Emotional Disturbance vs. Social Maladjustment:  
An Examination of the Distinction from a Lawyer’s Perspective

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A. Distinguishing a Socially Maladjusted Student from Emotionally Disturbed

An area of law that is of particular interest to this author is distinguishing an emotionally disturbed student from a socially maladjusted student. This author believes that many students who received the IDEA eligibility label of emotional disturbance may actually be socially maladjusted. In fact, qualification under the emotional disturbance disability category in the IDEA is one of the most defined eligibility categories with the most criteria to discern as a multidisciplinary team. Although the IDEA will typically not permit a socially maladjusted student to qualify for special education, if the student meets the eligibility criteria under Section 504, there is nothing that would prevent the implementation of reasonable accommodations. In this section, this author will attempt to summarize relevant law and guidance in the amorphous area of social maladjustment.

The emotional disturbance label was originally developed by Dr. Eli Bower. California funded research for Dr. Bower and his team to examine behavioral and emotional disorders in students. The original definition was proposed by Dr. Bower in 1957. Dr. Bower called this
category of students “emotionally handicapped.” At that time, the definition included similar language of the five conditions that are now included in the IDEA definition.

The term “seriously emotionally disturbed” was initially contained in the Education for All Handicapped Children Act of 1975. This definition included students with autism.\(^1\) The emotional disturbance category was later included in the 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.\(^2\)

The social maladjustment exception is generally thought to relate back to Dr. Bower’s original emotional handicap definition. Dr. Bower later stated that the social maladjustment exception was inconsistent with his original definition. Unfortunately, it is unclear why the social maladjustment exception was incorporated into the Education for All Handicapped Children Act of 1975. Popular opinion suggests that this exception was developed to give schools the ability to refuse IDEA qualification for students with purely delinquent or antisocial behaviors. However, after 42 years of inclusion of the social maladjustment clause in the emotional disturbance definition, there is still no consensus on a definition.

The IDEA delineates an emotional disturbance as:

(i) Emotional disturbance means 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.

\(^1\) In the early 1980’s Autism was then included in the communication disorder group and later made its own disability category.

\(^2\) 34 C.F.R. 300.8.
(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 under paragraph (c)(4)(i) of this section.³

34 CFR 300.8(c)(4)(i). In addition to satisfying the IDEA’s definition of emotional disturbance, a student must also require special education and related services.⁴ If the result of the multidisciplinary evaluation concludes only that the student requires related services and not special education, the student is not eligible under the IDEA.⁵ In this case, the multidisciplinary team should consider qualification of the student under Section 504.

This author defers to school psychologists and the multidisciplinary team to determine whether any or all of the five characteristics listed in the definition of emotional disturbance have been satisfied. However, this author opines that other crucial elements of the definition should be assessed with a heavy deference to case law and agency guidance. Therefore, the remaining portion of this section will attempt to highlight relevant cases and agency guidance.

1. “Long Period of Time”

The Office for Special Education Programs (OSEP) has indicated that to satisfy the “long period of time” requirement, the behavior should be exhibited for two to nine months.⁶ This author opines that case law is consistent with OSEP’s guidance.

³This portion of the definition indicates that if a student is socially maladjusted, if the student has one or more of the five conditions listed above they may still qualify. 34 C.F.R. 300.8(c)(4)(ii).
⁴ See 34 C.F.R. 300.8(a)(1).
⁵ 34 C.F.R. 300.8(a)(2).

The Guardian *ad litem* of a student with an exceptional history of trauma filed an action disputing the school district’s determination that the student did not qualify as a student under the IDEA with an emotional disturbance. During the student’s kindergarten year, she qualified for special education, but during her first-grade year the school district reevaluated the student and found her eligible only under Section 504. The Section 504 accommodations provided the student with an individual behavior plan. Although the student had multiple behavior incidents during her elementary school years, she excelled academically. The student then saw an outside psychiatrist who recommended residential treatment care and a request was made for the school district to provide payment for the facility. The Guardian *ad litem* filed a due process complaint claiming, *inter alia*, that the student should have qualified for special education as a student with an emotional disturbance. The Ninth Circuit discussed in detail the definition and elements of emotional disturbance. In examining the “long period of time” portion of the emotional disturbance definition, it held that behaviors exhibited over one trimester did not satisfy the definition.


The adoptive parents of a student born in Thailand brought an action under the IDEA claiming that the student should have qualified under the IDEA as a student with an emotional disturbance. The student consistently performed poorly in school and was defiant at home. She had multiple behavior infractions at school. After a fight with her parents, the student attempted suicide by overdosing on Aspirin. She was hospitalized for three days and returned to school. The student then underwent psychiatric hospitalizations and received diagnoses of conduct disorder, depression, PTSD, and was noted to have a dysphoric mood. The student’s parents requested that the school district provide payment for a private facility. The school district evaluated the student and determined that she did not meet IDEA eligibility but that the team should consider Section 504 eligibility. Although the Second Circuit did not discuss at length the “long period of time” portion of the emotional disturbance definition, it did hold that the student’s behaviors were exhibited over a long period of time and that she further met the additional IDEA eligibility criteria.


The parents of a student brought this IDEA and Section 504 action claiming that the student should have been found eligible under the IDEA with an emotional disturbance. In January 2008, the school district was made aware that the student was diagnosed with major depression, ADHD, OCD, and anxiety disorder. This is the only information the school district was aware of and no prior mental health history was cited. Therefore, in April 2008 the school district performed an IDEA evaluation and indicated that the student had not exhibited the conditions “over a long period of time.”
The court agreed that the school district was correct that the conditions were not exhibited over a long period of time.

2. **“Marked Degree”**

OSEP suggests that a “marked degree” would require an examination of the frequency, duration and intensity of the behavior in comparison to a student’s peers or school and community norms. Many cases that explore the emotional disturbance category of eligibility often combine the “marked degree” analysis into other categories. It is therefore difficult to find cases that specifically parse the “marked degree” discussion out from the other portions of the legal test. This author does find that the OSEP guidance on “marked degree” is consistent with case law analysis.


In examining the “marked degree” portion of the emotional disturbance analysis, the court discussed the student’s behaviors. The court reasoned that although the student did have problematic behaviors, those behaviors were not exhibited across all settings in the school environment. The court used this rationale to support a finding that the student was not emotionally disturbed under IDEA criteria.


The parent brought this action claiming child find violations after the student had received mental health inpatient hospitalizations. The court looked to the student’s educational progress by examining the student’s grades. Based upon the student’s average grades and consistent school attendance, the school district did not violate a child find duty to determine eligibility for an emotional disturbance.


The student exhibited serious behavioral and emotional problems at home. Given these behaviors, the parent requested that the student be evaluated by the school district and an FBA and multidisciplinary evaluation were performed. The examiner performed eight in-class observations and no problematic behaviors were noted. At school, the student achieved A and B grades, did not have behavioral problems, and scored proficient on the PSSA’s. The parent had an outside evaluation performed and the

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examiner opined that the student had an emotional disturbance. The parent then placed the student in a private school and sought tuition reimbursement. The school district reevaluated the student and indicated that the student’s behaviors at school did not qualify her as eligible under the IDEA. The court found a distinct difference between the student’s at-home behaviors and at-school behaviors. The court therefore held that the behaviors did not affect the student to a marked degree nor did they adversely affect her school performance.

3. **“Adversely Affects Educational Performance”**

The “adversely affects educational performance” portion of the emotional disturbance test is a critical piece of the analysis. Often, in due process hearings a parent will cite to a student’s at-home behaviors to justify IDEA eligibility. Although the at-home behaviors are certainly relevant and should be considered, at-home emotionality alone should not qualify a student with an emotional disturbance. The test “[i]s not whether something, when considered in the abstract, can adversely affect a student’s educational performance, but whether in reality it does.” *Marshall Joint Sch. Dis. v. C.D.*, 616 F.3d 632, 637 (7th Cir. 2010). One or more of the five conditions listed under the emotional disturbance category must be exhibited over a long period of time, to a marked degree, and must adversely affect the student’s educational performance. Many courts have struggled with this piece of the emotional disturbance analysis. Case law is legion in this area, and the following are just a few of the cases that have dealt with this issue:


Student’s disability did not have an adverse effect on educational performance when the student maintained average grades.


Finding a unique distinction between the student’s at-home and school behaviors and holding that where the behaviors do not adversely affect the student’s educational performance, regardless of the severity of the at-home behaviors, the student did not qualify under the IDEA.

Finding that where a student’s abilities were such that he could be maintained in a regular education classroom, and although at times his behaviors affected his academic performance, he did not qualify for special education because those behaviors were not consistent and did not manifest themselves over a long period of time.


The court examined a claim by Q.W.’s parents that Q.W.’s autism and behavioral concerns should have qualified him for special education and related services. Q.W.’s at-home behaviors were in stark contrast to his behavior at school. At home, Q.W. engaged in self-injurious acts, required a lot of prompting to complete homework, struggled to maintain focus, and as a result of anxiety, Q.W. would chew his fingers to the point of bleeding. Q.W.’s behaviors at school were generally good. The Sixth Circuit held that the “[p]lain meaning of ‘educational performance’ suggests a school-based evaluation.” The court further found that by adopting a rule that behaviors at-home may qualify a student for special education “[w]ould require schools to address all behavior flowing from a child’s disability, no matter how removed from the school day.” Therefore, the Sixth Circuit found that the Q.W.’s Autism and behavioral needs did not adversely affect his educational performance and he was ineligible under the IDEA.


The court examined a claim made by parents of a student with a diagnosis of Asperger’s disorder and ADHD that the school district failed to identify their son as a student eligible for special education and related services. The reports produced by A.J.’s parents at the hearing indicated that his private behavioral doctor opined that A.J. “will require services when he enters school....” The school district evaluated A.J. and found that he did not qualify for special education because his autism did not adversely affect his educational performance. *Id.* At the hearing, A.J.’s teacher testified that A.J. “[h]ad excellent work habits and was happy to be in the classroom.” The teacher did note inappropriate behaviors such as “[t]ouching another child, saying unkind words, and throwing things,” but the teacher testified that she could adequately address the behaviors. The hearing officer found and the federal court agreed that the classroom teacher was in the best position to determine if the student’s Autism adversely affected his educational performance. The federal court held that “‘[e]ducational performance’ must be assessed by reference to academic performance which appears to be the principal, if not only, guiding factor.” The court found that the fact that a student’s disability prevents him from reaching a maximum potential is irrelevant (*citing Board of Education v. Rowley*, 458 U.S. 176, 186, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (Reasoning that the IDEA provides a “basic floor of opportunity.”)) The federal court
reasoned that although A.J.’s behaviors and emotional problems may hinder his learning process, “absent a concrete gauge demonstrating that A.J.’s academic performance has suffered, all the court is left with is the implication that A.J. is not reaching his full potential, a standard that finds no support in the statute.” The federal court therefore ruled that since A.J. was performing at average to above-average levels in the classroom and was progressing academically, his disability had no adverse affect on his educational performance. *Id.* at 311.


Vermont statute defines “adverse affect on educational performance” as a student who “[i]s functioning significantly below expected age or grade norms, in one or more of the basic skills.”

g. *C.B. ex rel. Z.G. v. Dep't of Educ. of City of New York*, 322 F. App'x 20, 21-22 (2d Cir. 2009).

Holding that a student with ADHD and bipolar disorder that performed well in public school did not qualify as a student with an IDEA disability because her disability did not adversely affect her academic performance.


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 and found him eligible for the first time 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.
4. The Social Maladjustment Exception

What is social maladjustment? As was prior indicated in this writing, after forty-two years of the terms inclusion in the IDEA’s emotional disturbance category, no clear definition exists. This author opines that a socially maladjusted student will act with knowing volition. In other words, the student understands the gravity of his or her behavior and acts with a knowing disregard for the rules. In contrast, the emotionally disturbed student is unable to control or understand the inappropriate behavior they exhibit. Based upon this author’s research of case law on this topic, this author has developed the following table to suggest the behaviors that may be exhibited by an emotionally disturbed student versus the socially maladjusted.8

<table>
<thead>
<tr>
<th>Emotional Disturbance</th>
<th>Social Maladjustment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mood disorders and internalizing behaviors</td>
<td>Conduct disorder and externalizing behaviors</td>
</tr>
<tr>
<td>Evidence shown that the delinquent behavior and drug and alcohol problems are secondary to emotional disturbance</td>
<td>Delinquent behavior including drug and alcohol problems</td>
</tr>
<tr>
<td>Unable to comply with teacher requests</td>
<td>Unwilling to comply with teacher requests</td>
</tr>
<tr>
<td>School is a source of confusion or angst</td>
<td>Dislikes school except for social purposes</td>
</tr>
<tr>
<td>Misses school due to emotional or issues linked to mental health diagnosis</td>
<td>Misses school due to choice</td>
</tr>
<tr>
<td>Uneven or low academic achievement that is impaired by anxiety depression or emotions</td>
<td>Academic achievement influenced by truancy and/or negative attitude to school</td>
</tr>
</tbody>
</table>

8 Please note that this table was created by this author who is an attorney and not a psychologist. The table is meant only to demonstrate this author’s opinion and should not be considered legal advice or a clear guide to label a student.
Poorly developed social skills, immature, difficulty reading social cues, difficulty entering peer groups | Understands social cues
---|---
Inability to establish or maintain relationships, withdrawn, social anxiety | Relations with selected peer groups
Poor self-concept, overly dependent | Inflated self-concept (narcissistic)
Naive, gullible, thought disorders | Manipulates facts for own benefit
Immature, regressive | Developmentally age appropriate or above
Disproportionate reactions, actions not under the students control | Actions are intentional

The following is a selection of cases to demonstrate the difference between social maladjustment and emotional disturbance:


The parents of a student sued a school district claiming that the student should have been found eligible under the IDEA as a student with an emotional disturbance. The Fourth Circuit found in favor of the school district and believed that the student was socially maladjusted. The student maintained C grades and interacted appropriately with school staff and students. The student did have a lengthy record of delinquent behavior and had been arrested for burglary and theft of a vehicle. The student also had a history of alcohol and drug use. The court found it incontrovertible that the student was socially maladjusted. A psychologist testified at the administrative hearing and opined that a diagnosis of conduct disorder was the equivalent of social maladjustment. The court reasoned that “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.” The court further reasoned that the student’s educational difficulties were the result of his misbehavior and not an emotional disturbance.

The student was eligible under Section 504 with ADHD. The student also had a diagnosis of ODD and had ten out-of-school suspensions and two in-school suspensions. The student threatened to shoot a teacher and burn down the school. The student had a 504 Agreement that was modified. Despite the modifications, the behaviors intensified and the school recommended that the student be placed on homebound. The following school year began with few behavioral incidents but the student’s behavior increased closer to the end of the school year. In March of that school year the student was suspended and the school district requested that the parent consent to an IDEA evaluation.9 The parent refused to consent to the evaluation and the school recommended that the student be placed in an alternative education setting. The student was later suspended and the parent filed a due process complaint claiming that the school should have found the student eligible for special education. The court discussed the social maladjustment exception of the emotional disturbance category and relied on the language in the *Springer v. Fairfax County Sch. Bd.*, 134 F.3d 659 (4th Cir. 1998) case. The court declined to find that the student was emotionally disturbed.


The student was diagnosed with conduct disorder, ADHD, and bipolar disorder. The student had a long history of discipline at school and in the past had expressed suicidal ideation. The court cited the *Springer v. Fairfax County Sch. Bd.*, 134 F.3d 659 (4th Cir. 1998) case and distinguished the facts. The court found that this student was emotionally disturbed because his bipolar diagnosis contributed directly to his consistent struggles in classes and failing the standardized test to advance to the next grade.


A female student was sexually assaulted by an adult and shortly after her grandfather passed away. The student’s grades began to decrease and a teacher suggested that the student may have emotional problems and referred the student to a therapist.10 The student then began to do better in school. In ninth grade, the student was sexually assaulted by the stepfather of a school friend, and upon her return to school, her friend harassed and bullied her. The student was then placed in a nonpunitive outside school program. The parent objected to the transfer and the school granted the parent’s request to place the student in a nearby public school district. The student then began dating a boy and was found skipping school with him. The student was later diagnosed with PTSD and severe major depression and was prescribed medication. The student also had truancy issues that the parent attributed to her mental health. Given the student’s mental health concerns, the school district authorized homebound instruction for a period of time. An evaluation was completed and the school district did not find the student eligible for emotional disturbance.

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9 In the past the school district performed IDEA evaluations and found the student not eligible for special education.
10 The therapist was not employed by the school district.
The student began exhibiting self-injurious behaviors and an outside evaluator recommended residential treatment. The court reversed the administrative law judge’s determination that the student did not have an emotional disturbance. The court opined that the student’s major depression was more likely than not to underlay the student’s difficulties at school.


Parents brought this action claiming that the school district should have qualified the student with an emotional disturbance. During seventh and eighth grade the student began receiving failing grades and smoked three grams per day of marijuana (sometimes laced with cocaine), abusing alcohol, and prescription medications. The student was often truant. The student’s parents placed him in a drug and alcohol treatment facility where he had a variety of therapies. The student was unsuccessfully discharged from the drug and alcohol facility and a letter was written to the superintendent explaining the same. The student became violent and continued using drugs. His parents placed him in a private residential school. Based upon the parents’ request, the school psychologist performed an evaluation of the student. After the student’s drug use declined, the student’s academic performance increased. The court found that the student did not qualify as a student with an emotional disturbance and attributed the student’s behavioral difficulties with drug use.


Parents brought this action under the IDEA for tuition reimbursement claiming that the school district failed to find the student eligible under the IDEA. The student attended a private school until tenth grade when he enrolled in the school district. He was successful during summer school and then shortly into the new school year became uncooperative after his class schedule was changed. The student began sneaking out the back door of the school and did not want to attend school. Parents had the student evaluated by a private psychiatrist who cited to a history of delinquent behaviors and drug and alcohol use. The student had a diagnosis of major depression. Another psychologist diagnosed the student with ODD. Another evaluator gave the student an Axis II diagnosis of Narcissistic Personality Traits. The court found that the student’s academic difficulties were a result of truancy. The court also held that the truancy was a direct result of the student’s conduct disorder, narcissistic personality traits, and drug abuse. The court therefore found that the student’s social maladjustment was the root of the cause for the parents ultimate decision to place the student out of the school district and that the student was not emotionally disturbed.