Here and Now

Emotional Disturbance or Social Maladjustment?
What’s On the Agenda . . .

- Overview of ED Eligibility Criteria
  - Legal Definition
    - Historical Background
    - ED Eligibility Factors
  - Exclusion for Social Maladjustment
    - What Is Social Maladjustment?

- Case Examples
  - Student Found Eligible Under ED Category
  - Student Found Not Eligible Under ED Category
  - No Eligibility Determination (Flawed Assessment)
I. Overview of ED Eligibility Criteria
Introduction: A Bit of History

- Eligibility category of seriously emotionally disturbed ("SED") (later changed to ED) adopted by Congress in Education for All Handicapped Children Act of 1975 (P.L. 94-142), predecessor to IDEA

- Congress incorporated, almost verbatim, definition of ED developed and refined during 1960s by California psychologist Eli M. Bower

- Definition of ED has remained unchanged throughout various amendments and reauthorizations of IDEA that have occurred over past 40 years
What is an ED?

IDEA and California’s special education regulations define an ED as “a condition exhibiting one or more of [five] characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance”

(34 C.F.R. § 300.8(c)(4); Cal. Code of Regs., tit. 5, § 3030(b)(4))
The Five ED 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;
- General pervasive mood of unhappiness or depression; and/or
- Tendency to develop physical symptoms or fears associated with personal or school problems
Qualifications to ED Definition

- ED includes schizophrenia
- But ED does not apply to children who are socially maladjusted, unless it is determined that they have otherwise met the definition of ED

(34 C.F.R. § 300.8(c)(4); Cal. Code of Regs., tit. 5, § 3030(b)(4))
Diagnosed Mental Illness and ED

- DSM diagnosis of mental illness is not required to find student eligible under category of ED
- Nor does diagnosis automatically qualify student for special education
  - Criteria regarding emotional disorders in medical field are different than educational criteria for ED
- But symptoms may trigger child find obligations
The Five Factors: A Closer Look

1. Inability to Learn That Cannot be Explained by Intellectual, Sensory or Health Factors
   - Designed to rule out other possible reasons that student suspected of having ED might not be making satisfactory educational progress
The Five Factors: A Closer Look

1. Inability to Learn That Cannot be Explained by Intellectual, Sensory or Health Factors (cont’d)

☐ OAH: Short periods of lowered academic performance do not demonstrate inability to learn (Student v. Placentia-Yorba Linda Unified School Dist. (OAH 2009))

☐ OAH: Marginal decline in test scores and grades generally will not be enough to demonstrate inability to learn (Student v. Lakeside Joint Elementary School Dist. (OAH 2008))
The Five Factors: A Closer Look

2. Inability to Build or Maintain Satisfactory Interpersonal Relationships with Peers and Teachers
   - Many manifest in several ways and across settings (e.g., lack of sympathy/empathy toward others, inability to establish/maintain friendships, excessive verbal/physical aggression, or withdrawal from social interactions)
The Five Factors: A Closer Look

2. Inability to Build or Maintain Satisfactory Interpersonal Relationships with Peers and Teachers (cont’d)

- OAH: Choosing friends who are “a bad influence” does not satisfy criterion  
  (Student v. Saddleback Valley Unified School Dist. (OAH 2011))

- OAH: Positive relationships with teachers may negate criterion  
  (Student v. Lakeside Joint Elementary School Dist. (OAH 2008))
The Five Factors: A Closer Look

3. **Inappropriate Types of Behavior or Feelings Under Normal Circumstances**
   - Behaviors or feelings that are strange or unusual (in comparison with others in same circumstances)
   - Could be acting out or withdrawal behaviors
   - Does not include willful behaviors
The Five Factors: A Closer Look

3. **Inappropriate Types of Behavior or Feelings Under Normal Circumstances (cont’d)**
   - Consider whether the circumstances are “normal”
   - Criterion was not met where child had periodic bouts of crying that lasted for several minutes, as crying was within expected behavior of 7-year old boy who did not get his way. *(Student v. Los Angeles Unified School Dist. (SEHO 1999))*
The Five Factors: A Closer Look

4. General Pervasive Mood of Unhappiness or Depression
   - Actual, chronic, persistent symptoms of depression
   - Observable in school setting (and other situations)
   - Not a natural reaction to a traumatic event
4. **General Pervasive Mood of Unhappiness or Depression (cont’d)**

- OAH: Diagnosis of depression does not automatically fulfill criterion *(Student v. Saddleback Valley Unified School Dist. (OAH 2011))*

- OAH: But student does not need to meet DSM standards for depression to meet criterion *(Student v. Los Angeles Unified School Dist. (OAH 2007))*
The Five Factors: A Closer Look

5. **Tendency to Develop Physical Symptoms or Fears Associated with Personal or School Problems**
   - Student’s physical symptoms are generally excessive and chronic
   - Symptoms may include severe anxiety, phobias, panic attacks, headaches, stomachaches and eating disorders
   - Physical symptoms that result from biological or medical conditions do not meet criterion
5. **Tendency to Develop Physical Symptoms or Fears Associated with Personal or School Problems (cont’d)**

- OAH: Normal reaction to traumatic events might not satisfy criterion, e.g., school phobia following on-campus assault *(Student v. Lakeside Joint Elementary School Dist. (OAH 2010))*
Practice Pointer: ED Assessments

- In assessment reports examining ED eligibility, clearly indicate which assessment results address all five criteria.
- School psychologists should make recommendations regarding whether each criterion is met and why (or why not).
- Be sure to address every troublesome behavior assessed or observed, and explain why it does or does not meet the appropriate criterion.
What Is a “Long Period of Time”?

- Not defined in federal or state law

- OSEP:
  - Generally within range from two to nine months, assuming application of preliminary interventions and documentation that they had proved ineffective

(Letter to Anonymous, 213 IDELR 247 (OSEP 1989))
What Is a “Long Period of Time”?  

- **OAH:**
  - Minimum of six months following extensive and comprehensive efforts at behavioral intervention, but shorter duration may be appropriate for certain conditions, such as major depressive episode  

What is “To a Marked Degree”? 

- Again, not defined in federal or state law

- OSEP:
  - Look to “frequency, duration and/or intensity of the behavior in comparison to the student’s peers and/or school and community norms”

(Letter to Anonymous, 213 IDELR 247 (OSEP 1989)
What is “To a Marked Degree”?

- OAH:
  - Must be “pervasive and intense”
    - “Pervasive” means behavior is exhibited across more than one domain (school, home, community)
    - “Intense” means demonstration of negative behaviors in overt, acute and observable manner primarily related to student’s condition

What is “Adverse Affect”? 

- Without determination of adverse effect on educational performance, legal definition of ED has not been satisfied.
- Decided by courts and ALJs on case-by-case basis.
- “Adverse effect” means something more than simply minimal negative impact on educational performance.
  - Note: Some courts also have extended meaning of “educational performance” beyond classroom to include nonacademic areas and other skills necessary to prepare student for college and/or work.

(Mr. and Mrs. I. v. Maine School Administrative Dist. No. 55 (1st Cir. 2007) 480 F.3d 1, 47 IDELR 121)
Need for Special Education

- Don’t forget! Even if it is established that student meets ED definition, second step in determining eligibility is that student must require special education and related services as a result of his or her ED

- Without such need, the student cannot be found eligible
Practice Pointer: ED Eligibility

- Remember that ED eligibility may change over time and that some mental health issues develop as student matures.
- Keep an eye on behavioral issues that continue to escalate and/or fail to respond to interventions.
- Reassessment for ED may be necessary.
Exclusion for Social Maladjustment

- Social maladjustment—standing alone—is not an ED
- Although IDEA stipulates that student who is solely socially maladjusted is not eligible as a student with an ED, student who meets the ED criteria (and requires special education) and also has a social maladjustment would be eligible for services

(34 C.F.R. § 300.8(4)(ii); Cal. Code of Regs., tit. 5, § 3030(b)(4))
Definition of Social Maladjustment

- Not defined by IDEA or California law
  - U.S. Department of Education refused requests to add definition of socially maladjusted, reasoning that “there is no consensus on a definition” (71 Fed. Reg. 46550 (2006))

- Also not in DSM-5
  - Note that behaviors frequently identified with social maladjustment – angry outbursts, aggression, threats, defiance, drug use, etc.—may be diagnosed as ODD or Conduct Disorder, both of which are in DSM-5
Definition of Social Maladjustment

Case law differentiates “bad behavior”:

- “Any definition that equated simple bad behavior with [ED] would exponentially enlarge the burden IDEA places on state and local education authorities. Among other things, such a definition would require the schools to dispense criminal justice rather than special education.”

(Springer v. Fairfax County School Bd. (4th Cir. 1998))
Definition of Social Maladjustment

- Case law also focuses on student’s ability to control his or her conduct as an indicator of social maladjustment

  - “[S]ocially maladjusted students [are] the kinds of kids that have difficulty taking responsibility for their actions. They have very little or no remorse. They know the rules but still continue to want to break them. [T]heir behavior is by design, and they use their behavior to manipulate the situation to get their needs met.

  (Hansen v. Republic R-III School Dist. (8th Cir. 2011))
Definition of Social Maladjustment

- California case law:
  - “A student is socially maladjusted when the student acts in deliberate noncompliance with known social demands or expectations [or when the student's behavior is controlled, predictable, and purposeful]” (Torrance Unified School Dist. v. E.M. (C.D. Cal. 2008))
Definition of Social Maladjustment

- California case law (cont’d):
  - “[S]ocially maladjusted [is] a persistent pattern of violating societal norms with lots of truancy, substance abuse, i.e., a perpetual struggle with authority, easily frustrated, impulsive, and manipulative” (Child v. Sequoia Union High Sch. Dist. (N.D. Cal. 1987))
Practice Pointer: Social Maladjustment

- How do you differentiate behaviors exclusively due to social maladjustment and behaviors evidencing an ED?
  - Look for purpose of conduct: Is this purposeful behavior (rebellious, deliberate)?
  - Do not be single-mindedly focused on “bad” behavior
  - Student may be socially maladjusted, but do not miss other behavior, such as self-injury or suicidal ideation
Social Maladjustment and Section 504

- Student who is socially maladjusted and does not meet IDEA eligibility criteria for ED still may qualify for Section 504
  - Irvine (CA) Unified School Dist. (OCR 1989): “[I]t should be pointed out the determination of the presence of that ‘social maladjustment’ under the [IDEA] is not dispositive as to whether one is ‘[disabled],’ and thus entitled to services, under Section 504”
II. ED vs. Social Maladjustment: Case Examples
Student Found Eligible as ED
Case Example #1: Torrance Unified School Dist. v. E.M.

- **Facts:**
  - Beginning in kindergarten and continuing at two District elementary schools and middle school, Student exhibited significant behavior issues
  - Threw tantrums, fought with other students, reacted violently when teased, engaged in physical bullying
  - Suspended multiple times over multiple years, despite attempts at behavior interventions
  - District contended that Student did not qualify as a student with ED because her behaviors were “neither psychotic nor bizarre,” and were more consistent with social maladjustment
Case Example #1: Torrance Unified School Dist. v. E.M.

Decision:

- Court agreed with ALJ’s decision that District denied FAPE by not finding Student eligible with ED
- That Student’s difficulties persisted throughout her time at all District schools, and in a variety of settings, indicated that her problems were not situational
- Intensity of behaviors—and fact of no improvement despite long-term interventions—indicated problems were not solely due to social maladjustment

Student Found Eligible as ED
Case Example #2: San Mateo-Foster City School Dist.

- **Facts:**
  - In first grade, Student with SLD began exhibiting attention difficulties and acting out in class, which continued over several years.
  - Behavior was disruptive and “unusual” (spoke baby talk, blurted out phrases randomly picked up from video games, created funny stories instead of answering questions on topic).
  - District filed for due process, seeking to implement IEP at SDC and to add ED as area of eligibility.
  - Parents believed Student was “somewhat socially maladjusted,” but should not be classified as ED.
Student Found Eligible as ED
Case Example #2: San Mateo-Foster City School Dist.

- **Decision:**
  - ALJ found that Student demonstrated: (1) inability to build or maintain satisfactory relationships with peers and teachers; and (2) pattern of inappropriate types of behavior or feelings under normal circumstances
  - Student was isolated in classroom and had no personal relationships at school due to numerous negative encounters
  - What was taking place in classroom was not volitional, not purposeful and not within Student’s control

(San Mateo-Foster City School Dist. v. Student (SEHO 2005) Case No. SN04-02039, 43 IDELR 123)
Student Found Eligible as ED
Case Example #3: Fresno Unified School Dist.

- **Facts:**
  - Fourth-grade Student had history of behavioral difficulties and had been diagnosed with ADHD and ODD
  - In second grade, IEP team determined Student was not eligible for special ed, but placed him on 504 plan to address behaviors
  - During two-week period in fourth-grade, Student was suspended for four separate incidents, including pushing and threatening other students, using profanity and defying teacher
  - When Student returned to school following his third suspension, he threatened two female students in his class
  - District believed Student was socially maladjusted, not ED
Student Found to Be Eligible as ED
Case Example #3: Fresno Unified School Dist.

Decision:
- ALJ: Student exhibited inappropriate feelings and behavior under normal circumstances to a marked degree and over a long period of time
- Credited testimony of Student’s therapist that his behavior emanated “from an underlying and profound sense of shame”
- Several witnesses also testified that Student had an abnormal interest in death
- Student’s education had been adversely affected and he required special education as Section 504 plan and behavior interventions had not succeeded

(Student v. Fresno Unified School Dist. (SEHO 2003) Case No. SN02-02700, 39 IDELR 28)
Student Found Not Eligible as ED
Case Example #1: San Diego Unified School Dist.

- **Facts:**
  - High school Student with SLD devoted himself to technology and computer programming, ignoring schoolwork
  - Student hospitalized following suicide threat, but did not exhibit unusual or disturbing behaviors in the school setting
  - Transferred to another high school, where behavior improved significantly
  - After Student began smoking marijuana and sneaking out after midnight, Parents placed him in RTC in Utah
  - Parents claimed Student should have been found eligible as ED
Student Found Not Eligible as ED

Case Example #1: San Diego Unified School Dist.

- **Decision:**
  - Student did not qualify as ED, as he demonstrated voluntary patterns of action and was able to control behavior.
  - Had ability to function in school, while choosing to ignore accepted standards, such as timely work completion.
  - Did not satisfy any of the five ED criteria.

(Student v. San Diego Unified School Dist. (OAH 2015) Case No. 2014120525, 115 LRP 27887)
Student Found **Not Eligible as ED**

Case Example #2: Ventura Unified School Dist.

- **Facts:**
  - During ninth grade, Student began using marijuana and became increasingly oppositional and angry at home
  - Parents enrolled Student in charter school for 11th grade, but Student would go to adjacent field instead of going into school
  - After several unsuccessful weeks, Parents returned Student to District high school
  - Problems at home worsened (running away, threats of suicide, threatening to kill Father)
  - Parents placed Student in RTC, where he was assessed and found not eligible as ED, but, instead, as socially maladjusted
Student Found **Not Eligible** as ED
Case Example #2: Ventura Unified School Dist.

**Decision:**

- ALJ agreed with District’s assessment, crediting testimony of school psychologist
- Student demonstrated voluntary patterns of action and an ability to control his behavior
- Student was able to function in school and community, although at times he willfully disregarded accepted standards
- Severe behaviors were targeted toward his family and were not generalized, indicating social maladjustment
- None of the five ED criteria was present

*(Student v. Ventura Unified School Dist. (OAH 2012) Case No. 2011080552, 112 LRP 21671)*
Student Found **Not** Eligible as ED

Case Example #3: Perris Union High School Dist.

- **Facts:**
  - 15-year-old Student exhibited behavior problems since first grade (picking fights, confrontational, temper tantrums)
  - During eighth grade, Student was twice admitted to a psychiatric hospital
  - After Student reportedly destroyed items at his family's home, Parents unilaterally placed him in RTC
  - Parents contended that Student should have been found eligible as ED; District believed Student’s behavioral problems reflected social maladjustment
Student Found Not Eligible as ED
Case Example #3: Perris Union High School Dist.

Decision:
- HO concluded Student was not eligible as ED
- Major conflicts that required hospitalization occurred during severe/bitter family conflicts
- At school, Student’s behavior was “purposeful, planned, [and] goal-directed”
- Student always targeted younger or physically smaller students and was able to plan and control his attacks

(Student v. Perris Union High School Dist. (SEHO 2001) Case No. SN1396-00, 102 LRP 10121)
No Determination of Eligibility
Case Example: Kern High School Dist.

Facts:
- Student, previously eligible as OHI due to ADHD, was reassessed at age 10 and determined no longer eligible
- Behavior addressed through Section 504 accommodations, but difficulties continued (fighting, harassment)
- When Student entered high school, Parents requested psychoeducational assessment
- School psychologist’s report indicated Student’s behaviors were due to social maladjustment (volitional behaviors)
- IEP team determined Student was not eligible as ED
- Parents requested IEE and District filed for due process to defend its assessment
No Determination of Eligibility
Case Example: Kern High School Dist.

- Decision:
  - ALJ made no eligibility determination but awarded IEE to Parents based on finding that assessment was flawed
  - Determination that Student was socially maladjusted failed to reconcile many inconsistent findings within assessment results
  - Psychologist relied on the BASC-II in concluding that Student was not ED, but teachers and Parent described at-risk or clinical significant findings in several areas
  - Assessment report reached conclusion without explaining why Student did not meet the eligibility criteria for ED

(Kern High School Dist. v. Student (OAH 2013) Case No. 2012120758, 113 LRP 8853)
Take Aways . . .

- Cases illustrate conceptual challenge in differentiating between ED and social maladjustment, especially in circumstances where conduct problems are present along with variety of other emotional issues that cannot be categorized as social maladjustment.
Take Aways . . . (cont’d)

- When making eligibility decisions, IEP teams should not over-focus on social maladjustment and remember that student can be both socially maladjusted and meet criteria for ED
- School psychologist should understand ED eligibility criteria and make recommendations regarding whether each criterion is met and why (or why not)
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