Checklist for Identifying Students As Eligible under the IDEA Classification of Emotional Disturbance (ED): An Update*

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This checklist is the most recent update of this checklist's original version two decades ago.[1] The purpose is to provide a comprehensive, up-to-date, and systematic synthesis of the court decisions[2] concerning eligibility under "emotional disturbance" (ED) classification of the Individuals with Disabilities Education Act (IDEA) in relation to the various criteria in the definition of ED.[3] This systematic examination identifies the nature and extent of the adjudicated interpretations of this controversial definition.[4] More specifically, the checklist tracks the criteria in the unchanged definition of ED in the IDEA[5] via a flowchart-type sequence, showing the applicable court rulings[6] for each of the criteria in terms of whether the court ruled YES or NO.[7] The font size of the "X" entry approximates the weight of case law cited in the footnote for each one.[8]

The practical uses of the checklist include 1) having a systematic decisional framework for determining ED eligibility, 2) readily accessing the precedents interpreting each of the respective criteria, and 3) observing the trends in the case law to date. The three major findings are as follows:

1) criterion #1c (inappropriate behavior) is the most litigated initial doorway to ED eligibility, with the case law moderately favoring a YES answer
2) the major stumbling blocks to ED eligibility are the subsequent essential elements of adverse effect (criterion #3) and social maladjustment (criterion #4)

* This article appeared in *West's Education Law Reporter*, 2013, v. 286, pp. 7-11. The updates are highlighted in yellow.

3) the courts often do not address the need for special education (criterion #5)

The first finding is not surprising, given the high stakes of behavior in the K-12 school setting. The frequency and outcomes of the social maladjustment criterion are also not unexpected in light of the circular language and at best ambivalent response to students who persistently exhibit unacceptable conduct.[9] Finally, the adverse effect criterion poses a relatively high hurdle for eligibility serves, in effect, as the other side of the coin for the paucity of litigation concerning the need for special education.[10]

CHECKLIST FOR DETERMINING ED ELIGIBILITY UNDER THE IDEA

	Criteria	Yes	No
1.	Has the student exhibited one or more of the following characteristics[11]:		
a.	an inability to learn that cannot be explained by intellectual, sensory, or health factors? - OR -		X[12]
b.	an inability to build or maintain satisfactory interpersonal relationships with peers and teachers? - OR -	X[13]	X[14]
c.	inappropriate types of behavior or feelings under normal circumstances? - OR -	**X**[15]	X[16]
d.	a general pervasive mood of unhappiness or depression? - OR -	X[17]	X[18]
e.	a tendency to develop physical symptoms or fears associated with personal or school problems?	x[19]	x[20]
2.	If YES, has the student exhibited said characteristic(s) at both of these levels[21]:		
a.	for a long period of time? – AND -	X[22]	X[23]
b.	to a marked degree?		
3.	If YES, has the condition adversely affected the student’s educational performance?[24]	X[25]	**X**[26]
4.	If YES, is the student solely socially maladjusted (i.e., not also meeting the criteria in ##1-3)?[27]	X[28]	X[29]
5.	If **NO**, as the result of a condition meeting the criteria in ##1-3), does the student require special education?[30]	X[31]	X[32]

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[1] Perry A. Zirkel, *Checklist for Identifying Students Eligible under the IDEA Classification of Emotional Disturbance: An Update*, 286 EDUC. L. REP. 7 (2013); Perry A. Zirkel, *A Legal Checklist for Determining "SED" Eligibility*, 7 THE SPECIAL EDUCATOR 257 (May 1992).

[2] The coverage does not extend to the many hearing and review officer decisions on this issue, due to their lower level and uneven availability. However, it is exhaustive with regard to court decisions, not being limited to those that are officially published.

[3] Under the previous regulations, the designation for this classification was "serious emotional disturbance." The most recent IDEA regulations, which the U.S. Department of Education issued on August 14, 2006, make that the difference is semantic rather than substantive, clarifying that this same designation is "referred to in this part as 'emotional disturbance.'" 34 C.F.R. § 300.8(a)(1).

[4] For an earlier wave of controversy, see, e.g., David B. Center, *Social Maladjustment: Definition, Identification, and Programming*, 22 FOCUS EXCEPTIONAL CHILD. 1 (Sept. 1989); Steven R. Forness & Jane Kritzer, *A New Proposed Definition and Terminology to Replace "Serious Emotional Disturbance" in Individuals with Disabilities Education Act*, 21 SCH. PSYCH. REV. 12 (1992); Jane Slenkovich, *Can the Language "Social Maladjustment Language in the SED Definition Be Ignored*, 21 SCH. PSYCH. REV. 21 and 43 (1992); Russell Skiba & Kenneth Grizzle, *Opening the Floodgates: The Social Maladjustment Exclusion and State SED Prevalence Rates*, 32 SCH. PSYCH. REV. 267 (1994). In response to the most recent wave of criticism of the definition of ED, including the "social maladjustment" provision, the Department responded as follows in the commentary accompanying the final version of the 2006 regulations:

> Historically, it has been very difficult for the field to come to consensus on the definition of [ED], which has remained unchanged since 1977. On February 10, 1993, the Department published a ''Notice of Inquiry'' in the Federal Register (58 FR 7938) soliciting comments on the existing definition of serious emotional disturbance. The comments received in response to the notice of inquiry expressed a wide range of opinions and no consensus on the definition was reached. Given the lack of consensus and the fact that Congress did not make any changes that required changing the definition, the Department recommended that the definition of [ED] remain unchanged. We reviewed the Act and the comments received in response to the NPRM and have come to the same conclusion. Therefore, we decline to make any changes to the definition of [ED].

71 Fed. Reg. 46,550 (Aug. 14, 2006). For more recent professional views, see Amanda L. Sullivan & Shanna S. Sadeh, *Differentiating Social Maladjustment from Emotional Disturbance: An Analysis of Case Law*, 43 SCH. PSYCH. REV. 450 (2014; *see also* November 2004 special-theme issue of PSYCHOLOGY IN THE SCHOOLS; *cf.* Nicole M. Olreich, *A New "IDEA": Ending Racial Disparity in the Identification of Students with Emotional Disturbance*, 57 S. DAKOTA L. REV. 9 (2012).

[5] 34 C.F.R. § 300.8(c)(4). Some state laws provide a variation of this set of definitional criteria. New Jersey, for example, includes social maladjustment as a separate qualifying classification rather than as a partial exclusion. N.J. ADMIN. CODE § 6A:14-3.5(c)(11). As another example, both Indiana and Iowa follows the federal definition of emotional disturbance but with no exclusion for social maladjustment. 511 IND. ADMIN. CODE r. 7-41-7; IOWA ADMIN. CODE 281-41.50(2). Moreover, Section 504 provides an eligibility alternative based even on social maladjustment or one of its related diagnoses as (1) the requisite impairment and (2) various major life activity alternatives, expressly including concentration and possibly implicitly including behavioral control and social interaction, that may arguably be (3) substantially limited. The passage of the ADA Amendments Act, which went into effect on January 1, 2009, increased the odds of meeting the second and third criteria.

[6] In addition to the aforementioned exclusions (*supra* note 2), the scope of coverage does not extend to OSEP policy letters. *E.g.,* Letter to Woodson, 213 IDELR 224 (OSEP 1989); Letter to

Anonymous, 213 IDELR 247 (OSEP 1989). It also does not include child find cases that do not specifically determine the elements of ED eligibility. *E.g.*, Jackson v. Nw. Local Sch. Dist., 55 IDELR ¶ 71 (S.D. Ohio 2010); State of Haw. Dep't of Educ. v. Cari Rae S., 158 F. Supp. 2d 1190 (D. Haw. 2001). Finally, it does not extend to court decisions concerning ED eligibility based on issues other than the definitional criteria. *E.g.,* Richardson v. District of Columbia, 541 F. Supp. 2d 346 (D.D.C. 2008) (upholding non-eligibility determination where parent refused to allow access to essential psychiatric records).

[7] Court decisions are cited in more than one footnote to the extent that they ruled definitively on more than one of the criteria. Conversely, court decisions that determined eligibility under this IDEA classification without a separable ruling on one or more of the criteria are not included herein. *E.g.*, New Paltz Cent. Sch. Dist. v. St. Pierre, 307 F. Supp. 2d 394 (N.D.N.Y. 2003) (eligible); Richardson v. District of Columbia, 541 F. Supp. 2d 346 (D.D.C. 2008); Maricus v. Lanett City Bd. of Educ., 141 F. Supp. 2d 1064 (M.D. Ala. 2001) (not eligible). The overlap with adjoining issues, such as child find and FAPE, also contributed to a less than bright boundary for the scope of the case law. *E.g.*, Reg'l Sch. Dist. No. 9 v. Mr. and Mrs. M., 53 IDELR ¶ 8 (D. Conn. 2009).

[8] The entries, represented by five successive sizes of an "X," are only a tentative approximation on a national basis, culminating in the highest weighting for published federal appellate decisions. The intervening variables include not only the interpretation of the court's opinion but also—and most significantly for a particular setting—the jurisdictional fit of the cited case law.

[9] For an early example of the resistance to ED eligibility for children with social maladjustment, see JANE SLENKOVICH, PL 94-142 AS APPLIED TO DSM III DIAGNOSES 17 (1983) (arguing, from the perspective of a school district lawyer, that this exclusion was broad-based, requiring an additional clinical diagnosis beyond social maladjustment).

[10] The case law concerning eligibility for other IDEA classifications often focus on the need for special education. *E.g.,* Perry A. Zirkel, *The Legal Meaning of Specific Learning Disability for IDEA Eligibility: The Latest Case Law*, 41 COMMUNIQUÉ 10 (Jan./Feb. 2013). However, the specific extent may depend on the format for data collection and analysis. *E.g.,* Perry A. Zirkel, *ADHD Checklist for Identification under the IDEA and Section 504/ADA*, 293 EDUC. L. REP. 13 (2013) (addressing adverse effect and special education need together).

[11] 34 C.F.R.§ 300.8(c)(4)(i)(A)-(E).

[12] P.C. v. Oceanside Union Free Sch. Dist., 818 F. Supp. 2d 516 (E.D.N.Y. 2011); Brendan K. v. Easton Area Sch. Dist., 47 IDELR ¶ 249 (E.D. Pa. 2007); Katherine S. v. Umbach, 36 IDELR ¶ 63 (M.D. Ala. 2002); Barnard Sch. Dist. v. R.M., EHLR 555:263 (D. Vt. 1983).

[13] Hansen v. Republic R-III Sch. Dist., 632 F.3d 1024 (8th Cir. 2011); Babb v. Knox Cty. Sch. Sys., 965 F.2d 104 (6th Cir. 1992); A.A. v. District of Columbia, 70 IDELR ¶ 21 (D.D.C. 2017); Horne v. Potomac Preparatory P.C.S., 209 F. Supp. 3d 146 (D.D.C. 2016); Venus Indep. Sch. Dist. v. Daniel S., 36 IDELR ¶ 185 (N.D. Tex. 2002); Lapides v. Coto, EHLR 559:387 (N.D. Cal. 1988); *cf*. Pohorecki v. Anthony Wayne Local Sch. Dist., 637 F. Supp. 2d 547 (N.D. Ohio 2009) (confirming district's classification as reasonable rather than autism).

[14] R.B. v. Napa Valley Sch. Dist., 496 F.3d 932 (9th Cir. 2007); Springer v. Fairfax Cty. Sch. Dist., 134 F.3d 659 (4th Cir. 1998); P.C. v. Oceanside Union Free Sch. Dist., 818 F. Supp. 2d 516 (E.D.N.Y. 2011); W.G. v. N.Y.C. Dep't of Educ., 801 F. Supp. 2d 142 (S.D.N.Y 2011); Torrance Unified Sch. Dist. v. E.M., 51 IDELR ¶ 11 (E.D. Cal. 2008); Brendan K. v. Easton Area Sch. Dist., 47 IDELR ¶ 249 (E.D. Pa. 2007); Katherine S. v. Umbach, 36 IDELR ¶ 63 (M.D. Ala. 2002).

[15] Muller v. Comm. on Special Educ., 145 F.3d 95 (2d Cir. 1998); A.A. v. District of Columbia, 70 IDELR ¶ 21 (D.D.C. 2017); Horne v. Potomac Preparatory P.C.S., 209 F. Supp. 3d 146 (D.D.C. 2016); L.J. v. Pittsburg Unified Sch. Dist., 63 IDELR ¶ 133 (N.D. Cal. 2014), *aff'd on other grounds*, 835 F.3d 1168 (9th Cir. 2016); G.H. v. Great Valley Sch. Dist., 61 IDELR ¶ 63 (E.D. Pa. 2013); Eschenasy v. N.Y.C. Dep't of Educ., 604 F. Supp. 2d 639 (S.D.N.Y. 2009); N.G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008); Torrance Unified Sch. Dist. v. E.M., 51 IDELR ¶ 11 (E.D. Cal. 2008); Brendan K.

v. Easton Area Sch. Dist., 47 IDELR ¶ 249 (E.D. Pa. 2007); Lincoln Cty. Sch. Dist. v. A.A., 39 IDELR ¶ 185 (D. Or. 2003); Venus Indep. Sch. Dist. v. Daniel S., 36 IDELR ¶ 185 (N.D. Tex. 2002); Johnson v. Metro Davidson Cty. Sch. Sys., 108 F. Supp. 2d 906 (M.D. Tenn. 2000); Lapides v. Coto, EHLR 559:387 (N.D. Cal. 1988); *cf.* Anaheim Union High Sch. Dist. v. J.E., 61 IDELR ¶ 107 (E.D. Cal. 2013) (child find based on § 504 behaviors, including attempted suicide); J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635 (S.D.N.Y. 2011) ("might qualify"); Pohorecki v. Anthony Wayne Local Sch. Dist., 637 F. Supp. 2d 547 (N.D. Ohio 2009) (confirming district's classification as reasonable rather than autism).

[16] Mr. and Mrs. N.C. v. Bedford Cent. Sch. Dist., 300 F. App'x 11 (2d Cir. 2008); R.B. v. Napa Valley Sch. Dist., 496 F.3d 932 (9th Cir. 2007); Katherine S. v. Umbach, 36 IDELR ¶ 63 (M.D. Ala. 2002); *cf.* P.C. v. Oceanside Union Free Sch. Dist., 818 F. Supp. 2d 516 (E.D.N.Y. 2011) (at least not at the requisite level); W.G. v. N.Y.C. Dep't of Educ., 801 F. Supp. 2d 142 (S.D.N.Y 2011) (attributable to social maladjustment).

[17] Muller v. Comm. on Special Educ., 145 F.3d 95 (2d Cir. 1998); A.A. v. District of Columbia, 70 IDELR ¶ 21 (D.D.C. 2017); Horne v. Potomac Preparatory P.C.S., 209 F. Supp. 3d 146 (D.D.C. 2016); G.H. v. Great Valley Sch. Dist., 61 IDELR ¶ 63 (E.D. Pa. 2013); Eschenasy v. N.Y.C. Dep't of Educ., 604 F. Supp. 2d 639 (S.D.N.Y. 2009); N.G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008); R.C. v. York Sch. Dep't, 51 IDELR ¶ 68 (D. Me. 2008), *magistrate's recommendation adopted*, 51 IDELR ¶ 217 (D. Me. 2008); N.G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008); Brendan K. v. Easton Area Sch. Dist., 47 IDELR ¶ 249 (E.D. Pa. 2007); Lincoln Cty. Sch. Dist. v. A.A., 39 IDELR ¶ 185 (D. Or. 2003); Lapides v. Coto, EHLR 559:387 (N.D. Cal. 1987); *cf.* Pohorecki v. Anthony Wayne Local Sch. Dist., 637 F. Supp. 2d 547 (N.D. Ohio 2009) (confirming district's classification as reasonable rather than autism and only partial to extent of "depressive tendencies").

[18] Mr. and Mrs. N.C. v. Bedford Cent. Sch. Dist., 300 F. App'x 11 (2d Cir. 2008); Springer v. Fairfax Cty. Sch. Dist., 134 F.3d 659 (4th Cir. 1998); W.G. v. N.Y.C. Dep't of Educ., 801 F. Supp. 2d 142 (S.D.N.Y 2011); Torrance Unified Sch. Dist. v. E.M., 51 IDELR ¶ 11 (E.D. Cal. 2008); Katherine S. v. Umbach, 36 IDELR ¶ 63 (M.D. Ala. 2002); Doe v. Sequoia Union High Sch. Dist., EHLR 559:133 (N.D. Cal. 1987).

[19] Venus Indep. Sch. Dist. v. Daniel S., 36 IDELR ¶ 185 (N.D. Tex. 2002).

[20] P.C. v. Oceanside Union Free Sch. Dist., 818 F. Supp. 2d 516 (E.D.N.Y. 2011); Brendan K. v. Easton Area Sch. Dist., 47 IDELR ¶ 249 (E.D. Pa. 2007); Katherine S. v. Umbach, 36 IDELR ¶ 63 (M.D. Ala. 2002).

[21] 34 C.F.R.§ 300.8(c)(4)(i).

[22] Muller v. Comm. on Special Educ., 145 F.3d 95 (2d Cir. 1998); Lauren G. v. W. Chester Area Sch. Dist., 906 F. Supp. 2d 375 (E.D. Pa. 2012); Reg'l Sch. Dist. No. 9 v. Mr. and Mrs. M., 53 IDELR ¶ 8 (D. Conn. 2009); R.C. v. York Sch. Dep't, 51 IDELR ¶ 68 (D. Me. 2008), *magistrate's recommendation adopted*, 51 IDELR ¶ 217 (D. Me. 2008); Lincoln Cty. Sch. Dist. v. A.A., 39 IDELR ¶ 185 (D. Or. 2003); Johnson v. Metro Davidson Cty. Sch. Sys., 108 F. Supp. 2d 906 (M.D. Tenn. 2000); *cf.* Moore v. Hamilton Se. Sch. Dist., 61 IDELR ¶ 283 (S.D. Ind. 2013) (preserved negligence per se claim based on IDEA for further proceedings).

[23] Mr. P. v. W. Hartford Bd. of Educ., 885 F.3d 735 (2d Cir. 2018); R.B. v. Napa Valley Sch. Dist., 496 F.3d 932 (9th Cir. 2007) (for criterion 1d); J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635 (S.D.N.Y. 2011); P.C. v. Oceanside Union Free Sch. Dist., 818 F. Supp. 2d 516 (E.D.N.Y. 2011); Torrance Unified Sch. Dist. v. E.M., 51 IDELR ¶ 11 (E.D. Cal. 2008); St. Joseph-Ogden Cmty. High Sch. Dist. No. 305 v. Janet W., 49 IDELR ¶ 125 (C.D. Ill. 2008) (for criterion 1c); Brendan K. v. Easton Area Sch. Dist., 47 IDELR ¶ 249 (E.D. Pa. 2007) (for criteria 1c and 1d); *cf.* Hoffman v. E. Troy Sch. Dist., 38 F. Supp. 2d 750 (E.D. Wis. 1999) (child find in relation to severity standard in state law).

[24] 34 C.F.R. § 300.8(c)(4)(i). This criterion connects with criterion #5, which effectively provides the extent of this adverse effect.

[25] Indep. Sch. Dist. No. 283 v. E.M.D.H., 357 F. Supp. 3d 876 (D. Minn. 2019); A.A. v. District of Columbia, 70 IDELR ¶ 21 (D.D.C. 2017); M.M. v. N.Y.C. Dep't of Educ., 26 F. Supp. 3d 249

(S.D.N.Y. 2014); L.J. v. Pittsburg Unified Sch. Dist., 63 IDELR ¶ 133 (N.D. Cal. 2014), *aff'd on other grounds*, 835 F.3d 1168 (9th Cir. 2016); Eschenasy v. N.Y.C. Dep't of Educ., 604 F. Supp. 2d 639 (S.D.N.Y. 2009); N.G. v. District of Columbia, 556 F. Supp. 2d 11 (D.D.C. 2008); Venus Indep. Sch. Dist. v. Daniel S., 36 IDELR ¶ 185 (N.D. Tex. 2002); Johnson v. Metro Davidson Cty. Sch. Sys., 108 F. Supp. 2d 906 (M.D. Tenn. 2000); Lapides v. Coto, EHLR 559:387 (N.D. Cal. 1987); *cf*. Bd. of Educ. v. S.G., 230 F. App'x 330 (4th Cir. 2007) (concluding that the absences were relevant factor based on school environment impacted the student's schizophrenia).

[26] Mr. and Mrs. N.C. v. Bedford Cent. Sch. Dist., 300 F. App'x 11 (2d Cir. 2008); C.J. v. Indian River Cty. Sch. Dist., 107 F. App'x 893 (11th Cir. 2004); J.D. v. Pawlet Sch. Dist., 224 F.3d 60 (2d Cir. 2000*);* D.H.H. v. Kirbyville Consol. Indep. Sch. Dist., 75 IDELR ¶ 4 (E.D. Tex. 2019); E.L. Haynes Pub Charter Sch. v. Frost, 66 IDELR ¶ 287 (D.D.C. 2015); G.H. v. Great Valley Sch. Dist., 61 IDELR ¶ 63 (E.D. Pa. 2013); R.C. v. York Sch. Dep't, 51 IDELR ¶ 68 (D. Me. 2008), *magistrate's recommendation adopted*, 51 IDELR ¶ 217 (D. Me. 2008); Tracy v. Beaufort Cty. Bd. of Educ., 335 F. Supp. 2d 675 (D.S.C. 2004) (child find); Doe v. Bd. of Educ., 753 F. Supp. 65 (D. Conn. 1990); Paul T. v. S. Huntington Union Free Sch. Dist., 14 N.Y.S.3d 627 (Sup. Ct., Suffolk Cty. 2015); *cf.* Sch. Bd. v. Rose, 133 F. Supp. 3d 803 (E.D. Va. 2015); Nguyen v. District of Columbia, 681 F. Supp. 2d 49 (D.D.C. 2010) (concluding that other factors were the causal links); Tracy v. Beaufort Cty. Sch., 335 F. Supp. 2d 675 (D.S.C. 2004).

[27] The specific language of this circular exclusion, which is akin to a Venn diagram of two overlapping ovals, is as follows: "The term [ED] does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance [as defined via the stated criteria]. 34 C.F.R. § 300.8(c)(4)(ii). Schizophrenia, as compared with pure social maladjustment, is not a disqualifying condition. *Id.* Conversely, autism does not apply if a child's educational performance is adversely affected primarily because the child has an ED. *Id*. § 300.8(c)(1)(ii).

Alternatively, as the matter of the sequence of items in the checklist, this exclusionary criterion could be first, except that determining its sole role would seem to require tracking the overlapping criteria here listed before it. Alternatively, the child could be both socially maladjusted and ED but the adverse effect could be attributable to either one alone, thus fitting in criteria ## 4 and/or 5. This alternative interpretation arguably is more sensible. *E.g*., W.G. v. N.Y.C. Dep't of Educ., 801 F. Supp. 2d 142, 169 (S.D.N.Y 2011) ("This somewhat circular sounding qualifier would be meaningless if simple demonstration of the criteria and adverse academic performance were sufficient in all cases to warrant the emotional disturbance disability classification").

Finally, in an occasional state, social maladjustment is either a separate eligibility classification or not an exclusion under the definition of ED. *E.g*., CAL. CODE REGS., tit. 5, § 3030; IND. ADMIN. CODE 7-41-7; IOWA ADMIN. CODE r. 41.50(2); MINN. R. 3525.1329; N.J. ADMIN. CODE 6A-14-3.5(c)(11); WIS. ADMIN. CODE (P1) § 11.36. For other state laws that exclude but define social maladjustment, see, e.g., TENN. COMP. R. & REGS. 0520-01-09-.02; VT. CODE R. § 2362.1(c)(2). For a proposal to eliminate the exclusion in the IDEA, see Carolyn Mason, *The Social Maladjustment Exclusion*, 19 U.D.C. L. REV. 91 (2016).

[28] Springer v. Fairfax Cty. Sch. Dist., 134 F.3d 659 (4th Cir. 1998); A.E. v. Indep. Sch. Dist. No. 25, 936 F.2d 472 (10th Cir. 1991); W.G. v. N.Y.C. Dep't of Educ., 801 F. Supp. 2d 142 (S.D.N.Y 2011); Doe v. Sequoia Union High Sch. Dist., EHLR 559:133 (N.D. Cal. 1987) (adverse effect attributable to social maladjustment); *cf.* Mr. and Mrs. N.C. v. Bedford Cent. Sch. Dist., 300 F. App'x 11 (2d Cir. 2008) (concluding that the inappropriate behavior was more consistent with social maladjustment than ED); Brendan K. v. Easton Area Sch. Dist., 47 IDELR ¶ 249 (E.D. Pa. 2007) (following *Springer* but then alternatively proceeding to non-solely analysis); Tracy v. Beaufort Cty. Bd. of Educ., 335 F. Supp. 2d 675 (D.S.C. 2004) (child find); Mars Area Sch. Dist. v. Laurie L., 827 A.2d 1249 (Pa. Commw. Ct. 2003) (concluding that the student was socially maladjusted, not ED).

[29] Hansen v. Republic R-III Sch. Dist., 632 F.3d 1024 (8th Cir. 2011) (adverse effect attributable to ED and OHI); H.M. v. Weakley Cty. Bd. of Educ., 65 IDELR ¶ 68 (W.D. Tenn. 2015); Lincoln Cty.

Sch. Dist. v. A.A., 39 IDELR ¶ 185 (D. Or. 2003) (not the cause); *cf.* Indep. Sch. Dist. No. 284 v. A.C., 258 F.3d 769 (8th Cir. 2001) (rejected exclusion within context of FAPE placement issue).

[30] More specifically, the wording of the regulations is: "by reason thereof needs special education and related services." 34 C.F.R. § 300.8(a). As aforementioned (*supra* note 24), this criterion interrelates with criterion #3.

[31] L.J. v. Pittsburg Unified Sch. Dist., 850 F.3d 966 (9th Cir. 2017); Pocono Mountain Sch. Dist. v. T.D., 72 IDELR ¶ 186 (M.D. Pa. 2018); M.M. v. N.Y.C. Dep't of Educ., 26 F. Supp. 3d 249 (S.D.N.Y. 2014); Venus Indep. Sch. Dist. v. Daniel S., 36 IDELR ¶ 185 (N.D. Tex. 2002); *cf.* Moore v. Hamilton Se. Sch. Dist., 61 IDELR ¶ 283 (S.D. Ind. 2013) (preserving for trial and only indirectly via the evaluation issue for negligence per se); Johnson v. Metro. Davidson Cty. Sch. Sys., 108 F. Supp. 2d 906 (M.D. Tenn. 2000) (implicit based on adverse effect without separate ruling on this criterion).

[32] D.L. v. Clear Creek Indep. Sch. Dist., 695 F. App'x 733 (5th Cir. 2017); C.J. v. Indian River Cty. Sch. Dist., 107 F. App'x 893 (11th Cir. 2004); M.N. v. Katonah-Lewisboro Union Free Sch. Dist., 68 IDELR ¶ 158 (S.D.N.Y. 2015); *cf.* Springer v. Fairfax Cty. Sch. Dist., 134 F.3d 659 (4th Cir. 1998) (lack of causal connection); Munir v. Pottsville Area Sch. Dist., 59 IDELR ¶ 35 (M.D. Pa. 2012) (child find), *aff'd on other grounds*, 723 F.3d 423 (3d Cir. 2103); J.S. v. Scarsdale Union Free Sch. Dist., 826 F. Supp. 2d 635 (S.D.N.Y. 2011) (cryptic analysis).