

## Emotional Disturbance Eligibility: What are Your School and Community Norms?

by Rebecca Heaton Hall, Esq.

Emotional Disturbance is a complex special education category that is often misunderstood and misapplied. It is one of the only disability categories within the Individuals with Disabilities Education Improvement Act (IDEA) encouraging schools to compare the target student with school and community norms.

Typically, when mentioning students within the general education population in special education eligibility meetings, many of us have become accustomed to redirecting the attendees of the meeting by indicating that the team is only here to discuss the target student. It is often countered that “The ‘I’ in IEP stands for ‘Individualized.’” However, when it comes to eligibility decisions for students alleged to exhibit social, emotional, and behavioral needs, the U.S. Department of Education, Office of Special Education Programs, has advised that it is appropriate to consider school and community norms in the eligibility decision. Letter to Anonymous, 213 IDELR 247 (OSEP 1989).

Norms can be actual or perceived. Perceived norms are what are believed to be the norms of a school or community, and actual norms are the reality. What may be typical in one school may be atypical in another. Further, individual classrooms may have norms that differ from the overall school norms (a particular class that deviates from the school norms may suggest strengths or weaknesses in a teacher’s classroom management). It is imperative to gauge eligibility decisions for an emotional disturbance on actual norms rather than perceived.

How can we adequately assess norms? It can be an arduous task to measure school and community norms. One method to review school norms may be to survey your student body and teachers through the school-wide positive behavior support program. To find community norms, a school psychologist evaluating the target student can interview the student’s parent. Additional information on community norms could be obtained by engaging the local parent-teacher association to gather feedback and reviewing any data available on the community produced by the local government. A review of disciplinary referrals by individual teachers, classroom observations, and interviews of students may assist in developing an understanding of classroom norms. To assess



Rebecca Heaton Hall

*The impact of school and community norms directly influences a multidisciplinary team’s decision regarding whether the behavior is demonstrated to a “marked degree.”*

## Legislature Restores Arrest Powers for School Police Officers

by Aimee R. Zundel, Esq.

On July 2, 2019, with the signature of Act 67 into law, the authority of judges to grant arrest powers to school police officers was eliminated.



Aimee R. Zundel

The removal of such powers came about in a late amendment to the associated Senate Bill (SB 621). Efforts to clarify the power of school police officers have culminated in the passage of House Bill 49, on November 21, 2019. The bill became Act 91 of 2019 with Governor Wolf’s signature on November 27, 2019. Under the new law, school police officers may exercise the power to enforce good order in school buildings, on school buses, and school grounds, and – if authorized by the court – they may issue summary citations or detain individuals who are in school buildings, on school buses, and on school grounds. Officers will also maintain powers co-extensive with police officers of the municipality in which school property is located. Our office is happy to address entity-specific questions you may have regarding this legislation. Further, we recognize that school-based officers frequently navigate the balance between student safety and privacy rights. A helpful resource for school law enforcement officials regarding student confidentiality is available at: [https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/SRO\\_FAQs\\_2-5-19\\_0.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/SRO_FAQs_2-5-19_0.pdf).



## Alternative Education for Disruptive Youth (AEDY) Update

by Lynne Sherry, Esq.

The Pennsylvania Department of Education (PDE) recently released the new Basic Education Circular (BEC) to provide updated guidance on AEDY programs following PDE's settlement with the Department of Justice. The BEC can be found here: <https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/Alternative-Education-for-Disruptive-Youth.aspx>



Lynne P. Sherry

## We're Speaking...

- On November 18, 2019 Attorneys Ira Weiss and Annemarie Harr Eagle presented Human Resources Updates to members of PACTA (Pennsylvania Association of Career and Technical Administrators) at the Butler County CTC.
- On December 5, 2019, Attorneys Jocelyn Kramer, Aimee Zundel, Megan Turnbull, Lisa Colautti, Nicole Williams, Annemarie Harr Eagle, and Lynne Sherry presented to school district administrators at a full-day seminar in cooperation with Tri-State Area School Study Council. The range of topics included: special education, employment, transgender rights and Title IX, medical marijuana, confidentiality laws, Right-to-Know, and social media, enrollment, attendance and custody.
- In early December, Attorneys Weiss, Kramer, Williams and Harr Eagle delivered mandatory training to school board directors in conjunction with PSBA.
- Attorney Rebecca Heaton Hall will be presenting on the topic of "Emotional Disturbance: Stay Calm and Break it Down" on January 17, 2020 at LRP's Special Education School Attorneys Conference in New Orleans, Louisiana.
- Attorney Hall will co-present with Dr. Jessica Dirsmith on February 23, 2020 at the (Pennsylvania Association of Student Assistance Professionals) Conference in State College, Pennsylvania. Their presentation will address Adherence to Best Practices & Legal Compliance to Promote School Safety & Emotional Wellness. The two will also co-present on May 6, 2020 on the topic of "Emotional Disturbance: Legally Compliant Intervention, Assessment, and Identification Practices at a half-day workshop through the LPR Institute in New Orleans, Louisiana.
- Attorneys Hall and Harr Eagle will both speak on February 26, 2020 at the National Business Institute's seminar in Canonsburg on Disciplining Students with Behavioral Issues. Attorney Hall will discuss Discipline and Expulsion: A Practical Legal Guide. Attorney Harr Eagle will present an Overview of Applicable Laws.
- On March 18 and 19, 2020, Attorneys Kramer, Harr Eagle, Turnbull and Amanda Jewell will present at the PASBO Conference. Attorneys Kramer and Jewell will present on the topic of Employee Leaves, while Attorneys Harr Eagle and Turnbull will speak on the topics of Contract Language for Act 93 and EEOC/PHRC claims.
- Attorney Zundel will conduct a legal breakout session on the topic of "What's the Takeaway? Legal Cases Involving Students with Dyslexia" for the Pennsylvania Branch of the International Dyslexia Association (PBIDA) conference, on April 25, 2020 at Carlow University.

## Emotional Disturbance Eligibility, *continued*

whether the target student deviates from classroom norms, practitioners can use valid assessment tools to compare the target student's behavior with other students in the general education setting.

The legal definition for a student to meet eligibility for an emotional disturbance contains five steps: 1) student exhibits at least one of the five characteristics of emotional disturbance; 2) the characteristic is exhibited over a long period of time; 3) the characteristic is exhibited to a marked degree; 4) there is an adverse effect on educational performance; and 5) the student requires specially designed instruction. 34 CFR § 300.8(c)(4)(i). Each element must be met for a student to qualify under IDEA's emotional disturbance disability category. The impact of school and community norms directly influences a multidisciplinary team's decision regarding whether the behavior is demonstrated to a "marked degree." "Marked degree" prompts a team to find the frequency, intensity, and duration of the student's behavior in comparison to the student's peers, school norms, and community norms.

In partnership with LRP Publications, Jessica Dirsmith, D.Ed., NCSP, and I have written a book, *Assessment and Identification of Students with Emotional Disturbance and Behavioral Needs*, analyzing over ninety special education cases addressing emotional disturbance eligibility and over one hundred research studies and scholarly articles. Among other things, our book addresses school and community norms and takes a comprehensive and novel approach to emotional disturbance eligibility. If your school district is interested, copies can be obtained at [shoplrp.com/product\\_p/300714.htm](http://shoplrp.com/product_p/300714.htm) or by contacting me at [rheatonhall@wbklegal.com](mailto:rheatonhall@wbklegal.com).

## Weiss Burkardt Kramer LLC

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

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

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.

Copyright 2020, Weiss Burkardt Kramer LLC