

SOCIAL MALADJUSTMENT AND EMOTIONAL DISTURBANCE

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Definition/Criteria: Emotional Disturbance

- *Exhibit one or more of the following characteristics*
- *over a long period of time*
- *to a marked degree*
- *adversely affects a child's educational performance*

ED: The 5 Characteristics

- *Inability to learn that cannot be explained by intellectual, sensory, or health factors*
- *Inability to build or maintain satisfactory interpersonal relationships with peers and teachers*
- *Inappropriate types of behavior or feelings under normal circumstances*
- *A general pervasive mood of unhappiness or depression*
- *A tendency to develop physical symptoms or fears associated with personal or school problems*

History

- Federal definition based on the work of Eli Bower
- Bower and associates developed a protocol for identifying students in California who were in need of receiving services due to severe emotional and behavioral problems
- Bower's definition proposed that "emotionally handicapped" students had to exhibit one or more of 5 major characteristics to a marked extent and over a long period of time
- Original definition first proposed in 1957; Adopted within PL 94-142 about 20 years later
- The 5 characteristics have remained unchanged since PL 94-142 was adopted in 1975

The additional clause

- But the federal definition included some additions in wording (Thus original definition altered)
 - Adverse impact on educational performance
 - Types of conditions that could be included (e.g., Schizophrenia) and excluded [e.g., Social Maladjustment (SM)]
- *The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.*
- Social Maladjustment was not part of Bower's original definition.
- Social maladjustment first appeared in a bill to fund teacher training in 1957. The bill stated that exceptional children were maladjusted, emotionally and socially, including the institutionalized delinquent.

The additional clause

- In 1963 the bill passed the Senate, but when it got to the House, the wording was changed.
- It has been written that the intent of the clause was to exclude juvenile delinquents who were not emotionally disturbed, and it is assumed that the clause was added by legislators who did not want schools to be mandated to provide services to delinquent and antisocial students.
- Currently, the clause and the term are considered outdated, illogical and unclear.

Definition/Criteria Social Maladjustment

Social Maladjustment (SM)

- The IDEA does not define SM (SM has never been defined in the federal law).
- The DSM-5 does not define this term (there is no diagnostic label of SM in the mental health field).
- There are no criteria listed for determining SM and no single description that is universally recognized.
- ED and SM are educational terms, not clinical terms.
- Typically, SM refers to a pattern of behavior that violates societal norms (e.g., truancy, drug or alcohol abuse, significant problems with authority).
- This pattern is typically viewed as willful, deliberate and planned behavior that is within the student's control; a willful choice to disregard rules

SM

- SM is often referred to as a pattern of antisocial behavior - failure to conform to social norms and laws, deceitfulness (e.g., lying, conning others), impulsivity, irritability and aggressiveness (e.g., physical fights), disregard for others' safety, irresponsibility, lack of remorse
- Many view the term SM consistent with oppositional defiant and conduct disorder diagnoses/characteristics
- But, it is not a good idea to consider ODD and CD diagnoses as equivalent to SM

Why not ODD and CD?

ODD	CD
Angry/Irritable Mood	Aggression to people and animals
Argumentative/Defiant Behavior	Destruction of Property
Vindictiveness	Deceitfulness or Theft
	Serious Violations of Rules
Only 4 of 8 symptoms required	There are 15 criteria and need only 3 to be present
Can be ODD without negative mood	Can be CD if truant, lies, and steals; but can also be CD if physically aggressive, cruel, and sexually assaultive

Disruptive,
Impulse-Control
and Conduct
Disorders
DSM-5 pp.461-480

- In the DSM-5, these diagnoses are part of Disruptive, Impulse-Control, and Conduct Disorders and involve problems in self-control of emotions and behaviors.
- While the behaviors violate the rights of others or bring the individual in conflict with societal norms or authority figures, these behaviors can be the result of poorly controlled emotions such as anger.
- The FIE typically does not include such diagnoses, but often students are evaluated privately and given the diagnosis. If applied, must know the exact symptoms/behaviors exhibited to warrant the diagnosis. Cannot simply equate ODD and CD with SM.
- These disorders frequently co-occur with ADHD, mood, and anxiety disorders and other psychiatric conditions
- And even if the student has these characteristics, that does not preclude identification as ED.

So why is this
still a thing?

- If we do not have a definition of SM and cannot say you are not ED due to SM, then why is this such a big deal?
- Schools have many students who exhibit behavior problems and disruptive, rule-breaking actions and at times, parents and educational personnel infer that this indicates a disability.
- In *Springer v. Fairfax County* (1998), it was noted that “a ‘bad conduct’ definition of serious emotional disturbance might include almost as many people in special education as it excluded. ... such a definition would require the schools to dispense criminal justice rather than special education.”

Springer v. Fairfax
County Public
Schools
US Court of
Appeals 4th Circuit

- Access at:
<https://law.resource.org/pub/us/case/reporter/F3/134/134.F3d.659.97-1482.html>
- Educational History in elementary and middle school, including private school from 7th-9th grade, was successful.
- 10th grade returned to high school in Fairfax County: C+ average, positive relationships with peers and teachers, participated in church group, Boy Scouts and high school wrestling team.
- Developed significant behavioral problems in 11th grade: arrested and put on probation; would sneak out of the house; stole from parents and others; used marijuana and alcohol; broke school rules; truant; stole a car and kept it for a week of joy-riding.

Springer v.
Fairfax County
Public Schools

- In response to behavior problems, parents enrolled Edward in a private residential school, filed a hearing and claimed he was ED
- The parents also had a psychiatrist write a letter to the juvenile court saying he was both conduct disordered and suffered from dysthymia (depressive disorder)
- The district evaluated and found no ED, and stated that the pattern was one of conduct disorder
- Parents won the hearing with the hearing officer relying on the letter written by the psychiatrist.
- District appealed to the state and hearing officer decision was overturned saying no ED. Found that the letter had been written to persuade a judge to sentence him to a camp in Idaho rather than incarceration, and the letter was “insufficient in detail and dignity” to use

Springer v. Fairfax County Public Schools

- Parents appealed the overturn.
- The finding of social maladjustment “does not end the inquiry...a student may be socially maladjusted and suffer an independent serious emotional disturbance”
- But, several separate evaluations had been conducted saying no ED (school psychologist, and two private psychologists)
- So final decision was to uphold the district court decision and rule that he did not exhibit ED

Springer v. Fairfax County Public Schools

- This case also addressed the concept of adverse impact on educational functioning
- “Even if they had been able to demonstrate that Edward exhibited one or more of the five characteristics ... the Springers still have failed to establish the critical causal connection between the condition and the educational difficulties Edward experienced ... Edward’s delinquent behavior appears to be the primary cause of his troubles.”

Adverse impact?

- Remember to be ED, must have been over a long period of time, to a marked degree **that adversely affects educational performance**. We have a few cases where the ED, even if present, is not the reason for the educational difficulty.
 - *Nguyen v. District of Columbia*, 54 IDELR 18 (D.D.C. 2010)
Truancy and drug use led to educational difficulties, not diagnosed depression
 - *Mr. and Mrs. N.C. v. Bedford Central Sch. Dist.*, 51 IDELR 149 (2nd Cir. 2008). Drug use, not ED caused educational difficulties
- But
 - *H.M. by J.M. v. Weakley County Bd. of Educ.*, 65 IDELR 68 (W.D. Tenn. 2015) severe depression and social maladjustment were present and not just misconduct caused problems in school, so reversed ineligibility of ED.
 - *Eschenasy ex rel. Eschenasy v. New York City Dept. of Educ.*, 52 IDELR 66, 604 F. Supp. 2d 639 (S.D.N.Y. 2009) Conduct disorder and ED

Marie K. v. Round Rock ISD 142-SE-1295

- 17 years of age, high school senior, attending private school in Arizona
- Elementary – private schools through 6th grade, high achiever
- 7th – 8th grades – public school in RRISD, in gifted and talented classes and made A's and B's
- High school – enrolled on and off 4 times, frequently truant
- Troubles began when Marie ran away from home multiple times in 9th grade, skipped classes, was defiant of authority, ... She was placed by her parents in various hospitals and then a residential center

Marie K. v.
Round Rock ISD
142-SE-1295

- Returns to RRISD and has discipline referrals for tardiness and truancy. Drug abuse in 10th grade and goes to a wilderness program in Utah.
- Put on probation for truancy: “forbade Marie to associate with drug or narcotic users or to visit the Sixth Street nightclub area in Austin...” Hospitalized again and then put at an academy in Utah – she ran away, stole a car and drove to New Mexico
- Enrolls in private school in Austin and asked to leave; re-enrolls in RRISD but only stays 3 months then put in another private school and was expelled within one month; back to several hospitalizations, some private schools, a summer camp school in New Hampshire (still running away or not allowed to remain), in a residential treatment facility for one year in Alabama ...

Marie K. v.
Round Rock ISD
142-SE-1295

- Eventually at a boarding school in Arizona
- Parents want reimbursement for all placements
- Throughout these years, many evaluations were conducted and diagnostic impressions indicated conduct disorder and many other diagnoses: depression, bipolar, ODD, personality disorder, substance abuse
- RRISD never referred or evaluated Marie for special ed
- It was noted that Marie was socially maladjusted, but “a socially maladjusted student is IDEA-eligible if he or she meets the criteria for serious emotional disturbance in addition to being socially maladjusted ... Marie should have been evaluated to determine this very issue.”

Marie K. v.
Round Rock ISD
142-SE-1295

- Hearing Officer found Marie eligible as ED
- RRISD failed to refer, failed to evaluate, failed to identify, denied FAPE
- Reimbursement for Alabama and Arizona was granted
- No reimbursement for various psychiatric hospitalizations and private schools

Student v. West
Valley School
District

- OAH Docket No. 06-2019-OSPI-00793 (Washington)
- 5th grade – multiple disciplinary infractions including disruptive behavior or disrespect, defiance, or failure to comply with staff; then possession of vape pen, destroying 2 cell phones in locker room; ultimately, stole juice from the kitchen, leading to MDR
- Parent had requested school evaluation, had student evaluated externally, diagnosed with ADHD and PTSD, and “other specified disruptive, impulse-control, and conduct disorder.” Then another evaluation concluded ODD.
- 34 discipline referrals for 18-19 school year and missed 54 full or partial days
- School said no causal relationship due to no identifiable disability condition. History of stealing. Not due to a trauma or triggering event.

Student v. West Valley School District

- Considered evaluation, but attributed poor academic performance due to absences and lack of motivation and poor behavior due to social maladjustment
 - *...the Student would not be eligible under this category because he met the definition of social maladjustment. ... None of the District witnesses were able to provide the definition of social maladjustment that was used by the team. However, Ms. Lewis provided some explanation of this term to the team during the meeting... Further, Ms. Forrest testified that a conduct disorder can be thought of as social maladjustment.*
- District violated Child Find, did not provide FAPE, did not consider all disability categories (OHI-ADHD, SLD, EBD) for evaluation or MDR, conducted an improper MDR

Student v. West Valley School District

- *The PWN declining to evaluate the Student stated "In addition, [the Student's] diagnosis would preclude him from being eligible for special education in another category due to exclusionary factors in the Washington Administrative Code (WACs)." This statement reflects the evaluation team's conclusion that the Student would not be eligible under the EBD disability category because his diagnosis of conduct disorder proves he is socially maladjusted. ... Similar to its analysis of SLDs, it appears the evaluation team made assumptions about what the outcome of the Student's evaluation would be without any assessments to back up the conclusion. The PWN provided limited information and none of the evaluation team members could explain the definition of "socially maladjusted." Further, the District admitted that a Student who is socially maladjusted can also be eligible under the EBD category in some circumstances or can be eligible under a completely different category. Social maladjustment does not preclude a Student from being eligible for special education.*

Not a
differential
classification!

- The term does not apply to children who are socially maladjusted, **unless it is determined that they have an emotional disturbance.**
- You are not differentiating between SM and ED.
- If the student is SM, he can also be ED.
- Focus of the FIE is the determination of ED, not SM.
- Over 30 years ago a task force report said this:
 - TEA and TDMMR Joint Task Force report (1990, p. 16):
“The heart of the diagnostic matter is that while there is presently no need, justification, or method for defining social maladjustment, there is a clear need to define emotional disturbance if the child is to receive special education services. ... Assessment personnel should concentrate on describing and documenting the emotional condition stated in the federal law to label any child E.D.”

TAKE-AWAYS

- A pattern of misbehavior does not automatically indicate ED, but cannot determine ED without an evaluation designed to address it. It would be prudent not to determine the need for an evaluation based on SM vs. ED.
- The presence of SM does not automatically exclude ED. Which of the 5 ED characteristics are thought to overlap with SM?
 - Learning
 - Social – build or maintain interpersonal relationships
 - Inappropriate behavior
 - Depression
 - Physical Symptoms or Fears

SM w/wo ED

- Our FIEs must be designed to investigate ED and be educationally focused. What behaviors are interfering with educational functioning?
- Investigate and delineate the pattern of the student's behavior and how that leads to adverse impact. It would be wise to include a functional behavioral assessment (FBA) as part of any FIE to determine ED.

FIE

- **BOTTOM LINE:**
- Do not approach an evaluation with a SM vs. ED mindset
- Ensure that the FIE is comprehensive and includes all components needed to address ED.
 - R=Review of Records (it is likely that the student has been seen by professionals external to the school)
 - I=Interviews (parents, teachers, student, related service providers in school; do not forget, with parent permission, external service providers or other external individuals who may have evaluated the student and know the student well in a non-academic setting)
 - O=Observations (across activities/expectations with different levels of demand)
 - T=Tests (rating scales and self-report measures; there are instruments that claim to assist in determining ED and the concept of SM (e.g., SAED-3), but if used, would be part of a battery and used with caution)

Remember, Condition ≠ Eligibility

- While we need adverse impact to determine the presence of a disability condition, adverse impact does not equal the need for special education (5th Circuit A.D. v. Alvin ISD)
- *Adversely affects* is subpart of 1st prong for eligibility – used to establish disability condition – adversely affects does not mean he is eligible
- 2nd prong – *by reason of ...* needs special education

So what if student has a SM pattern?

- In the FIE Conclusions, can write something like this:
- Johnny does display a pattern of behavior typically associated with social maladjustment (SM). For Johnny these behaviors involve theft (various materials from classmates, two phones, and money from his parents) and defiance of authority (argues with teachers, does not comply with non-instructional requests from teachers and the principals, violates rules in the classroom and educational environment). There are 8 discipline referrals regarding these specific types of behaviors. It should be noted that compliance does occur when highly sought after reinforcers are present (e.g., tokens to exchange for money at home, time on a preferred activity such as a video game).
- However, the presence of SM does not preclude the presence of an emotional disturbance (ED). Therefore, this assessment investigated the characteristics associated with ED.

ED Characteristics

- The Conclusions then go on to address each of the ED characteristics:
- *Inability to learn that cannot be explained by intellectual, sensory, or health factors*
 - Johnny does not display this characteristic. His overall level of intelligence falls in the high average range (WISC-V FSIQ=113), academic achievement is average (KTEA-3 Reading Composite=103, Math Composite=109, Written Expression=98) and he is on grade-level for academic performance (MAP results; has passed STAAR in all areas)
- *Inability to build or maintain satisfactory interpersonal relationships with peers and teachers.*
 - Johnny does not display this characteristic. He has several friends, is outgoing, and is part of an athletic group (community baseball). Relationships with some teachers are strained in that Johnny is often defiant and has difficulty following classroom rules, especially in ELA and Social Studies. However, he has a good relationship with his math teacher and PE coach.

ED Characteristics

- *A general pervasive mood of unhappiness or depression*
 - Johnny does not display this characteristic. There were no elevations on parent, teacher or self-report rating scales in this area (BASC-3 and CDI). Both the parent and teacher describe Johnny as having a pleasant disposition and that there is no indication of sadness.
- *A tendency to develop physical symptoms or fears associated with personal or school problems*
 - Johnny does not display this characteristic. The Somatization scales on the BASC-3 were not elevated and no specific fears were reported. Measures of anxiety (BASC-3 an RCMAS) fell within normal limits.

ED Characteristics

- This is the characteristic that is typically problematic for this decision, although several cases have had SM and depression.
- *Inappropriate types of behavior or feelings under normal circumstances*
 - Johnny does not display this characteristic. He does display a disregard for demands or expectations, especially as applied to rules at school. He conforms to such rules in community activities (baseball). Johnny understands expectations, but does not like rules and will challenge them. He is viewed as oppositional, but mostly in classes that he dislikes (e.g., ELA vs. Math). Some teachers refer to him as having a “bad attitude,” but indicate that he can be conforming at times if he likes what topic is being discussed and if he will get something for conforming.
- Therefore, Johnny does not display any of the 5 characteristics of an emotional disturbance.
- **WHAT YOU CANNOT SAY IS THAT JOHNNY IS NOT ED BECAUSE HE IS SM.**
- **WOULD YOU ARRANGE THIS DIFFERENTLY? ADDRESS ED FIRST THEN SM?**

Do you have to
include SM in
your FIE?

- If the student meets the criteria for ED, then your conclusions will address which of the 5 characteristics is/are met.
- Would there be a need to address social maladjustment if the student clearly meets ED criteria?
- How much of a pattern of behavior associated with social maladjustment does a student have to exhibit before you address it in your FIE?

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- Skiba, R. & Grizzle, K. (1991). The social maladjustment exclusion: Issues of definition and assessment. *School Psychology Review*, 20, 580-594.
- Hochbaum, Daniel. Emotional Disturbance and Social Maladjustment: Doing Away with the IDEA's "Social Maladjustment Exclusionary Clause"
- Various presentations by Dr. Stephen E. Brock can be accessed which discuss this issue
- Some states have guidelines on ED that include SM (e.g., Colorado, Michigan, Connecticut)