

ACHIEVING THE IDEA OF THE I.D.E.A.: PSYCHOLOGICAL SERVICES

WENDY FUREY
UNIVERSITY OF GEORGIA SCHOOL OF LAW
J.D. EXPECTED MAY 2006

I. INTRODUCTION	2
II. STATUTORY LANGUAGE	2
III. JUDICIAL INTERPRETATION	4
A. QUALIFICATION	5
B. COST	7
C. CLASSIFICATION AS MEDICAL SERVICE	8
IV. PRACTICAL IMPEDIMENTS	10
A. STANDARD OF REVIEW	10
B. LIMITED AVAILABILITY	11
C. COST	11
V. CONCLUSION	12
VI. TABLE OF AUTHORITIES	13

ABSTRACT

The text of the Individuals with Disabilities Education Act directly addresses the provision of psychological services to disabled students as a related service and courts consistently have interpreted the relevant clauses of the I.D.E.A. according to their plain meaning. Difficulties in supplying psychological services therefore are more likely the result of practical impediments, rather than strictly legal constructions. This paper first covers the statutory language of the I.D.E.A. regarding psychological services. Second, it reviews how courts have applied the I.D.E.A. to cases involving psychological services. Finally, the paper considers practical impediments to the actual provision of psychological services to disabled students.

I. INTRODUCTION

In 1975 Congress found children with disabilities were not receiving appropriate educational services and consequently enacted the Education for All Handicapped Children Act.¹ The Education for All Handicapped Children Act has been renamed the Individuals with Disabilities Education Act (hereinafter, I.D.E.A.), but the purpose of providing free appropriate public education, including special education and related services, to disabled children has remained.² Explicitly referenced in the I.D.E.A. as a related service is psychological services.³ Court rulings based on the I.D.E.A. consistently have supported the provision of psychological services to disabled children by school districts. Unfortunately for the emotionally disturbed children who stand to benefit from psychological services, the realization of such services has been inefficient.⁴

This paper first will cover the statutory language of the I.D.E.A. regarding psychological services. Second, it will review how courts have applied the I.D.E.A. to cases involving psychological services. Finally, the paper will consider practical impediments to the actual provision of psychological services to disabled students.

II. STATUTORY LANGUAGE⁵

The I.D.E.A. incorporates providing psychological services to disabled students. A child with "serious emotional disturbance . . . who, by reason thereof, needs special education and

¹ 20 U.S.C.A. § 1400(c)(2) (West 1997).

² See *generally* Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 *et seq.* (West 1997) (previously entitled Education for All Handicapped Children Act).

³ 20 U.S.C.A. § 1401(22) (West 1997).

⁴ See, e.g., U.S. DEP'T OF HEALTH & HUMAN SERV., SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN., CTR. FOR MENTAL HEALTH SERV., NAT'L INST. OF HEALTH, NAT'L INST. OF MENTAL HEALTH, MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL (1999) (approximately seventy percent of children and adolescents in need of treatment do not receive mental health services and schools are the primary providers of mental health services for children).

⁵ Quoting the I.D.E.A. as amended in 1997, though corresponding provisions were analogous in previous versions.

related services” is a “child with a disability” for the purpose of entitlement to benefits under the I.D.E.A.⁶ The definition of emotional disturbance to be used by school districts in evaluating qualification for special education is outlined as follows:

- (i) The term 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.
 - (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) The term includes schizophrenia. The terms does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.⁷

Under the I.D.E.A. an emotionally disturbed child, like a child with any other disability, is entitled to a “free appropriate public education” which includes not only individualized special education, but also related services “as may be required to assist a child with a disability to benefit from special education.”⁸ Explicitly included in the statute as examples of supportive related services are psychological services, social work services and counseling services.⁹

Psychological services are defined by the applicable federal regulations to include:

- (i) Administering psychological and educational test, and other assessment procedures;
- (ii) Interpreting assessment results;
- (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
- (iv) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;

⁶ 20 U.S.C.A. § 1401(3)(A) (West 1997).

⁷ 34 C.F.R. § 300.7(c)(4) (2005).

⁸ 20 U.S.C.A. §§ 1401(8) & 1401(22) (West 1997).

⁹ 20 U.S.C.A. § 1401(22) (West 1997).

- (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
- (vi) Assisting in developing positive behavioral intervention strategies.¹⁰

Listed in the federal regulations as examples of social work services are:

- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- (v) Assisting in developing positive behavioral intervention strategies.¹¹

According to federal standards counseling services can be provided by “qualified social workers, psychologists, guidance counselors, or other qualified personnel.”¹²

The statutory language of the I.D.E.A. and of the associated federal regulations unambiguously includes psychological services as a related service to be provided if required for a child with a disability, including emotional disturbance, to benefit from special education.

III. JUDICIAL INTERPRETATION

Though there is no direct U.S. Supreme Court authority on the issue, federal courts consistently have supported the provision of psychological services to children with disabilities as required related services in accordance with the statutory language of the I.D.E.A. State regulations attempting to classify psychological services outside the definition of related services have been invalidated by courts as superceded by inconsistent language in the federal I.D.E.A.¹³

In assuring psychological treatment and education for emotionally disturbed children, the Sixth Circuit Court of Appeals ruled, “The concept of education under the [I.D.E.A.] clearly embodies both academic instruction and a broad range of associated services traditionally

¹⁰ 34 C.F.R. § 300.24(b)(9) (2005).

¹¹ 34 C.F.R. § 300.24(b)(13) (2005).

¹² 34 C.F.R. § 300.24(b)(2) (2005).

¹³ See, e.g., T.G. v. Bd. of Educ. of Piscataway, 576 F.Supp. 420 (D.N.J. 1983); In the Matter of the “A” Family, 602 P.2d 157 (Mont. 1979).

grouped under the general rubric of ‘treatment.’ Any attempt to distinguish academics from treatment when defining ‘educational placement’ runs counter to the clear language of the [I.D.E.A.].”¹⁴ “Educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization.”¹⁵

The First Circuit Court of Appeals reiterated, “A school district’s special education program *must* include psychological services if [the child’s] emotional disturbances interfere with his ability to learn.”¹⁶ The Seventh Circuit Court of Appeals expressed its high regard for psychological services when it stated, “Psychological services are . . . often *essential* if a plan is to have any realistic chance of facilitating education.”¹⁷

A. QUALIFICATION

Courts addressing the qualification of students for psychological services have espoused breadth. The Sixth Circuit Court of Appeals highlighted that in determining the qualification of a child for services under the I.D.E.A., the school system must “fully examine the child’s academic, emotional, and psychological profile,” assessing the child “in all areas related to the suspected disability, including, where appropriate, health, . . . social and emotional status, general intelligence, [and] academic performance.”¹⁸ Employing a “common-sense reading” of the I.D.E.A., the court determined the school system was responsible for the costs of educating an emotionally disturbed child in a psychiatric hospital.¹⁹ According to the court, “The plain meaning of [the I.D.E.A.] requires educating emotionally handicapped children in ‘hospitals and institutions’ when necessary to enable a handicapped child to obtain a ‘free appropriate public education.’

¹⁴ Tilton v. Jefferson County Bd. of Educ., 705 F.2d 800, 803 (6th Cir. 1983).

¹⁵ County of San Diego v. Cal. Special Educ. Hr’g Office, 93 F.3d 1458, 1467 (9th Cir. 1996).

¹⁶ Rome Sch. Comm. v. Mrs. B., 247 F.3d 29, 32 (1st Cir. 2001) (emphasis added).

¹⁷ Charlie F. v. Bd. of Educ. of Skokie Sch. Dist. 68, 98 F.3d 989, 993 (7th Cir. 1996) (emphasis added).

¹⁸ Babb v. Knox County Sch. Sys., 965 F.2d 104, 108 (6th Cir. 1992).

¹⁹ *Id.* at 109.

Further, the plain language of the Act specifically provides as part of a free appropriate public education the psychological and counseling services to which [the child] was referred and which he received [at the psychiatric hospital].”²⁰

In *Gonzalez v. Puerto Rico Department of Education*, the First Circuit Court of Appeals, in determining whether psychological services were required, confirmed the I.D.E.A. does not obligate schools “to remedy a poor home setting or to make up for some other deficit.”²¹ Only services which are “necessary for the child’s education . . . , rather than for any social, medical, or emotional problems distinct from his learning problem” are required.²² However, the Second Circuit Court of Appeals held even if a psychological placement is “due primarily to emotional problems” or “to alter a child’s regressive behavior at home as well as within the classroom,” the service must be provided under the I.D.E.A. if “it is necessary to ensure that the child can be properly educated.”²³

A child attending school in the Ninth Circuit qualified for extensive psychological services because his “social, emotional, medical and educational needs [were] not severable and [were] intertwined.”²⁴ His depression “adversely affected his educational performance, including his social withdrawal and non-participation in classroom discussion.”²⁵ A Sixth Circuit Court of Appeals case affirmed the psychiatric educational placement of an emotionally disturbed child because his “main learning problem” was his “inability to cooperate with authority.”²⁶

²⁰ *Id.* at 109.

²¹ *Gonzalez v. P.R. Dep’t of Educ.*, 254 F.3d 350, 353 (1st Cir. 2001).

²² *Id.* at 352.

²³ *Mrs. B. v. Milford Bd. of Educ.*, 103 F.3d 1114, 1122 (2nd Cir. 1997).

²⁴ *Taylor v. Honig*, 910 F.2d 627, 630 (9th Cir. 1990).

²⁵ *Id.* at 630.

²⁶ *Clevenger v. Oak Ridge Sch. Bd.*, 744 F.2d 514, 516 (6th Cir. 1984).

In the case of *Chris D. v. Montgomery County Board of Education*, an Eleventh Circuit District Court held the child's emotional disability was "primarily responsible for his academic problems" and the court particularly disparaged school system officials for "ignor[ing] obvious signs suggesting that [the child] suffered from a serious emotional disturbance" and for failing "to develop *any* program for addressing his inappropriate behavior."²⁷ The school's initial special education evaluation of the child considered only whether he was mentally retarded and therefore did not find him entitled to services under the I.D.E.A., "despite the fact that his test results and school records suggested he suffered instead from an emotional disability," an equally significant qualification for the purpose of the I.D.E.A. eligibility.²⁸

A remarkably disturbing case arose in the Seventh Circuit where a teacher "repeatedly invited her pupils to express [to the class] their complaints about Charlie," an emotionally disturbed fourth grade student suffering from attention deficit disorder and panic attacks.²⁹ The Court of Appeals remanded the case for administrative proceedings, indicating the school district was required by the I.D.E.A. to provide psychological services to Charlie as a related service because the need had not only "an adverse educational consequence," but "an educational source" in the teacher's pedagogy.³⁰

B. COST

Federal courts have recognized "cost can be a legitimate consideration when devising an appropriate [individualized education] program," however they are quick to point out "cost considerations are only relevant when choosing between several options, all of which offer an

²⁷ *Chris D. v. Montgomery County Bd. of Educ.*, 753 F.Supp. 922, 932 (M.D. Ala. 1990).

²⁸ *Id.* at 924.

²⁹ *Charlie F.*, 98 F.3d at 990.

³⁰ *Id.* at 993.

'appropriate' education."³¹ School districts are prohibited from declining to meet the educational and related needs of disabled students because of the cost involved in providing the services.³²

In addition to the cost of psychological services to school districts, courts have taken into account the cost to the parents of disabled children. A school district only assuming the costs of psychological services "beyond what parent insurance will cover" was not considered a free education as required by the I.D.E.A. because of the impact on lifetime coverage limits.³³ The District Court in *Seals v. Loftis* held, "Parents of a [disabled] child cannot be required to utilize their private medical insurance benefits where the utilization of those benefits would cause them to incur a financial cost . . . in that the payment reduced the lifetime benefits available to them under their policy."³⁴ "Any other conclusion would be inconsistent with the concept of a free appropriate public education."³⁵

C. CLASSIFICATION AS MEDICAL SERVICE

Attempts to disqualify psychological services as medical services generally have been disfavored by the courts. In interpreting the related services provision of the I.D.E.A., the Ninth Circuit Court of Appeals rejected the licensed physician test to determine a service's medical status as "an arbitrary classification."³⁶ "Psychotherapy, a recognized related service under the Act, does not become excluded as a medical service *merely* because it is provided by a psychiatrist—a licensed physician—rather than by a psychologist."³⁷ A District Court in the Seventh Circuit earlier had pointed out the "unfair and illogical result" of the licensed physician

³¹ *Clevenger*, 744 F.2d at 517.

³² *Id.* at 517.

³³ *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 770 (6th Cir. 2000).

³⁴ *Seals v. Loftis*, 614 F.Supp. 302, 305 (E.D. Tenn. 1985).

³⁵ *Id.* at 306.

³⁶ *Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hr'g*, 903 F.2d 635, 643 (9th Cir. 1990).

³⁷ *Id.* at 643.

distinction through the example of bandaging a finger which would be required if a school nurse performed the bandaging, but not if a physician performed the service.³⁸ The restrictions on related services “were intended to limit the *nature* of the services required rather than the *personnel* who may provide the service.”³⁹ Psychological services therefore “do not become nonreimbursable by virtue of their being performed by a psychiatrist,” as opposed to a psychologist, social worker or other non-physician qualified provider.⁴⁰

In contrast to the examples of psychological services given in the federal regulations, acute psychiatric hospitalization is typically considered to be a medical service not within the scope of the I.D.E.A. In the case of *Butler v. Evans*, an emotionally disturbed child was qualified for special education services, including psychological services, but the Seventh Circuit Court of Appeals did not consider her inpatient psychiatric hospitalization to be a related psychological service because, at the time of her hospitalization, “[her] acute psychological condition demanded medical intervention and took precedence over her educational needs.”⁴¹ While the psychotherapeutic services an emotionally disturbed child receives at a psychiatric hospital “may be qualitatively similar” to psychological services deemed to be within the scope of the I.D.E.A., the “intensity” of acute psychiatric hospitalization indicates a focus “upon treating an underlying medical crisis.”⁴² “Psychiatric hospitals . . . are not responsible for the ‘training’ or ‘education’ of their patients, but for their medical care.”⁴³

³⁸ *Max M. v. Thompson*, 592 F.Supp. 1437, 1444 (N.D. Ill. 1984).

³⁹ *Id.* at 1444.

⁴⁰ *Id.* at 1445.

⁴¹ *Butler v. Evans*, 225 F.3d 887, 893 (7th Cir. 2000) (The child’s hospitalization occurred during the interval between the creation of an I.E.P. and the actual provision of services. The parents contended, but were unable to satisfy the burden of proof to establish, the psychiatric hospitalization could have been avoided if the school district immediately had provided the psychological services recommended by the I.E.P.).

⁴² *Clovis Unified Sch. Dist.*, 903 F.2d at 645.

⁴³ *Id.* at 646 n.4.

IV. PRACTICAL IMPEDIMENTS

While courts, in keeping with the text of the I.D.E.A., have been supportive of psychological services for disabled children, there are practical impediments limiting the actual provision of such services. For example, deference is to be given by courts to agency decisions, the specific psychological services a child requires may not be available locally and, though the I.D.E.A. provides for free services for disabled children, parents may incur costs in securing psychological services.

A. STANDARD OF REVIEW

The U.S. Supreme Court, in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, construed the deference to be given to the determinations made by education agencies as follows:

The provision that a reviewing court base its decision on the “preponderance of the evidence” is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review. . . . The fact that [20 U.S.C.] § 1415(e) requires that the reviewing court “receive the records of the [state] administrative proceedings” carries with it the implied requirement that due weight shall be given to these proceedings. And we find nothing in the Act to suggest . . . [Congress] intended that reviewing courts should have a free hand to impose substantive standards of review which cannot be derived from the Act itself.⁴⁴

There are multiple clauses within the I.D.E.A. and its associated regulations which allow for a significant amount of subjectivity by educational agencies.⁴⁵ In the case of *Dale M. v. Board of Education of Bradley-Bourbonnais High School District*, a child suffered from the psychological problems of substance abuse and depression which the court found could qualify him for special education services, however, the court “was obliged to defer to [the hearing officer’s]

⁴⁴ Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206 (1982) (citing to the I.D.E.A. predecessor, the Education for All Handicapped Children Act, 20 U.S.C. § 1400 *et seq.* (1976 and Supp. IV)).

⁴⁵ See, e.g., 20 U.S.C.A. § 1401(22) (West 1997) (“assist a child with a disability to benefit from special education”); 34 C.F.R. § 300.7(c)(4) (2005) (“a long period of time,” “a marked degree”).

determination” that “Dale’s problems [were] not primarily educational.”⁴⁶ Though “his substance abuse interfere[d] with his schooling,” it interfered “with much else besides” and because the hearing officer considered the prevention of further substance abuse to be by methods of “confinement,” not “psychological services,” it was not a related service under the I.D.E.A.⁴⁷

B. LIMITED AVAILABILITY

Special education and related services must be individualized to the needs of each disabled student, but it is not feasible for each local school district to have access to all potential modes of psychological services. The Eleventh Circuit Court of Appeals called attention to the difficulty local school districts may have in securing psychological services in a case where an emotionally disturbed student had to be sent out of the state in order to receive appropriate services.⁴⁸

C. COST

Significant costs can be incurred by parents attempting to secure the benefits of psychological services for their disabled children. Due to the importance of timeliness for students, parents may choose to pay out of pocket for psychological services and later sue for reimbursement under specialized provisions within the I.D.E.A.⁴⁹ Parents also have the option of appealing adverse educational agency rulings to secure psychological services.⁵⁰ Despite the possibility of recovering attorney’s fees upon a favorable court decision, the significant financial cost and risk involved in pursuing an appeal may preclude some parents from taking such action.⁵¹

⁴⁶ Dale M. v. Bd. of Educ. of Bradley-Bourbonnais High Sch. Dist., 237 F.3d 813, 817 (7th Cir. 2001).

⁴⁷ *Id.* at 817.

⁴⁸ Todd D. v. Andrews, 933 F.2d 1576 (11th Cir. 1991).

⁴⁹ 20 U.S.C.A. § 1412 (West 1997).

⁵⁰ 20 U.S.C.A. § 1415 (West 1997).

⁵¹ 20 U.S.C.A. § 1415(i)(3) (West 1997).

V. CONCLUSION

The text of the Individuals with Disabilities Education Act directly addresses the provision of psychological services to disabled students as a related service and courts consistently have interpreted the relevant clauses of the I.D.E.A. according to their plain meaning. Difficulties in supplying psychological services therefore are more likely the result of practical impediments, rather than strictly legal constructions. Resources should be focused on removing barriers to the achievement of the Congressional intent of ensuring free appropriate public education for disabled students, including emotionally disturbed children requiring psychological services.

VI. TABLE OF AUTHORITIES

FEDERAL STATUTE

Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 *et seq.* (West 1997).

FEDERAL REGULATION

Department of Education Office of Special Education and Rehabilitative Services, 34 C.F.R. § 300 (2005).

FEDERAL REPORT

U.S. DEP'T OF HEALTH & HUMAN SERV., SUBSTANCE ABUSE & MENTAL HEALTH SERV. ADMIN.,
CTR. FOR MENTAL HEALTH SERV., NAT'L INST. OF HEALTH, NAT'L INST. OF MENTAL HEALTH,
MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL (1999).

CASES

U.S. SUPREME COURT

Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982).

FEDERAL COURTS OF APPEALS

Babb v. Knox County Sch. Sys., 965 F.2d 104 (6th Cir. 1992).

Butler v. Evans, 225 F.3d 887 (7th Cir. 2000).

Charlie F. v. Bd. of Educ. of Skokie Sch. Dist. 68, 98 F.3d 989 (7th Cir. 1996).

Clevenger v. Oak Ridge Sch. Bd., 744 F.2d 514 (6th Cir. 1984).

Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hr'g, 903 F.2d 635 (9th Cir. 1990).

County of San Diego v. Cal. Special Educ. Hr'g Office, 93 F.3d 1458 (9th Cir. 1996).

Dale M. v. Bd. of Educ. of Bradley-Bourbonnais High Sch. Dist., 237 F.3d 813 (7th Cir. 2001).

Gonzalez v. P.R. Dep't of Educ., 254 F.3d 350 (1st Cir. 2001).

Knable v. Bexley City Sch. Dist., 238 F.3d 755 (6th Cir. 2000).

Mrs. B. v. Milford Bd. of Educ., 103 F.3d 1114 (2nd Cir. 1997).

Rome Sch. Comm. v. Mrs. B., 247 F.3d 29 (1st Cir. 2001).

Taylor v. Honig, 910 F.2d 627 (9th Cir. 1990).

Tilton v. Jefferson County Bd. of Educ., 705 F.2d 800 (6th Cir. 1983).

Todd D. v. Andrews, 933 F.2d 1576 (11th Cir. 1991).

FEDERAL DISTRICT COURTS

Chris D. v. Montgomery County Bd. of Educ., 753 F.Supp. 922 (M.D. Ala. 1990).

Max M. v. Thompson, 592 F.Supp. 1437 (N.D. Ill. 1984).

Seals v. Loftis, 614 F.Supp. 302 (E.D. Tenn. 1985).

T.G. v. Bd. of Educ. of Piscataway, 576 F.Supp. 420 (D.N.J. 1983).

STATE SUPREME COURT

In the Matter of the "A" Family, 602 P.2d 157 (Mont. 1979).