Teaching Resources

As mentioned in the last section, a majority of E.D. students spend most of their time in general education classrooms.⁴⁷ As a result, these students “are likely to have teachers who feel unprepared to work with them.”⁴⁸

E.D. students require “teachers with a strong repertoire of behavior-management skills to decrease inappropriate behaviors and increase pro-social behaviors.”⁴⁹ Yet, 22.9% of E.D. students in elementary school had general teachers who “strongly agreed” they had adequate training for teaching these students and at the middle school and high school levels the percentages were at 30% and 13.1%, respectively.⁵⁰ Over 10% of special educators are not certified to teach E.D. students.⁵¹ The lack of qualifications that teachers who instruct E.D. students possess makes them reluctant to teach these students; in fact, these students are referred to as “among the least desirable to have in general education classrooms.”⁵²

General and special education teachers are deemed un-qualified to teach E.D. students because of “[d]eefficient teacher preparation, insufficient professional development opportunities, inadequate administrative support, and [access to] limited resources.”⁵³ Specifically, the lack of professional development opportunities that these teachers receive means that they also do not receive “additional tools to increase their sense of competence in the area of emotional disturbance.”⁵⁴ Furthermore, teachers also become overwhelmed by the amount of paperwork they have to complete in regards to E.D. students as well as working in an environment of conflict, which will be discussed later in this memo.⁵⁵ The failure to improve teacher preparation and professional development is theorized to be a result of “ever-increasing budgetary constraints and economic realities that have universally afflicted state and local education agencies.”⁵⁶

Additionally, children with E.D. require access to other knowledgeable professionals in their schools. While adequately trained teachers are hard to come by in schools, “[m]ore than 86% of students with E.D. . . . had access to at least one school psychologist.”⁵⁷ It is estimated that close to all E.D. students had access to at least one guidance counselor and paraprofessionals or instructional assistants.⁵⁸ Moreover, 54.8% to 60.7% of E.D. children attend institutions with social workers on the faculty.⁵⁹

Behavior in Class

Disruptive behavior and symptoms of conduct disorder are common in students with E.D.⁶⁰ Consequently, “the largest subgroup of youth placed in E.D. classrooms” are E.D. students who

⁴² See Dikel, *supra* note 8, at 601.

⁴³ Friend, *supra* note 40, at 19.

⁴⁴ *Id.*

⁴⁵ Wagner, *supra* note 20, at 103. See also Friend, *supra* note 40, at 17. (stating that “[t]he proportion of students classified as E.D. who took general academic classes without any modifications to the curricula ranged from 47.7% of elementary students to 38.7% and 37.8% of middle and high school students”).

⁴⁶ *Id.* See Appendix B for Mental Health Services Provided to or Planned for Students with E.D. *Id.* at 106.

⁴⁷ Friend, *supra* note 40, at 12.

⁴⁸ *Id.*

⁴⁹ *Id.* at 13-14.

⁵⁰ *Id.* at 17.

⁵¹ Richard Peterson, *Caught in the Cross-Fire: The Psychological and Emotional Impact of the Individuals with Disabilities Education Act (IDEA) upon Teachers of Children with Disabilities, A Therapeutic Jurisprudence Analysis*, 33 PACE L. REV. 878, 907 (2013).

⁵² Friend, *supra* note 40, at 14, 24.

⁵³ Peterson, *supra* note 51, at 881.

⁵⁴ Friend, *supra* note 40, at 24.

⁵⁵ Peterson, *supra* note 51, at 881.

⁵⁶ *Id.* at 910.

⁵⁷ Friend, *supra* note 40, at 17.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Reddy, *supra* note 22, at 380.

experience these symptoms and behaviors.⁶¹ Compared to students with other disabilities, “teachers were twice as likely to say that elementary school students with E.D. became easily distracted ‘very often’” (33.7% vs. 65.5%, respectively).⁶² Also, 53.6% of E.D. students are frequently impulsive while only 20.1% of students with other disabilities are.⁶³ Additionally, based on teachers’ reports, E.D. students are twice as likely to be involved in fighting compared to other students with other disabilities.⁶⁴

Because behavioral issues are common with E.D. children, it is common for them to have a behavior management or a support plan in place.⁶⁵ Three-fourths of E.D. children in elementary and middle schools have one of these plans and the same is true for half of high school E.D. students.⁶⁶ However, the percentages of students who actually receive the services in their plans are lower. Between 30.9% and 45.2% of all E.D. students receive behavioral intervention and 38.3% to 40.2% receive mental health services.⁶⁷

Results

Consequently, E.D. students are not getting the help they need and, thus, are dropping out of school and/or getting suspended at alarming rates.⁶⁸ E.D. students make up over half of all suspensions.⁶⁹ It is estimated that about 55% of E.D. students who left school (graduating, transferring, etc.) did so by dropping out.⁷⁰ This estimate is “twice the rate of students in the general population and the highest of any category of students with disabilities.”⁷¹

Moreover, children, whether they are classified as E.D. or socially maladjusted, can be seen as being ‘delinquents.’⁷² It is reported that many of the E.D. characteristics listed under the statute “strongly correlate with behavior associated with delinquency.”⁷³ Consequently, students, who should be classified as E.D. are more likely to be arrested than children classified under other categories of disabilities.⁷⁴

Conclusion:

The current E.D. classification under the IDEA has little practicality in today’s education system.

⁶¹ *Id.*

⁶² Friend, *supra* note 40, at 19.

⁶³ *Id.*

⁶⁴ *Id.* at 21.

⁶⁵ *Id.* at 19.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ CAROL ANN BAGLIN, MARYLAND’S CHILDREN IN SPECIAL EDUCATION WITH EMOTIONAL DISTURBANCE: AN OVERVIEW OF DATA AND CURRENT OUTCOMES, MD. ST. DEP’T EDUC. 36, 38 (2008).

⁶⁹ *Id.* at 36.

⁷⁰ Wagner, *supra* note 20, at 99.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 1208.

⁷⁴ *Id.*

Appendix A

Demographic Characteristics of Youths with SED, Youths with Any Disability, and Youths in the General Population			
	Youths		
	With SED	With Any Disability	In the General Population
Percentage male	76.4	68.5	51.4 ^a
Percentage who were			
White	67.1	65.0	73.0 ^a
African American	25.1	24.2	14.0
Hispanic	6.0	8.1	6.2
Other	1.7	2.7	6.9
Percentage from household with 1986 annual income			
Under \$12,000	38.2	34.8	18.2 ^b
\$12,000 to \$24,999	32.1	33.5	20.6
\$25,000 to \$37,000	15.7	16.2	25.4
\$38,000 or more	14.0	15.4	35.8
Percentage with head of household whose highest education was			
Some high school	43.7	41.0	22.3 ^b
High school graduate	29.1	36.0	38.8
Some college/two-year degree	18.0	14.0	17.8
Four-year degree or more	9.2	8.9	21.1
Percentage from single-parent household	44.3	36.8	25.6 ^b
Percentage whose community was			
Urban	39.5	29.6	22.3 ^c
Suburban	34.0	33.6	47.9
Rural	26.5	36.8	28.7
n	552 to 777	6,092 to 7,142	

^a National Longitudinal Survey of Youth (U.S. Department of Labor, 1979 to 1983, unpublished). Data are for youths ages 15 to 20 who were in secondary school or had been in secondary school in the current or previous school year(s).

^b U.S. Bureau of the Census (1988). Data refer to youths ages 12 to 17 and living with at least one parent in March 1987. Note that categorical boundaries are \$12,500, \$25,000, and \$40,000 rather than the \$12,000, \$25,000, and \$38,000 used in the NLTS.

^c National Center for Education Statistics. *High school and beyond: 1980 sophomore cohort, third followup*, vol. 7. Washington, DC: U.S. Department of Education, 1987, p. 8.1.2. Data refer to sophomores in high school in

Appendix B

Mental Health Services Provided to or Planned for Students with SED and Students with Any Disability by or Through Their Secondary Schools		
	Students	
	With SED	With Any Disability
Percentage receiving personal counseling or therapy from or through their schools in		
9th grade	33.8	20.3
10th grade	37.0	13.1
11th grade	34.9	16.3
12th grade	39.2	18.7
n	86 to 166	923 to 1,687
Percentage of 12th-graders with		
Any transition planning done on their behalf	61.0	77.9
A written transition plan	28.4	67.3
Transition planning involving contacts made on behalf of the students by the school with		
Employers	56.8	31.4
State vocational rehabilitation agencies	38.8	64.2
Colleges	31.6	30.6
Job placement programs	30.3	36.3
Military	27.2	16.0
Postsecondary vocational training programs	27.1	31.6
Supported employment programs	18.4	19.1
Other vocational training programs	18.0	20.6
Social service agencies	10.3	16.2
Sheltered workshops	6.0	8.2
Group homes	5.9	4.6
Mental health agencies	.0	6.8
n	29 to 44	297 to 452

*The Rutgers Center on Law, Inequality and Metropolitan Equity (CLiME) is committed to studying the role of law and policy in encouraging or inhibiting opportunity based on place. This memo is a part of our **Trauma, Schools and Poverty Project (TSP)**, a multi-year effort to understand the relationships between structural inequality and the pervasive experience of complex psychological stress and trauma. To learn more, visit our blog <http://www.endinequality.com>*