

# SCHOOLS SHOULD REMEMBER THAT BAD BEHAVIOR IS NOT A MEDICAL ISSUE

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Schools are full of teachers and administrators who want to help children reach their potential. It's not surprising, then, that the vast majority of educators want to give students the benefit of the doubt when there is a behavioral or performance issue. To that end, when a child is struggling behaviorally, they often want to give the student the benefit of the doubt. In their desire to do so, schools sometimes default to the notion that the problem must have a medical basis. While it may seem like the most caring approach to take, it is a mistake that can land the school with an Americans with Disabilities Act (ADA) claim.

## The Basics Of Disability Discrimination Law And School Discipline

Title III (public accommodations) of the ADA prohibits discrimination based on an individual's disability. An individual has an actual disability or record of a disability when they have an impairment that substantially limits a major life activity or when they previously had such an impairment, respectively. Schools are required to provide reasonable accommodations to students and employees for such disabilities. An individual also may be "perceived as" disabled. An individual is perceived as disabled if the school adopts a mistaken attitude toward the student's physical or mental condition, thinking they have an impairment when they really don't, for example, or taking some kind of adverse action based on a relatively minor impairment.

Despite the obligation to accommodate disabled individuals, schools are not required to excuse behavior that violates the school's code of conduct or to excuse performance that falls

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below the school's expectations – even if the misconduct or poor performance results from a disability. Rather, if the school is unaware of the disability at the time of the misconduct or poor performance, it may proceed with the regular course of discipline that it would normally pursue. Even if the disability is known before the disciplinary decision or performance counseling has occurred, the school is required to provide only a reasonable accommodation that may enable the student to meet the behavioral or performance standard.

### **No Good Deed Goes Unpunished**

Out of compassion, however, schools often turn misconduct issues into medical issues. For example, a school may have a first-grader who hits other students or who refuses to follow directions. After the behavior occurs multiple times, the school may tell the student's parents that their child needs psychoeducational testing (a \$2,000 to \$5,000 expense) or a psychiatric examination. This is where the school turns a behavioral issue into a medical issue in its desire to see how it can help the child. While testing or a mental examination may provide the school with recommendations concerning how it should interact with the student to prevent the behavior, the school may or may not be able to implement the suggestions.

Further, the testing or evaluation may disclose that the child has a disability. If the school determines it cannot accommodate the child or that the child has to be expelled for the behavior **after** the testing, then it looks like the newly disclosed diagnosis or the request for accommodation that may not be reasonable is what motivated the school to expel the student rather than the misconduct that led to the testing and evaluation. Even if the student is not diagnosed with any kind of impairment, the parents may argue that the school believed the child had an impairment of some kind because it requested (or even merely suggested) the testing or evaluation.

### **Honesty Is The Best Policy**

Consequently, the school should deal with misconduct as misconduct as opposed to believing there is a medical basis for the conduct. This path does not preclude the school from having an honest discussion with the parents that includes a statement that they may want to seek professional help for a child because of the behavior. For example, advising parents

that they may wish to consider professional guidance for their child because they are physically aggressive toward other students or has an anger management issue or seems to be inexplicably angry focuses on behavior and emotion. It does not suggest the child has a condition that causes the behavior.

Does this mean that the school should never suggest medical testing or a medical evaluation? No. Suggesting testing may be appropriate in at least two situations. First, if the school knows the student has a medical condition and has objective evidence that the student or employee may be a threat of harm to self or others, Second, when the school is at the point that it is going to expel the student but it places the student on a "Last Chance Agreement" in lieu of expulsion. Such an agreement will allow the student to continue school if the student submits to counseling and authorizes the counselor to tell the school that the student is complying with all recommendations.

## **Wrapping Up**

In summary, when students are behaving inappropriately, treat the matter as a misconduct issue. For example, a student who makes a threat of violence should be treated in accordance with the school's regular policy. Even if the threat seems bizarre, do not treat the matter as a mental health issue. It is a conduct issue and, depending on the age of the student, should result in discipline rather than a medical inquiry – this is true even if the individual has a disability. If the threat would result in an expulsion, the school may choose to offer a Last Chance Agreement.

Further, the school should choose its words carefully and describe the behavior – not the conclusions they draw from the behavior that may have mental health implications. For example, the school should avoid saying that a student is "acting paranoid" (even if the student is). Remember, "acting paranoid" is a characterization of observed behavior that can otherwise be objectively described. Thus, the school could say that the student seemed not to trust anyone, did not want to share with others, and did not believe others were acting in their best interest. While the term "acting paranoid" is more concise, the longer explanation is less likely to make parents believe the school thinks their child – who may be getting expelled – has a mental impairment.