



EDUCATION PRACTICE

ALERT

IS A STUDENT EMOTIONALLY DISTURBED UNDER THE IDEA? THE TALE OF TWO STUDENTS

By Timothy E. Gilsbach

One of the more difficult eligibility determinations under the Individuals with Disabilities Education Act (IDEA) is whether to classify a student as emotionally disturbed. By its very nature, this category of eligibility often implicates, and sometimes blurs, issues a student has both in and out of the school setting. A recent court decision from the Eight Circuit Court of Appeals, *Hansen v. Republic R.-III Sch. Dist.* (2011), gives some guidance on this difficult issue.

Under the IDEA, a student meets the criteria of emotionally disturbed if he or she exhibits “one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child’s educational performance:” (1) an inability to learn that cannot be explained by intellectual, sensory or health factors, (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers, (3) inappropriate types of behavior or feelings under normal circumstances, (4) a general pervasive mood of unhappiness or depression or (5) a tendency to develop physical symptoms or fears associated with personal or school problems. *Hansen* gives guidance in applying this standard by comparing two different students.

In *Hansen*, the student was found eligible under this exceptionality and (1) had numerous disciplinary referrals over a four-year period for fighting and threatening peers and teachers, (2) was socially unsuccessful and had limited social skills, (3) consistently struggled to pass his classes and standardized testing and (4) suffered academically because of his bipolar disorder diagnosis. Under these

facts, the court found the student eligible as emotionally disturbed.

The court compared the student in *Hansen* to a prior case out of the Fourth Circuit Court of Appeals, in which the student was found to not qualify under the emotionally disturbed classification. The court noted the student who did not qualify (1) received passing grades and progressed successfully from grade to grade until 11th grade, (2) maintained positive relationships with teachers and peers and (3) participated in extracurricular activities until 11th grade, when he started stealing, skipping school, sneaking out of his house and using marijuana. The court found this student obtained average and superior scores on standardized testing but his grades suffered because he was skipping school and missing assignments, rather than because of any type of emotional disturbance. Finally, it noted this student had friends across a broad spectrum and had no evidence of abnormal depression. The court explained under those facts, the student was not emotionally disturbed under the IDEA but rather was socially maladjusted. Moreover, the court cautioned against equating bad conduct, without more, to emotionally disturbed under the IDEA.

While this call needs to be made on a case-by-case basis, the *Hansen* case’s comparison is instructive in giving guidance on an often difficult determination.

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