

Tools to Address School Avoidance and Anxiety

By Aimee R. Zundel, Esq.

Schools understand there is no quick cure for school avoidance, particularly if a student's avoidance stems from a larger mental health or trauma history.

An anxious child may present with symptoms that don't "look anxious" – such as lashing out over a project deadline or complaining of physical pains that are not observable. It's difficult for both the child and adults in the school setting to measure anxiety, as an internalizing behavior. Anxiety is the most common mental health condition in the U.S., affecting 18.1% of the total population and 25.1% of children ages 13-18¹. Fortunately, the Pennsylvania legislature and recent case law provide some guidance for schools to consider.



Aimee R. Zundel

All Pennsylvania children, from enrollment until the age of 17, are subject to compulsory school attendance. Act 16 of 2019 extends compulsory school age from 6 to age 18, starting next school year. School districts of the first, second, and third class are required to employ an attendance officer or home and school visitor. This individual is primarily responsible for enforcing compulsory school attendance, but when it comes to eligible students with anxiety or related conditions, the responsibility extends to the student's Section 504 Team or IEP Team.

Compulsory attendance processes are directly linked with an eligible student's right to a free appropriate public education. Students with disabilities are about 50% more likely to be chronically truant². According to PDE's Compulsory School Attendance BEC, "If a student with a disability is truant or chronically absent, the school should convene the student's IEP team to determine whether revisions to the student's IEP are necessary or appropriate." The same goes for 504 teams.

Keeping lines of communication open between staff responsible for the student attendance improvement process and the IEP/504 team is important for legal compliance. A student's IEP must establish a plan for academic and functional achievement in light of the child's particular circumstances. If the programming is not yielding a better result for the student (i.e., increase in attendance, increase in skills), then teams must go back to the drawing board to look at aids, services, and accommodations.

A recent 3rd Circuit Court of Appeals case outlines several strategies that helped one school district prevail in the face of federal litigation. In *S.C. v. Oxford Area Sch. Dist.*, 751 F. App'x 220 (3d Cir. 2018), the parent of a high school student with specific learning disabilities and anxiety

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Overhaul of Alternative Education for Disruptive Youth (AEDY) Programs in Pennsylvania

By Lynne P. Sherry, Esq.

The Pennsylvania Department of Education (PDE), in response to a complaint filed by the Education Law Center (ELC), recently entered into a settlement agreement (Agreement) with the United States Department of Justice (DOJ) that significantly impacts AEDY programs statewide.



Lynne P. Sherry

AEDY programs are for students who are currently and persistently "disruptive," as defined by PA law. 24 P.S. § 19-1901-C. The ELC's 2013 complaint challenged discriminatory practices and the substandard quality of education in PA's AEDY programs across the state. The culminating Agreement mandates significant changes to AEDY programs generally and, in particular, affects the way in which AEDY programs educate students with disabilities and English learners (ELs).

Pursuant to the Agreement, students with disabilities and ELs cannot be placed in AEDY programs unless the programs are approved by PDE. Students with disabilities cannot be placed in an AEDY program prior to a Manifestation Determination Review (MDR) and districts cannot place students in AEDY programs if the student's behavior in question was caused by or related to the student's disability, with limited exception. Students with disabilities that are placed in AEDY programs must receive all necessary supports and services, including those contained in the student's IEP, and must be educated by teachers certified to teach students with disabilities. A "transition team" must convene within five (5) days of AEDY placement for students with disabilities to plan for a timely return to school. AEDY programs must have a "presumptive exit date" for students with disabilities, not to exceed forty five (45) days in most circumstances. In addition, all students placed in AEDY programs must have measurable behavior goals and clear exit criteria, and must be reviewed at least every semester to determine eligibility for return to the sending school.

Per the Agreement, Districts must establish an "EL Service Plan" for submission to and approval by PDE prior to referring ELs to AEDY programs. The purpose of the EL service plan is to ensure that ELs placed in AEDY programs will receive instruction by certified ESL teachers, using

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¹ Source: Anxiety & Depression Assn. of Am., Facts & Statistics, <http://adaa.org/about-adaa/press-room/facts-statistics> (accessed Sept. 19, 2019).

² Source: U.S. Dept. of Ed., Chronic Absenteeism In the Nation's Schools, <http://www2.ed.gov/datastory/chronicabsenteeism.html> (accessed Sept. 19, 2019).

School Avoidance and Anxiety, *continued*

filed suit, claiming the student's IEP was inappropriate in relation to his mental health needs. Among other supports, once the district learned about student's anxiety diagnosis, staff provided positive feedback for on-task behavior and self-advocacy. The school also provided as-needed access to the emotional support classroom and permitted student to skip classes that "troubled him." Will these exact accommodations work in every case? The answer is "no," since the law requires programming that meets each student's unique disability-related needs. Nonetheless, implementation of the above strategies was pivotal to the district's success in litigation.

When facing a school avoidance challenge with an eligible child, schools must ensure they have fully assessed the behavior leading to school avoidance and have arranged supportive services aimed at increasing school attendance. Teams must consider related services that are needed in order to cope with and eventually overcome school avoidance, such as counseling or social work services. Further, schools have a continuing responsibility to assess students in all areas of need, including that of school and classroom attendance if chronic absence is an issue. In *R.W. v. North Hills Sch. Dist.*, 19185/16-17 (SEA PA 2/6/18), the school district prevailed in part due to its appropriate functional behavioral assessment (FBA) of a student with generalized anxiety disorder. The assessment piece is critical to documentation of FAPE.

While in-school strategies must be explored first, know that in extreme cases, home-based programs have been found appropriate for students with school phobia, after less restrictive options are considered and rejected as inappropriate by the IEP/504 team.

With the passage of Act 18 of 2019, the Pennsylvania legislature recognized that ACEs – Adverse Childhood Experiences – can

trigger school related anxiety and avoidance, as well as other barriers to academic success. The Act mandates training for professional employees on trauma-informed approaches, recognition of the signs of trauma in students, and best practices – including use of multi-tiered systems of support (MTSS). Training must also discuss how to connect students with appropriate services. Trauma-informed educational approaches are just one more way that schools can add to their tool belt for responding to school avoidance and anxiety.

Lastly, if school avoidance has been prompted by an event of bullying or harassment, schools must implement their policy and investigation procedures with fidelity. A frank discussion on "how can you get to school safely and remain in school safely" goes a long way toward both legal compliance and positive attendance outcomes.

AEDY Overhaul, *continued*

materials that are appropriate for the EL's age and level of English proficiency while in AEDY. AEDY programs must provide information to parents in the language they understand.

PDE will also develop a complaint process at the local and state level concerning any aspect of a student's AEDY program including the decision to transfer a student, the length of stay in AEDY, and the quality of education delivered.

The AEDY overhaul mandated by the Agreement went into effect at the onset of the 2019-20 school year. While PDE's official guidance on this topic is forthcoming, PaTTAN will host monthly webinars and has convened AEDY stakeholder meetings statewide to address the components of the Agreement. Attorneys at WBK are available to consult with school districts on issues surrounding AEDY programs, compliance with the Agreement, and the requirements that went into effect at the beginning of this school year.

We're Speaking...

- Attorney Lisa Colautti will be speaking at PSBA's Navigating Charter Authorization workshop on October 15, 2019 in Hershey, PA.
- Attorneys Aimee Zundel and Lynne Sherry will be presenting at the Exceptional Children Conference in Philadelphia, PA on October 25, 2019. Attorney Zundel will present on the topic of Anxiety and School Phobia. Attorney Sherry will present on the topic of Alternative Education for Disruptive Youth (AEDY).
- In November 2019, Attorney Rebecca Hall will co-present with Dr. Jessica Dirsmith and Dr. Eric Bieniek on "To Tier 3 and Beyond! From Intervention to IDEA Identification" at the Association of School Psychologists of Pennsylvania, Pennsylvania State University Annual Fall Conference in State College, Pennsylvania.
- Attorney Hall will also be presenting on the topic of "Emotional Disturbance: Stay Calm and Break it Down" in January 2020 for LRP Publications in New Orleans, LA.
- Attorney Hall will co-present with Dr. Jessica Dirsmith in May 2020 for LRP Publications in New Orleans, LA on the topic of "Emotional Disturbance: Legally Compliant Intervention, Assessment, and Identification Practices."
- Attorney Zundel will conduct a legal breakout session for the Pennsylvania Branch of the International Dyslexia Association (PBIDA) conference, on April 25, 2020 at Carlow University.
- *Unlocking Emotional Disturbance: A legally aligned guide for assessment and identification of students with emotional and behavioral needs*, a book authored by Attorney Hall and Dr. Dirsmith is scheduled for release in January 2020.

Weiss Burkardt Kramer LLC

445 Fort Pitt Boulevard Suite 503 Pittsburgh, PA 15219
www.wbklegal.com Phone: (412) 391-9890 Fax: (412) 391-9685

Ira Weiss	iweiss@wbklegal.com
M. Janet Burkardt	jburkardt@wbklegal.com
Jocelyn P. Kramer	jkramer@wbklegal.com
Aimee Rankin Zundel	azundel@wbklegal.com
Lisa M. Colautti	lcolautti@wbklegal.com
Nicole W. Williams	nwilliams@wbklegal.com
Rebecca Heaton Hall	rheatonhall@wbklegal.com
Claude C. Council	councillaw@verizon.net
Annemarie K. Harr	aharr@wbklegal.com
Victor S. Kustra	vkustra@wbklegal.com
Jessica Quinn-Horgan	jqhorgan@wbklegal.com
Megan Turnbull	mturnbull@wbklegal.com
Lynne Sherry	lsherry@wbklegal.com
Amanda Jewell	ajewell@wbklegal.com

This issue of In Brief: School Law Update is meant to be informational and does not constitute legal advice. Should districts wish legal advice on any matter, they should contact their legal counsel or request a legal opinion from Weiss Burkardt Kramer LLC.

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