



Fagen Friedman & Fulfrosts LLP

All Things Considered

**Serving Students
with Anxiety
and/or Depression**



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What We'll Consider . . .

- Background and Definitions
- Legal Overview of Eligibility
- Recent OAH Cases Addressing Issues Related to Anxiety and/or Depression

Los Angeles USD

Capistrano USD

Castro Valley USD

Dixie ESD



I. Background and Definitions



Introduction

- Common types of mental illness that may affect students include anxiety disorders, depression, bipolar disorder, schizophrenia and eating disorders
- Not uncommon for children to be diagnosed with both depression and anxiety disorder, or depression and general anxiety
- If eligible, usually under ED or OHI category



Anxiety

- Students might exhibit one or more of the following types of anxiety disorders
 - Generalized anxiety disorder
 - Phobias
 - Social phobia (social anxiety)
 - Obsessive compulsive disorder (“OCD”)
 - Panic disorder
 - Post-traumatic stress disorder (“PTSD”)



Depression

- Two main categories
 - Major depressive disorder (two weeks or longer)
 - Dysthymia (less severe but lasts for 2+ years)
- Students may display one or more of:
 - Irritability/mood swings
 - Physical complaints
 - Difficulty concentrating/short-term memory issues
 - Hypersensitivity
 - Lack of interest/boredom
 - Impulsivity/risky behaviors



II. Legal Overview of Eligibility (ED and OHI)



Emotional Disturbance (“ED”)

- IDEA and California’s special education regulations define 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 Regs., tit. 5, § 3030(b)(4))



The Five Factors

- 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
- 2. Inability to Build or Maintain Satisfactory Interpersonal Relationships with Peers and Teachers**
 - ❑ May manifest in several ways and across settings (e.g., lack of sympathy/empathy toward others, inability to maintain friendships, excessive verbal/physical aggression, or withdrawal from social interactions)



The Five Factors

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)

4. **General Pervasive Mood of Unhappiness or Depression**

- ❑ Observable in school setting

5. **Tendency to Develop Physical Symptoms or Fears Associated with Personal or School Problems**

- ❑ Symptoms may include severe anxiety, phobias, panic attacks, headaches, stomachaches and eating disorders



What Is a “Long Period of Time”?

- Not defined in federal or state law
- 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
- OSEP:
 - Generally within range from two to nine months

(Letter to Anonymous (OSEP 1989) 213 IDELR 247; Student v. Anaheim Union High School Dist. (OAH 2013) Case No. 2012031076, 113 LRP 13659)



What is “To a Marked Degree”?

- Again, not defined in federal or state law
- OAH:
 - Must be “pervasive and intense”
- 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 (OSEP 1989) 213 IDELR 247; Student v. Anaheim Union High School Dist. (OAH 2013) Case No. 2012031076, 113 LRP 13659)



What is “Adverse Effect”?

- Decided by courts and ALJs on case-by-case basis
- “Adverse effect” has been interpreted to mean something more than minimal negative impact on educational performance and can include extracurriculars and socialization (i.e., “more than just school work”)

(Student v. Irvine Unified School Dist. (OAH 2009) Case No 2009050088, 109 LRP 63258)



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



Other Health Impairment (“OHI”)

- IDEA and California’s special education regulations define OHI as “having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment”

(34 C.F.R. § 300.8(c)(9); Cal. Code Regs., tit. 5, § 3030(b)(9))



Other Health Impairment (“OHI”)

- Must be due to chronic or acute health problems
 - “. . . such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome”
 - List is not exhaustive (mental illness can qualify)

(Student v. Placer County Mental Health Dep’t (OAH 2010) Case No. 2010020003, 110 LRP 41039)



Medical Diagnosis and OHI

- Medical or psychiatric diagnosis is not required in order for student to be determined eligible under OHI, but “chronic or acute health problem” must exist
- But, as with ED, diagnosis does not automatically qualify student for special ed (must be adverse effect)



Need for Special Education

- And don't forget! Even if student meets ED or OHI definition, second step in determining eligibility is that student must require special education and related services as a result of his or her disability
- Without such need, student cannot be found eligible



III. Recent Cases Addressing Issues Related to Depression and/or Anxiety



Los Angeles USD (OAH 2017)

Facts

- Student enrolled in District's charter school in 2014
- District developed 504 plan to address ADHD
- Student participated in GATE program, but Parents withdrew him due to anxiety issues
- Anxiety increased through 2016, manifesting in school refusal and task avoidance



Los Angeles USD (OAH 2017)

Facts (cont'd)

- District amended 504 plan in March 2016 in response to increased absences and inability to focus
- Attendance and behavior worsened
- Parents requested assessment in April 2016
- No eligibility under either ED or OHI
 - No adverse effect on educational performance



Los Angeles USD (OAH 2017)

Issues

- Did District violate child find by not beginning assessment process until May 2016
- Should District have found Student eligible for special education under ED and/or OHI?



Los Angeles USD (OAH 2017)

Decision & Rationale

- ALJ ruled in favor of Parents on both issues
- District had enough information to suspect disability by its March 2016 Section 504 meeting based on excessive absences and disruptive behaviors
- Delay in identifying was significant because summer break tolled 60-day timeline



Los Angeles USD (OAH 2017)

Decision & Rationale (cont'd)

- Student also met eligibility criteria under ED and OHI
- Section 504 plan was ineffective
- While Student received good grades, overall educational performance was affected by anxiety-related absences and behaviors

(Student v. Los Angeles Unified School Dist. (OAH 2017) Case No. 2017041138, 117 LRP 47485)



Child Find and Eligibility

Practical Compliance Keys



- Child find inquiry is not whether student will be eligible for special education, but lower standard of whether there are indications that he or she might be eligible
- In assessment reports examining ED eligibility, clearly indicate which assessment results address each of the five criteria



Child Find and Eligibility

Practical Compliance Keys



- When assessing, do not forget to review past medical and psychological records and conduct interviews with parents and student
- When making eligibility determinations, look to nexus between depression/anxiety and student's overall educational performance (not just academics)



Capistrano USD (OAH 2017)

Facts

- Student had sports-related head injury in October 2014
- Expressed suicidal ideations in May 2015
- Hospitalized on two occasions, but Parent did not inform District as to reason
- Parent discussed Student's mental health issues with District in September 2015



Capistrano USD (OAH 2017)

Facts (cont'd)

- After Student told math teacher about suicidal ideations in October 2015, she was again hospitalized
- Received “dialectical behavior therapy” from Harbor UCLA hospital
- Upon return from hospital, Student had difficulties coping at school



Capistrano USD (OAH 2017)

Facts (cont'd)

- District provided assessment plan in November 2015
- Report indicated clinically significant anxiety/depression and Student was found eligible as ED in February 2016
- Initial IEP
 - Individual counseling 105 minutes per month, later increased to 60 minutes per week



Capistrano USD (OAH 2017)

Issues

- Did District violate child find by failing to identify Student's needs between October 2014 and February 2016?
- Did District fail to offer appropriate counseling services to Student in its initial and amended IEPs?



Capistrano USD (OAH 2017)

Decision & Rationale

- ALJ ruled in favor of District on both issues
- Student's October 2014 head injury did not affect Student's school performance
- Psychiatric hospitalization in May 2015 also did not affect school performance
- No effect at school until Student expressed suicidal ideations to teacher in October 2015



Capistrano USD (OAH 2017)

Decision & Rationale (cont'd)

- No evidence that District's services were inadequate to meet Student's needs
- Although Parent insisted that dialectical behavior therapy was "gold standard," no evidence that this therapy was the only way to address Student's mental health issues

(Student v. Capistrano Unified School Dist. and Capistrano Unified School Dist. v. Student (OAH 2017) Case Nos. 2016100466 and 2017030402, 117 LRP 24357)



Services

Practical Compliance Keys



- Case offers another reminder that, in most cases, IDEA does not require IEP to identify specific methodology that district will use
- Methodology is left to district's discretion
 - Provided it meets student's needs and is reasonably calculated to enable student to make progress appropriate in light of his or her circumstances



Services

Practical Compliance Keys



- Often, as in this case, students with anxiety and/or depression do not require substantial amount of specialized academic instruction
- But consider whether one or more of following related services may be appropriate
 - Psychological services
 - Counseling/guidance services (including parent counseling)
 - Social work services



Castro Valley USD (OAH 2015)

Facts

- Student with ADHD had superior cognitive abilities, but was disorganized and exhibited some minor maladaptive behaviors
- Severe behavior issues at home
- District found Student did not qualify as ED, OHI or SLD



Castro Valley USD (OAH 2015)

Facts (cont'd)

- After grades plummeted during first semester of high school, Student exhibited anxiety and depression
- IEP team found Student eligible as ED
- November 2013 IEP goals focused on attendance, completing assignments and developing relationship with trusted adult



Castro Valley USD (OAH 2015)

Facts (cont'd)

- When Student showed no improvement, IEP team reconvened in January 2014
- Added two 30-minute counseling sessions per month and counseling goal
- Parents revoked consent to IEP



Castro Valley USD (OAH 2015)

Issue

- Did District fail to offer and provide appropriate services and supports to address Student's needs arising from his ED, including:
 - Appropriate goals to address anxiety and executive functioning
 - Individual therapy (counseling services)



Castro Valley USD (OAH 2015)

Decision & Rationale

- ALJ ruled in favor of Parents
- Student had socio-emotional needs rooted in anxiety
- Goals addressed how anxiety manifested itself (i.e., work completion issues), but did not specifically address anxiety itself
 - Without addressing “root cause,” anxiety would manifest itself in other ways



Castro Valley USD (OAH 2015)

Decision & Rationale (cont'd)

- Failure to offer counseling services in November 2013 IEP also denied FAPE
- Student needed school-based therapy to make progress
- Counseling added in January 2014 only addressed executive functioning deficits

(Student v. Castro Valley Unified School Dist. and Castro Valley Unified School Dist. v. Student (OAH 2015) Case Nos. 2015010039 and 2015020202, 115 LRP 43179)



Goals

Practical Compliance Keys



- As ALJ pointed out, manifestations of anxiety (or depression) may change depending on situation(s)
- To meet student's underlying needs, draft goals that directly address anxiety and/or depression itself, not just their manifestations



Goals

Practical Compliance Keys



- Remember the four critical components of a well-written goal
 - Timeframe is usually specified in number of weeks or certain date for completion
 - Conditions specify circumstances that prompt student's performance of observable behavior
 - Behavior identifies performance being monitored, and is measurable
 - Criterion identifies how much, how often, or to what standards behavior must occur in order to demonstrate that goal has been reached



Dixie ESD (OAH 2015)

Facts

- Parents asked for part-time home placement (Tuesdays and Thursdays) for eighth-grade Student with ED, who exhibited attendance problems and school refusal based on anxiety
- Parents claimed Student had sensory processing disorder (“SPD”) and felt “bombarded by stimuli” at school



Dixie ESD (OAH 2015)

Facts (cont'd)

- District believed not attending school full time would increase Student's anxiety and that Student only attended school "when he wanted to and not otherwise"
- After IEP team denied several requests for partial home placement, Parent filed for due process



Dixie ESD (OAH 2015)

Issue

- Did District deny FAPE by failing to offer and provide appropriate placement that would include three shortened school days of no more than six periods and two days of home instruction per week?



Dixie ESD (OAH 2015)

Decision & Rationale

- ALJ supported District's full-time school placement offer
- Parent's opinion was not based on relevant expertise and was determined, in part, by her work schedule
- Symptoms of SPD would be constant and ongoing; Student's anxiety was unpredictable



Dixie ESD (OAH 2015)

Decision & Rationale (cont'd)

- IEP team had no legitimate reason to believe that anxiety challenges could be overcome on Mondays, Wednesdays and Fridays, but not on Tuesdays and Thursdays
- When Student missed classes, it “created more rather than less anxiety”

(Student v. Dixie Elementary School Dist. (OAH 2015) Case No. 2014110335, 115 LRP 10498)



Placement

Practical Compliance Keys



- Therapeutic and home placement are among most restrictive on continuum and should only be considered if student cannot receive a FAPE in less restrictive placements
- Consider including transition planning for students who are returning to public school from these restrictive placements



Placement

Practical Compliance Keys



- Frequent placement changes can exacerbate anxiety, so attempt to minimize unnecessary moves if student is making progress in his or her current placement
- Remember that IEP goals and services drive placement



Other Recent Noteworthy Decisions

Newport-Mesa USD (OAH 2017)

- District's multidisciplinary assessment of 7-year-old did not meet required standards
- Did not address Parents concerns over depression and withdrawal
- Socio-emotional assessment, which led to finding of ineligibility under ED and OHI categories, was inaccurate

(Newport-Mesa Unified School Dist. v. Student (OAH 2017) Case No. 2016090104, 117 LRP 16948)



Other Recent Noteworthy Decisions

Pasadena USD (OAH 2016)

- District believed Student's anxiety issues warranted intensive counseling services assessment
- ALJ denied request, finding no evidence that Student's educational or social-emotional performance worsened during school year

(Pasadena Unified School Dist. v. Student (OAH 2016) Case No. 2016060614, 116 LRP 39294)



Other Recent Noteworthy Decisions

Folsom Cordova USD (OAH 2015)

- Failure to provide IEP goal related to Student's anxiety did not deny FAPE
- Despite independent assessor's report, school psychologist and teachers concluded Student's anxieties were "mild"

(Student v. Folsom Cordova Unified School Dist. and Folsom Cordova Unified School Dist. v. Student (OAH 2015) Case Nos. 2015010431 and 2014121009, 115 LRP 39396)



Take Aways . . .



- Anxiety and depression can be rooted in biology, genetics and personality and can also be complicated by environmental factors
- It is important to keep in mind that all students are unique with differing needs and coping mechanisms



Take Aways . . .



- By appropriately identifying and then providing needed services to address anxiety and/or depression, special education personnel and IEP teams can be instrumental in helping student achieve positive social, emotional and educational outcomes



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