

All Things Exotic!!

1

Discerning Outside Diagnosis(es) Under Article 7 Eligibility



MONICA J. CONRAD, M.A., J.D.
LEWIS KAPPES



PRESENTED BY:

DR. JULIE STECK, PH.D., HSPP
CHILDREN'S RESOURCE GROUP

Clinical Diagnosis of Mental Disorders VS. Article 7 Special Education Eligibility:

2

Determining eligibility for special education services?

Scenario:



3

- ▶ Sixth grade general education student, Jane, has been getting into trouble at school lately. She has an attitude toward her teacher and has been telling her teacher "no" whenever she asks her to do something. As a result, Jane earned detention five times in the month of January—mainly for "not following instructions" and "talking back" to adults in the building. On February 1st, Jane's mother informs the school that Jane has been clinically diagnosed with "oppositional defiance disorder" and says that Jane will be needing special education services because of her newfound eligibility.

How many of you have had a similar situation happen: a parent informs the school that their child has been diagnosed by a doctor/psychologist and want their child to receive special education services?

Background information

4

- ▶ The Diagnostic and Statistical Manual of Mental Disorders (**DSM-5**) is a manual used by mental health professionals to clinically diagnose mental disorders
 - ▶ Make diagnosis by checking off criteria – assessment process varies widely (ie. clinical judgment)
- ▶ Article 7 (part 41) establishes eligibility criteria for special education eligibility categories
 - ▶ Make eligibility determination using eligibility criteria AND an assessment process



HOW DO THESE ELIGIBILITY CRITERIA ALIGN?

LEGAL KEYS TO DIFFERENTIATED DIAGNOSIS Under Article 7

5

- ▶ (e) The public agency must establish, maintain, and implement procedures to ensure the following: (1) Assessments and other evaluation materials are as follows: ... (C) Used for the purposes for which the assessments or measures are **valid and reliable**... (E) Technically sound instruments that may assess the relative contributions of cognitive and behavioral factors, in addition to physical or developmental factors
- ▶ (7) Educational evaluations are **sufficiently comprehensive** to identify all of the student's special education and related service needs **whether or not commonly** linked to the disability category in which the student has been classified.
- ▶ (c) When determining eligibility for special education and related services, the CCC must: (2) **not rely on any single measure or assessment as the sole criterion** for determining eligibility or appropriate educational services.

Emotional Disabilities

6

Oppositional Defiance Disorder (ODD)

7

DSM-5 Diagnostic Criteria

(A) A pattern of **angry/irritable mood, argumentative/defiant behavior, or vindictiveness** lasting at least **6 months** as evidenced by at least **four symptoms** from any of the following categories, and exhibited during interaction with at least **one individual who is not a sibling** AND (B) the disturbance in behavior is associated with distress in the individual or others in his immediate social context or it impacts negatively on social, educational, occupational, or other important areas of functioning.

- **Angry/Irritable Mood**
 - Often loses temper
 - Is often touchy or easily annoyed
 - Is often angry and resentful
- **Argumentative/Defiant Behavior**
 - Often argues with authority figures or, for children and adolescents, with adults
 - Often actively defies or refuses to comply with requests from authority figures or with rules
 - Often deliberately annoys others
 - Often blames others for his or her mistakes or behavior
- **Vindictiveness**
 - Has been spiteful or vindictive at least twice within the past 6 months

Conduct Disorder

8

DSM-5 Diagnostic Criteria

(A) A **repellive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated**, as manifested by the presence of at least **3 of the following 15 criteria in the past 12 months** from any of the categories below, with **at least 1 criterion present in the past 6 months** AND (B) the disturbance in behavior causes clinically significant **impairment in social, academic, or occupational functioning**.

- **Aggression to People and Animals**
 - Often bullies, threatens, or intimidates others
 - Often initiates physical fights
 - Has used a weapon that can cause serious physical harm to others (e.g. a bat, brick, broken bottle, knife, gun)
 - Has been physically cruel to people
 - Has been physically cruel to animals
 - Has stolen while confronting a victim
 - Has forced someone into sexual activity
- **Destruction of Property**
 - Has deliberately engaged in fire setting with the intention of causing serious damage
 - Has deliberately destroyed others' property (other than by fire setting)

Conduct Disorder (cont.)

9

DSM-5 Diagnostic Criteria

- **Deceitfulness or Theft**
 - Has broken into someone else's house, building, or car
 - Often lies to obtain goods or favors or to avoid obligations (i.e. "cons" others)
 - Has stolen items of nontrivial value without confronting a victim (e.g. shoplifting, but without breaking and entering; forgery)
- **Serious Violations of Rules**
 - Often stays out at night despite parental prohibitions, beginning before age 13 years
 - Has run away from home overnight at least twice while living in the parental or parental surrogate home, or once without returning for a lengthy period
 - Is often truant from school, beginning before age 13 years

Bipolar Disorder (Type I)

10

DSM-5 Diagnostic Criteria

For a diagnosis of bipolar I disorder, it is necessary to **meet the following criteria for a manic episode**. The manic episode may have been preceded by and may be followed by hypomanic or major depressive episodes.

- **Manic Episode**
 - (A) A distinct period of **abnormally and persistently elevated, expansive, or irritable mood** and **abnormally and persistently increased goal-directed activity or energy, lasting at least 1 week** and present most of the day, nearly every day (or any duration if hospitalization is necessary).
 - (B) During the period of mood disturbance and increased energy or activity, **three (or more) of the following symptoms** (four if the mood is only irritable) are present to a significant degree and represent a noticeable change from usual behavior
 - Inflated self-esteem or grandiosity
 - Decreased need for sleep (e.g. feels rested after only 3 hours of sleep)
 - More talkative than usual or pressure to keep talking
 - Flight of ideas or subjective experience that thoughts are racing
 - Distractibility (i.e. attention too easily drawn to unimportant or irrelevant external stimuli), as reported or observed
 - Increase in goal-directed activity or psychomotor agitation
 - Excessive involvement in activities that have a high potential for painful consequences (e.g. engaging in unrestrained buying sprees, sexual indiscretions, foolish business investments)

Bipolar Disorder (Type I) (cont.)

11

DSM-5 Diagnostic Criteria

- (C) the mood disturbance is sufficiently severe to cause marked impairment in social or occupational functioning or to necessitate hospitalization to prevent harm to self or others, or there are psychotic features
- (D) The episode is not attributable to the physiological effects of a substance abuse (e.g. a drug of abuse, a medication, other treatment) or to another medical condition

Disruptive Mood Dysregulation Disorder

12

DSM-5 Diagnostic Criteria

- (A) Severe recurrent temper outbursts manifested verbally (e.g. verbal rages) and/or behaviorally (e.g. physical aggression toward people or property) that are **grossly out of proportion in intensity or duration to the situation or provocation**
- (B) The temper outbursts are **inconsistent with developmental level**
- (C) The temper outbursts occur, on average, **three or more times per week**
- (D) The mood between temper outbursts is persistently **irritable or angry most of the day**, nearly every day, and is observable by others (e.g. parents, teachers, peers)
- (E) **Criteria A-D have been present for 12 or more months**. Throughout that time, the individual has not had a period lasting 3 or more consecutive months without all of the symptoms in Criteria A-D.
- (F) **Criteria A and D are present in at least two of three settings** (i.e. at home, at school, with peers) and are severe in at least one of these.
- (G) The diagnosis should not be made for the first time before age 6 years or after age 18 years.
- (H) By history or observation, the **age at onset of Criteria A-E is before 10 years**.
- (I) There has never been a distinct period lasting more than 1 day during which the full symptom criteria, except duration, for a manic or hypomanic episode have been met.
- (J) The behaviors do not occur exclusively during an episode of major depressive disorder and are not better explained by another mental disorder (e.g. autism spectrum disorder, posttraumatic stress disorder, separation anxiety disorder, persistent depressive disorder (this diagnosis cannot coexist with oppositional defiant disorder or bipolar disorder)).
- (K) The symptoms are not attributable to the physiological effects of a substance or to another medical or neurological condition.

Article 7 Eligibility Criteria for Emotional Disability

13

511 IAC 7-41-7 Emotional Disability

ELIGIBILITY CRITERIA

(a) "Emotional Disability" means an **inability to learn or progress** that cannot be explained by cognitive, sensory, or health factors. The student **exhibits one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance:**

- (1) A tendency to develop physical symptoms or fears associated with personal or school problems
- (2) A general pervasive mood of unhappiness or depression
- (3) An inability to build or maintain satisfactory interpersonal relationships
- (4) Inappropriate behaviors or feelings under normal circumstances
- (5) Episodes of psychosis

Article 7 Eligibility Criteria for Emotional Disability

14

511 IAC 7-41-7 Emotional Disability

ASSESSMENT

(b) Eligibility for special education as a student with an emotional disability shall be determined by the student's CCC. This determination shall be based on the multidisciplinary team's educational evaluation reports described in 511 IAC 7-40-5(e), which includes the following:

- (1) An assessment of the following:
 - (A) **Current academic achievement** as defined in 511 IAC 7-32-2
 - (B) **Emotional and behavioral functioning**
- (2) A social and developmental history that may include, but is not limited to, the following:
 - (A) Communication skills; (B) Social interaction skills; (C) relevant family and environmental information; (D) Responses to sensory experiences; (E) Patterns of emotional adjustment; (F) unusual or atypical behaviors
- (3) A **functional behavior assessment** as defined in 511 IAC 7-32-41 that includes an analysis of any interventions used to address the behaviors leading to the referral for the educational evaluation
- (4) Available medical and mental health information that is educationally relevant
- (5) Any **other assessments and information**, collected prior to referral or during the ed. evaluation, necessary to:
 - (A) Address whether the student's inability to learn or progress is caused by **cognitive, sensory, or health factors**
 - (B) Determine eligibility for special education and related services; and
 - (C) Inform the student's CCC of the student's special education and related services

Case Law

15

- ▶ Social maladjustment is not generally enough to qualify under the Article 7 definition of ED; there must be a causal connection between the qualifying mental health condition and educational difficulties
 - ▶ See *W.G. v. NY City Dept of Educ.*, 801 F.Supp.2d 142 (S.D.N.Y., 2011) ("inappropriate behavior that is attributable to social maladjustment, rather than to an independent emotional disturbance, is insufficient to warrant recognition and accommodation of an [ED] disability.")
 - ▶ See *Springer v. Fairfax County School Board*, 134 F.3d 659 (4th Cir. 1998) (holding a child not eligible for special education because he was socially maladjusted and did not have an ED)
- ▶ The key phrase for determining whether an outside diagnosis of a mental health issue (e.g. ODD, Conduct Disorder) qualifies as an Article 7 disability is whether the condition "**adversely affects a child's educational performance.**"
 - ▶ *Educational performance*

Specific Learning Disabilities

16

Dyslexia

17

DSM-5 Diagnostic Criteria

- Under the DSM-5, "Dyslexia is an alternative term used to refer a pattern of learning difficulties characterized by problems with acute or fluent word recognition, poor decoding, and poor spelling abilities. If dyslexia is used to specify this particular pattern of difficulties, it is important to specify any additional difficulties that are present, such as reading comprehension or math reasoning." → It is a **SUBSET** of "specific learning disorder," which is diagnosed as follows:

- (A) Difficulties learning and using academic skills, as indicated by the presence of **at least once of the following symptoms that have persisted for at least 6 months**, despite the provision of interventions that target those difficulties:
 - (1) **Inaccurate or slow and effortful word reading**
 - (2) **Difficulty understanding the meaning of what is read** (e.g. may read text accurately but not understand the sequence, relationships, inference, or deeper meanings of what is read).
 - (3) **Difficulties with spelling**
 - (4) Difficulties with written expression
 - (5) Difficulties mastering number sense, number facts, or calculation
 - (6) Difficulties with mathematical reasoning
- (B) The affected academic skills are substantially and quantifiably below those expected for the individual's chronological age, and cause significant interference with academic or occupational performance, or with activities of daily living, as confirmed by individual assessment.
- (C) The learning difficulties begin during school-age years but may not become fully manifest until the demands for those affected academic skills exceed the individual's limited capacities
- (D) The learning difficulties are not better accounted for by intellectual disabilities, uncorrected visual or auditory or other mental or neurological disorders or lack of instruction

Dysgraphia

18

DSM-5 Diagnostic Criteria

- Dysgraphia is a written language disorder in serial production of strokes to form a handwritten letter that involves not only motor skills but also language skills— finding, retrieving, and producing letters, which is a subword level language skill. It may interfere with spelling and/or composing, but individuals with only dysgraphia do not have difficulty with reading (Berninger et al. 2015)
- Under the DSM-5 → It is a **SUBSET** of "specific learning disorder," and defined as "a specific learning disorder" with **impairment in writing expression**, which is diagnosed as follows:

- (A) Difficulties learning and using academic skills, as indicated by the presence of **at least once of the following symptoms that have persisted for at least 6 months**, despite the provision of interventions that target those difficulties:
 - (1) Inaccurate or slow and effortful word reading
 - (2) Difficulty understanding the meaning of what is read (e.g. may read text accurately but not understand the sequence, relationships, inference, or deeper meanings of what is read).
 - (3) Difficulties with spelling
 - (4) **Difficulties with written expression***
 - (5) Difficulties mastering number sense, number facts, or calculation
 - (6) Difficulties with mathematical reasoning
- (B) The affected academic skills are substantially and quantifiably below those expected for the individual's chronological age, and cause significant interference with academic or occupational performance, or with activities of daily living, as confirmed by individual assessment.
- (C) The learning difficulties begin during school-age years but may not become fully manifest until the demands for those affected academic skills exceed the individual's limited capacities
- (D) The learning difficulties are not better accounted for by intellectual disabilities, uncorrected visual or auditory or other mental or neurological disorders or lack of instruction

19

Not mentioned in the DSM-5

Because not in the DSM-5, there are no clearly defined clinical criteria for diagnosis; according to the literature, these are the most generally agreed upon!

Diagnosis	What is it?	Commonly-used diagnosis criteria
Central Auditory Processing Disorder (CAPD)	The reduced or impaired ability to discriminate, recognize or comprehend complex sounds, such as those used in words, even though the person's hearing is normal.	Four major behavioral tests used to identify CAPD, including: <ul style="list-style-type: none"> (1) auditory discrimination tests: determine subtle differences in a variety of sounds. (2) dichotic tests: evaluate a person's ability to separate or combine sounds presented to both ears at the same time. (3) test of auditory pattern of speech: provides information about a student's effectiveness in identifying cues in speech. (4) low redundancy test: assesses an individual's ability to screen out background noise and understand rapid speech (DeBonis & Moncrieff, 2008).
Nonverbal Learning Disorder (NLD or NLVD)	A disorder which is usually characterized by a significant discrepancy between higher verbal skills and weaker motor, visual-spatial and social skills. It has been compared to a less severe Asperger's Syndrome.	<ul style="list-style-type: none"> (1) NVLD can be conceptualized as an imbalance in thinking skills—intact linear, detail oriented, automatic processing with impaired appreciation of the big picture, gestalt or underlying theme. (2) It is not nearly as common as language-based learning disabilities, but this may be a phenomenon created by environmental demands (i.e. our societal demands for precision skills in reading assure that even the most subtle language-based LD cases are identified) (3) Typically social/psychiatric concerns are raised before academic problems are identified. (4) While the overlap is not complete, NVLD children may meet the criteria for Pervasive Developmental Disorder Not Otherwise Specified (PDD NOS), Asperger's Disorder, or Schizotypal Personality (Dinklage, 2017).

20

Not mentioned in the DSM-5

Because not in the DSM-5, there are no clearly defined clinical criteria for diagnosis; according to the literature, these are the most generally agreed upon!

Diagnosis	What is it?	Commonly-used diagnosis criteria
Sensory Processing Disorder	When there is a problem in the process of receiving and interpreting sensory information it is referred to as a Sensory Processing Disorder (SPD), or sensory integrative dysfunction. Individuals with SPD have great difficulties in performing everyday tasks and in functioning in academic, vocational, recreational and social settings (Bailey, 2010).	<p>An evaluation for SPD involves standardized testing, detailed clinical observations, and parent-report measures to gauge sensory impairment and the impact on functioning in home or school. Typical assessments include the following:</p> <ul style="list-style-type: none"> SP3D or Sensory Processing Three Dimensions scale and has both a respondent survey (parent or self report measure) and a performance assessment (new in 2017) Sensory Integration and Praxis Tests (SIPT) Miller Function and Participation Scales (MFUN) Bruninks-Oseretsky Test of Motor Proficiency™ - Second Edition Movement Assessment Battery for Children - Second Edition (Movement ABC-2) Miller Assessment for Preschoolers (MAP) Goal-Oriented Assessment of Life Skills (GOAL) <p>NOTE: often identified and categorized by an occupational therapist with advanced training in sensory processing and integration</p>

21

Article 7 Eligibility Criteria for Specific Learning Disability

511 IAC 7-41-12 Specific Learning Disability

ELIGIBILITY CRITERIA

(a) "Specific learning disability" means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that adversely affect the student's educational performance, including conditions referred to, or previously referred to, as perceptual handicaps, brain injury, minimal brain dysfunction, **dyslexia**, and developmental aphasia. As follows, a specific learning disability:

(1) Manifests itself when the student does not achieve adequately for the student's age or to meet state approved grade level standards in one (1) or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or state approved grade level standards:

(A) **Reading disability**, which is a specific learning disability that is neurological in origin and has a continuum of severity. It is characterized by difficulties with accurate or fluent, or both, word recognition and by poor spelling and decoding abilities. A reading disability may be due to difficulties in the following:

- (i) Basic reading skills.
- (ii) Reading fluency skills.
- (iii) Reading comprehension.

22

Article 7 Eligibility Criteria for Specific Learning Disability

511 IAC 7-41-12 Specific Learning Disability

ELIGIBILITY CRITERIA (Cont.)

(B) **Written expression disability**, which is a specific learning disability that is neurological in origin and has a continuum of severity. Written expression is a complex domain that requires the integration of the following:

- (i) Oral language.
- (ii) Written language.
- (iii) Cognition.
- (iv) Motor skills.

(C) **Math disability**, which is a specific learning disability that is neurological in origin and has a continuum of severity. The ability to perform mathematical computations and reasoning requires multiple core cognitive processes. A math disability may be due to difficulties in the following:

- (i) Mathematics calculation.
- (ii) Mathematics problem solving.

(D) **Oral expression disability**, which is a specific learning disability that: (i) is neurological in origin; (ii) has a continuum of severity; and (iii) is characterized by deficits in using expressive language processes to mediate learning of:

(AA) reading; (BB) writing; (CC) spelling; or (DD) mathematics: skills.

(E) **Listening comprehension disability**, which is a specific learning disability that: (i) is neurological in origin; (ii) has a continuum of severity; and (iii) is characterized by difficulties in using receptive language processes to mediate learning of:

(AA) reading; (BB) writing; (CC) spelling; or (DD) mathematics:

23

Article 7 Eligibility Criteria for Specific Learning Disability

511 IAC 7-41-12 Specific Learning Disability

ELIGIBILITY CRITERIA (Cont.)

AND

(2) Can be evidenced through either of the following:

(A) Insufficient progress to meet age or state approved grade level standards in one (1) or more of the areas identified in subdivision (1) when using a process based on the student's response to scientific, research based intervention.

(B) A pattern of strengths and weaknesses in performance or achievement, or both, relative to:

- (i) age;
- (ii) state approved grade level standards; or
- (iii) intellectual development;

that is determined by the group to be relevant to the identification of a specific learning disability. The multidisciplinary team is prohibited from using a severe discrepancy between academic achievement and global cognitive functioning to meet this requirement.

24

Article 7 Eligibility Criteria for Specific Learning Disability

511 IAC 7-41-12 Specific Learning Disability

ASSESSMENT

(b) **Eligibility for special education as a student with a specific learning disability** shall be determined by the student's CCC. This determination shall be based on the multidisciplinary team's educational evaluation report described in 511 IAC 7-40-5(e) and 511 IAC 7-40-5(g), which includes the following:

- (1) An **assessment of current academic achievement** as defined at 511 IAC 7-32-2.
- (2) An **observation of the student** in the student's learning environment, including the general classroom setting, to document the student's academic performance and behavior in the areas of difficulty. The multidisciplinary team may do either of the following:
 - (A) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an educational evaluation.
 - (B) Have at least one (1) member of the multidisciplinary team, other than the student's general education teacher, conduct an observation of the student's academic performance in the general education classroom after:
 - (i) the child has been referred for an educational evaluation; and
 - (ii) parental consent for the educational evaluation has been obtained. In the case of a student of less than school age or out of school, a team member must observe the student in an environment appropriate for a student of that age.
- (3) Available medical information that is educationally relevant.

Article 7 Eligibility Criteria for Specific Learning Disability

25

511 IAC 7-41-12 Specific Learning Disability

ASSESSMENT (cont.)

- (1) A social and developmental history that may include, but is not limited to, the following:
 - (A) Communication skills.
 - (B) Social interaction skills.
 - (C) Responses to sensory experiences.
 - (D) Relevant family and environmental information.
 - (E) Patterns of emotional adjustment.
 - (F) Unusual or atypical behaviors.
- (2) An assessment of progress in the general education curriculum that includes **an analysis of any interventions used to address the academic concerns leading** to the referral for the educational evaluation.
- (3) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
 - (A) address the exclusionary factors listed in subsection (a)(3);
 - (B) determine eligibility for special education and related services; and
 - (C) inform the student's CCC of the student's special education and related services needs.

Article 7 Eligibility Criteria for Specific Learning Disability

26

511 IAC 7-41-12 Specific Learning Disability

ASSESSMENT (cont.)

- (c) Other assessments and information, collected prior to referral or during the educational evaluation under subsection (b)(6), **may** pertain to the following:
- (1) For difficulties with reading, the following:
 - (A) Decoding.
 - (B) Phonological awareness.
 - (C) Phonological memory.
 - (D) Phonological processing.
 - (E) Orthographic processing.
 - (F) Reading fluency (rate and accuracy).
 - (G) Reading comprehension.
 - (2) For difficulties with written expression, the following:
 - (A) Handwriting, which encompasses the following: (i) Fine motor skills. (ii) Visual-motor coordination. (iii) Visual and working memory. (iv) Phonological and orthographic processing.
 - (B) Spelling, which encompasses the following: (i) Phonological and orthographic processing. (ii) Written spelling ability.
 - (C) Composition, which encompasses the following: (i) Oral language. (ii) Reading ability. (iii) Attention. (iv) Memory.
 - (3) For difficulties with math, the following: (A) Nonverbal problem solving. (B) Working memory. (C) Long-term memory. (D) Processing speed. (E) Attention.

Legal Analysis

27

- ▶ OSEP Opinion Letter, 2016.
 - ▶ IDEA does not prohibit terms of dyslexia, dyscalculia, and dysgraphia.
 - ▶ There is no requirement under the IDEA that the disability label or "diagnosis" be given to students, so long as student is regarded as having a disability and receives services.
 - ▶ Schools must ensure that students are assessed in all areas related to the suspected disability, including as appropriate, academic performance.
 - ▶ "There is no provision in the IDEA that gives a parent the right to dictate the specific areas that the public school must assess as part of the comprehensive evaluation; [the school] is only required to assess the child in particular areas related to the child's suspected disability, as it determines appropriate.

Questions

28



Monica Conrad

Lewis Kappes

Phone: 317-639-1210
219-648-2072

mconrad@lewis-kappes.com



Dr. Julie Steck, Ph.D., HSPP

Children's Resource Group

Phone: 317-575-9111

jsteck@childrensresourcegroup.com