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# Adverse Educational Impact

Mo-CASE Law Conference

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# Eligibility under IDEA: Adverse Educational Impact

- What does IDEA say about Adverse Educational Impact?
- What do federal regulations implementing IDEA provide?
- What do state regulations implementing IDEA provide?
- What do court decisions tell us?

# IDEA

Definition of “child with a disability” encompasses children with one of the listed categories of disabilities:

“who, by reason thereof, needs special education and related services.”

# IDEA Regulations

Federal regulations implementing IDEA contains a definition of “child with a disability” and

- Each category of disability is listed and defined
- Each indicates that the definition includes “adversely affects a child’s educational performance” with a couple of exceptions.

# Example

“Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, **that adversely affects a child’s educational performance.**”

34 CFR 300.8 (c)(1)(i)

# IDEA Regulations

- No definition of “adversely affecting” or “adverse educational impact” within the IDEA Regulations – federal, or in Missouri’s state regulations.
- U.S. Department of Education, Office of Special Education Programs (OSEP) declined to define.

# IDEA Regulations

In Missouri, state regulations implementing IDEA mirror the federal regulations implementing IDEA in connection to the “adversely affects a child’s educational performance” component of eligibility criteria under the state criteria.

## So what is a team to do???

- No definition in IDEA statute
- No definition in IDEA federal regulations
- No definition in IDEA state regulations

# Court Decisions

- Guidance from various court cases around the country
- Factors identified by court decisions
- Analysis provided by court decisions

## *A.J. v Board of Ed. Of East Islip Union Free School District*

- U.S. District Court (NY) 2010
- Student with Asperger's Syndrome
- Performed well in school
- Ineligible

## *Ashli C. v State of Hawaii*

- U.S. District Court, Hawaii (2007)
- Minimal adverse effect
- Ineligible
- Ordinary meaning of “adverse” was key to court’s analysis

## *Mr. I. v Maine School Administrative District No. 55*

- 1<sup>st</sup> Circuit Court of Appeals (2007)
- State attempted to define “educational performance”
- Educational performance can’t be limited to only those areas being measured and assessed by the school district
- Adversely doesn’t mean “significant” impact

## *Yankton School District v Shramm*

- 8<sup>th</sup> Circuit Court of Appeals (1996)
- Excellent grades can still mean adverse educational impact
- Orthopedic impairment requires specially designed instruction in the classroom and mobility assistance
- Services, accommodations, and modifications that enable child to benefit must be considered.

## *Marshall Joint School v C.D. ex rel. Brian D.*

- 7<sup>th</sup> Circuit Court of Appeals (2010)
- Student exited from special education
- Adverse educational impact must already exist
- Hearing officer standard of whether the disability “can” adversely affect student’s performance was incorrect

# General Rules!

- Adverse impact needs to be related to the child's disability
- The need for a related service does not mean child is eligible; must need special education
- "Education" needs to be viewed broadly; not only academic achievement/performance, but also social development, functional performance, communication skills and self-management

# Disclaimer

- PLEASE NOTE: The information provided in this training is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.

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