Mental Health in Schools:
The challenges for administrators to work with the over-diagnosed, under-diagnosed, conveniently diagnosed, emotionally disturbed and socially maladjusted student.

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Many school-aged children face significant mental health issues.

13% of children from ages 8-15 will experience a severe mental disorder.

21.4% of children from ages 13-18 will experience a severe mental disorder.

70% of youth in the juvenile justice system have at least one mental health condition and 20% have a serious mental condition.

Half of all chronic mental illness will begin by age 14.


The agenda

- Definitions
- Continuum of Services
- Child find
  - Individuals with Disabilities Education Improvement Act
  - Section 504 of the Rehabilitation Act
- What can schools do for the over and under-diagnosed student?
- Emotional Disturbance vs. Social Maladjustment
- New truancy laws
The baseline for this presentation

This presentation is from the perspective of a school district lawyer.

The following are the definitions this presenter will utilize (these definitions are certainly not meant to offend any particular person and also should not be assumed to meet every situation in a school).

- The *over-diagnosed* student: A student who has undergone multiple/numerous evaluations, with multiple or numerous diagnoses from various medical and mental health professionals.
- The *under-diagnosed* student: A student who presents to the school district with various behavioral or emotional concerns with no outside evaluations or diagnoses.
- The *conveniently-diagnosed* student: A student who obtains a diagnosis after a significant event occurs at school.
The baseline for this presentation

- The *emotionally disturbed* student: A student who has been evaluated for special education services and has been determined by the multidisciplinary team to be eligible as a student with an emotional disturbance.

- The *socially maladjusted* student: A student who has been evaluated for special education services or a Section 504 Service Agreement and has been determined by the multidisciplinary team to meet the definition of socially maladjusted. The student may or may not qualify for services under the IDEA and Section 504.
When can mental health become a legal issue for schools?

Child Find
- Based upon the student’s behavior, should the school district have made attempts to evaluate the student to determine the need for special education or accommodations under Section 504?
- May be raised after a crisis – A parent or guardian asserts that the critical event could have been avoided if the school district had identified the student’s behavioral and emotional needs.

Student discipline
- Manifestation determination review
- May be raised by the parent after the disciplinary event occurred

Continuum of services

Bullying and harassment
Continuum of Services

In order for students to be able to receive instruction in the least restrictive environment, schools are required to offer a full range of supplementary aids and services. 20 U.S.C. 1401(33).

- The term “supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate....
Continuum of Services

The IDEA defines “related services” as transportation, developmental, corrective, and other supporting services that may be required to assist a child with a disability to benefit from special education. 20 U.S.C. 1401(26)(a).

- The IDEA lists what may be considered a supporting service. This list includes: psychological services, therapeutic recreation, social work services, counseling services.

Although the IDEA does not use the term “mental health” services, it certainly lists services that would be considered in the realm of mental health services.
Continuum of Services

PDE issued guidance regarding supplementary aids and services. PDE uses an expansive explanation for supplementary aids and services and refers to PATTAN’s resources.

◦ (Pennsylvania Department of Education, Basic Education Circular: Least Restrictive Environment (LRE) and Educational Placement for Students with Individualized Education Programs (IEPs), October 1, 2006.)

PATTAN uses the word “infinite” to describe what may be considered a supplementary aid and service.

Continuum of Services

The Every Student Succeeds Act also contemplates the use of mental health services for students.

- ESSA discusses addressing “[t]he needs of all children in the school, but particularly the needs of those at risk of not meeting the challenging State academic standards, through activities which may include counseling, school-based mental health programs, specialized instructional support services, mentoring services, and other strategies to improve students’ skills outside the academic subject areas” 20 U.S.C. 6314(b).
Child Find: What is it?

- Schools have an affirmative duty to locate and identify students with disabilities who are in need of special education supports and related services.


- The child find obligation also extends to students who require reasonable accommodations under Section 504 of the Rehabilitation Act.

- Students who are over-diagnosed, under-diagnosed, conveniently diagnosed, emotionally disturbed and socially maladjusted student (in some, but not all circumstances), will likely trigger the child find duty.

  - Whether or not the student will actually qualify under the IDEA or Section 504 is a determination made after the triggering of the child find duty.
Child Find: Why does mental health trigger child find?

The IDEA includes two primary avenues for students with a mental health diagnosis to qualify for special education services.

1) Other Health Impairment (OHI)
   - having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that
     - (i) Is 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; and
     - (ii) Adversely affects a child’s educational performance. 34 C.F.R. 300.8(c)(9).
   - According to the DSM-5, ADHD is a neurodevelopmental disorder that has a “persistent pattern of inattention and/or hyperactivity-impulsivity that interferes with functioning or development.”
Child Find: Why does mental health trigger child find?

2) Emotional Disturbance (ED)
   - (i) a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:
     - (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 general pervasive mood of unhappiness or depression.
     - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
   - (ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.... 34 C.F.R. 300.8(c)(4).
Child Find: Why does mental health trigger child find?

Students with mental health disorders may also qualify for services under Section 504 of the Rehabilitation Act. 42 U.S.C. 12102.

Section 504’s definition of disability includes student’s with a “mental impairment.”

◦ The mental impairment must substantially limit one or more major life activity.
◦ Major life activities include, but are not limited to, reading, listening, concentrating, and thinking.
◦ The mitigating effect of medication and learned behavioral or adaptive neurological modifications may not be considered.
◦ Recent guidance issued by the U.S. Department of Education, Office for Civil Rights indicates that unless contrary evidence exists, there is a presumption that students with ADHD will qualify under Section 504. Dear Colleague Letter, July 26, 2016.
Child Find: What do court cases establish as red-flags?

When a legal action has been filed against a school district alleging that the school district missed or failed to give appropriate consideration or weight to a student’s mental health condition, school solicitors will generally look to case law to assess the school district’s risk of liability.

Each case is unique, however, courts will generally consider certain factors.
Child Find: What do court cases establish as red-flags?

1. Grades
   ◦ Was there a sudden drop in grades?
   ◦ Was there a fluctuation in grades that would not be considered normal for this student?

2. Standardized test results
   ◦ Are they low?
   ◦ Did they fluctuate?

3. Did the student’s behavior differ from other students in that grade level? (i.e., did the behavior stand out?)
   ◦ Consider: frequency, duration, and intensity
   ◦ Consider the settings that the behavior is observed. (i.e., across all classes, during one class, during lunch, etc.)
Child Find: What do court cases establish as red-flags?

4. Does the school district know of any in-patient psychiatric hospitalizations?

5. Is the student attending outpatient mental health therapy? What is the focus of that therapy (i.e., home or school issues)?

6. School attendance

7. Teacher input

8. Disciplinary record (i.e., has the behavior occurred before?)

9. Student health record (i.e., does the student go to the nurse’s office often with somatic complaints?)

10. Self injurious behaviors
Child Find: How to fulfill the child find obligation.

A school district can fulfill its child find obligation by conducting a multidisciplinary evaluation to determine whether the student should qualify for services under the IDEA or Section 504.

- The key is: Do not wait for a parent to request the evaluation.
- What happens when a parent will not grant permission to conduct an evaluation?
  - The IDEA states that the school district may, but is not obligated to, file a complaint for due process.
  - Set a reminder to again ask for a multidisciplinary evaluation. And, keep asking!
- What if the result of the evaluation is that the student does not qualify?
  - The school district will be in a better position to defend any claims made by the parent.
  - Not every child who is suspected to be eligible will be eligible.
  - Consider RTI or other interventions offered by the school district.
Child Find: How to fulfill the child find obligation.


The Third Circuit addressed whether D.K.’s school district had breached a child find duty. D.K. had a history of serious temper tantrums at school and had to repeat kindergarten due to lack of progress. D.K. had social skills deficits and fought with children on the playground. Achievement testing placed him in the average to low-average range. The school district evaluated D.K. several times but did not find him eligible for services until over four years after D.K. entered the school district with behavioral concerns. The Third Circuit shortened the potential liability period to the two years prior to the filing of the complaint, which covered a two-year period where the student had not yet been identified under the IDEA or Section 504. The Court relied upon a prior Third Circuit case and indicated that “When a school district has conducted a comprehensive evaluation and concluded that a student does not qualify as disabled under the IDEA, the school district must be afforded a reasonable time to monitor the student's progress before exploring whether further evaluation is required.... The IDEA does not require a reevaluation every time a student posts a poor grade.” (quoting *M.R. v. Ridley Sch. Dis.*, 680 F.3d at 273). After the multidisciplinary evaluation, D.K. continued to exhibit behavioral concerns, but the court noted that many of the behaviors were typical for students of his age. The Third Circuit indicated that “schools need not rush to judgment or immediately evaluate every student exhibiting below-average capabilities, especially at a time when young children are developing at different speeds and acclimating to the school environment.” Further, the lack of a Functional Behavioral Assessment as part of a multidisciplinary evaluation is not indicative of a breach of a child find duty.
Act 138 and Truancy

- On November 3, 2016, Act 138 was signed into law amending sections of the Public School Code.
- The amendments place an added importance on keeping families together and only using punitive disciplinary measures against a parent of a student who is habitually truant as a last resort.
- Habitually Truant is defined as six (6) or more school days of unexcused absences during the school year.
The School District’s Duty to Respond to Truancy Issues

- A school district MUST within 10 days of a student’s third unexcused absence notify the parent in writing with a detailed description of consequences that will occur once the student becomes habitually truant.

- If unexcused absences continue after this notice is issued, then the District must offer a voluntary school attendance improvement conference.
  - The following members should participate in this meeting: student, parent/guardian, school personnel, and suggested service providers.
  - At the conference, the child’s absences and reasons for the absences should be examined in an effort to improve attendance.
  - Additionally, the conference should provide an opportunity to discuss whether additional services are needed to eliminate truancy.

- Following this conference a school attendance improvement plan must be recorded.
- Legal action cannot be taken until after the date of this conference.
- A District may not expel, suspend, or transfer as a result of truancy.
The School District’s Duty to Respond to Truancy Issues

- If the student becomes habitually truant and is under the age of 15, then the school may refer the child to an attendance improvement program, contact the county’s youth services agency, or file a citation with the appropriate local judge against the parent/guardian with whom the student resides.

- If the student becomes habitually truant and is over the age of 15, then the citation may be issued against either the student or the parent/guardian.

- A student who is considered to be habitually truant is one who has six (6) or more unexcused absences and refuses to participate in the improvement conference.

- If the truancy is filed with the appropriate court, a judge will issue notice of a hearing to the school, parent/guardian, student, and county youth agency. The burden to prove truancy remains on the school district.

- If truancy is pending in court, a school district may not pursue actions for additional truancies during the time period.

Reminder – poor attendance can be a child find red flag!
What can schools do for the under or over-diagnosed student?

Under-diagnosed:
- These are the students that the LEA believes may have a mental health disorder but have not been diagnosed.
- Possible causes? Parent is not involved or may be in denial.
- Do not! Blame the parent or tell the parent there’s nothing the school can do to help.
- Do! Take action by initiating a request to conduct a multidisciplinary evaluation.
What can schools do for the under or over-diagnosed student?

Over-diagnosed:

◦ These are the students that keep showing up with a new outside evaluation.

◦ Possible causes? There could be many...

◦ Do not! Ignore the outside diagnoses.

◦ Do! Take action by convening a multidisciplinary team to consider the outside evaluations. Always consider whether the student may be eligible under the IDEA or Section 504. If the student is already eligible, consider whether changes should be made to the student’s IEP or Section 504 Service Agreement. Also, always consider whether the school district should perform any follow-up testing.
The emotionally disturbed vs. the socially maladjusted

“Seriously emotionally disturbed” was initially contained in the Education for All Handicapped Children Act of 1975.

Seriously emotionally disturbed was also included Individuals with Disabilities Education Act of 1990 and reauthorizations in 1997 and 2004. The term “seriously” was dropped in 1997 but the definitions have remained unchanged.
The emotionally disturbed vs. the socially maladjusted

Emotional disturbance (ED) is the most defined area of eligibility under the IDEA with the most steps to determine eligibility.

Despite this, it also remains one of the most amorphous disability categories in the IDEA.

It is also one of the most challenging child find disability categories for school district administrators and teachers. Why?

The definition of ED has an exception for the student population who are socially maladjusted.
The emotionally disturbed vs. the socially maladjusted

The ED classification requires an examination of four (4) steps:

- **Step One:** 1 or more of the following:
  - (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 general pervasive mood of unhappiness or depression.
  - (E) A tendency to develop physical symptoms or fears associated with personal or school problems.
The emotionally disturbed vs. the socially maladjusted

- **Step Two:** The characteristics must be:
  - (A) Exhibited Over a Long Period of Time
    - Usually 2 to 9 months
  - (B) To a Marked Degree
    - Consider the frequency, duration, and intensity
  - (C) That Adversely Affects *Educational* Performance
    - Consider grades, attendance, assessments results, teaching rating scales, teacher input

- **Step Three:**
  - The student requires special education and related services.
  - **If the student meets all criteria but does not require special education and related services, the team should consider eligibility under Section 504.**
The emotionally disturbed vs. the socially maladjusted

- Step Four: Consider whether the student is socially maladjusted.
  - If the student is socially maladjusted, the student does not qualify for special education.
  - However, if the team believes that the student is socially maladjusted but meets each criteria under the ED definition, the team should qualify the student for services.
  - If the student meets all criteria but does not require special education services, the team should consider eligibility under Section 504.
  - But, what is social maladjustment?
    - After 42 years in the IDEA, no definition exists.
The emotionally disturbed vs. the socially maladjusted

- **Social Maladjustment:**
  - It’s widely believed that the social maladjustment exception was placed into the IDEA to relieve schools from qualifying students with behaviors that are best described as delinquent behaviors.
  - “Teenagers [] can be a wild and unruly bunch....Adolescence is, almost by definition, a time of social maladjustment for many people.... Any definition that equated simple bad behavior with serious emotional disturbance 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 Sch. Bd.*, 134 F.3d 659 (4th Cir. 1998).
The emotionally disturbed vs. the socially maladjusted

- Social Maladjustment:
  - An example of a student who is likely to be socially maladjusted is a student who has declining school performance due to drug and alcohol abuse.
  - Although courts have declined to follow a clear rule that would indicate that a student with a conduct disorder is socially maladjusted, many cases on this issue result in a conclusion that the student is not emotionally disturbed.
  - The DSM-5 lists the following disruptive impulse control, and conduct disorders:
    - Oppositional Defiant Disorder, Intermittent Explosive Disorder, Conduct Disorder, Pyromania, Kleptomania
Thank You!

Additional comments or questions:

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