



**School Mental Health
and the Expert Witness –
A Primer for Mental Health
and Education Professionals**

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What is an
expert witness?

A fact witness testifies
to factual evidence
that she/he has witnessed

An expert witness goes beyond the facts and bases opinions on other data (e.g. other professionals' documents)

The overriding duty of an expert witness is to provide independent, impartial and unbiased evidence to the court or tribunal.

For whom am I working?
(And who's paying the bill?)

Contingency fees are
unethical

**A role of consultation
paired with teaching**

Bridging the gap
between the law
and one's specialty

What qualifications
are required
to be an expert
witness?

The legal requirements
for being an expert witness
are fairly minimal

According to Federal
Rule of Evidence 702,
expert witnesses must have
“knowledge, skill, experience,
training, or education” ...

which will “help the trier of fact to understand the evidence or to determine a fact in issue.”

Note the conjunction “or.”
Under Rule
702, the expert only needs to
have
“knowledge”, “skill”,
“experience”,
“training”, OR “education”.

A witness who is qualified
as an expert by knowledge,
skill, experience, training, or
education
may testify in the form of an
opinion or otherwise if:

-The expert's scientific,
technical,
or other specialized knowledge
will help the trier of fact to
understand the evidence or
to determine a fact in issue;

-The testimony is based on sufficient facts or data;

-The testimony is the product of reliable principles and methods; and

-The expert has reliably applied the principles and methods to the facts of the case.

In most civil cases, the legal requirements for stating an expert opinion is related directly to the burden of proof that exists.

That burden of proof is a
“preponderance of the
evidence,”

“more likely than not,” or “more
than 50% likely.”

This is a much lesser burden of proof than the “beyond a reasonable doubt” standard with criminal cases.

Experts can expect to be
closely

questioned on their opinions,
how they were formed, and the
facts and data upon which they
are based

**Federal Rule of Civil Procedure
26(a)(2)(B)(i)-(vi) governs the
requirements for expert reports
in civil cases:**

-A complete statement of all opinions the witness will express and the basis and reasons for them;

**-The facts or data
considered by the
witness in forming
them;**

**-Any exhibits that will
be used to summarize
or support them;**

**-The witness's qualifications,
including a list of all
publications
authored in the previous 10
years;**

-A list of all other cases in
which,
during the previous 4 years,
the witness testified as an
expert
at trial or by deposition; and

-A statement of the
compensation
to be paid for the study and
testimony in the case.

There are corresponding provisions for the government and the defendant which require the expert to provide a “written summary of any testimony” ...

which includes the
“witness’s
opinions, the bases
and reasons
for those opinions, and the
witness’s qualifications.”

Indicating when and
by whom your report
was requested

Including the date you
received the documents
and formed your opinion

Stating that you may
have additional opinions
or updated/revised opinions
if new information/
documents
are provided

Including a summary of
your conclusions/opinions

An expert witness should
have:

- Familiarity with legal issues
and context of the case

**-Ability to formulate a
relevant opinion**

**-Ability to testify and to
withstand cross examination**

- The ability to meet deadlines.
- A competitive spirit and commitment to excellence

- A lack of skeletons in
your closet
- Being thick skinned

**-Good communication
skills**

**-Organizational, investigative,
and research skills**

Daubert test:

-Whether the expert's technique or theory can be or has been tested

**-Whether the technique
or theory has been
subject to peer review
and publication**

**-The known or potential
rate of error of the
technique or theory
when applied**

**-The existence and
maintenance of
standards
and controls**

-Whether the technique
or theory has been
generally accepted in
the scientific community

In the realm of school
mental health, both educational
professionals and mental
health
professionals may become
expert
witnesses in their field

**Types of cases where
an educational professional
may be an expert witness:**

Negligence in:

- Student suicide case
 - Re: duty to inform
- In sexual misconduct

-Special education admissibility

**-Sexually hostile classroom
environment**

- Student violence
- Educational assessment
- Availability of resources

-Staff hiring and dismissal

-Staff promotions

Education professionals may be teachers, principals, special education directors, school counselors, psychologists, social workers, nurses, behavior analysts, autism specialists, etc.

Types of cases where a mental health professional may be an expert witness:

-Negligence in suicide,
sexual misconduct, etc.

-Assessment of dangerousness

-Placement in (and payment
for)
residential treatment

-Restrictiveness of placement

- Accommodations and modifications**
- Diagnostic clarification**
- Staff employment and mental illness**

Rules of Thumb:

- Don't devalue your expertise just because you haven't spent years doing this

Assuming that you have the
qualifications. you have to
start somewhere

**-Don't be intimidated by the
expertise of the opposing
expert witness**

**-Obtain all available
pertinent records:
Mental Health
Medical
Social Services
Education
Corrections
Etc.**

Remember:

**You will probably be the
only person who has
read the whole file**

The longer a student has had emotional/behavioral problems, the thicker the files and the less likely that anyone has reviewed all the records

Surprises may be in store!

Gain experience working
for both plaintiff and
defendant's attorneys.
Don't be a hired gun

Avoid conflict of interest
E.g. being a paid expert
witness on a case in which
you are involved in
another capacity

Obtain a reasonable
retainer and bill for
all of your time

Be aware of attorney's tricks
re: attacking your expertise

Know how to respond
effectively

- Devaluing your field
(e.g. “Voodoo”)
- Series of “Yes” answers
 - Oversimplifying
 - Yes/No questions
 - Authoritative text

-How many cases?

-(If few= incompetent,
if many= hired gun)

Personal attacks
should make you
feel good:
They have nothing
to attack but you

Professional Demeanor

Cheerful

Confident

Competent

Unbiased

Your Report:

- Write a comprehensive and detailed report
- Remain within your area of expertise

- Clearly articulate your reasoning
- Maintain objectivity and neutrality
- Communicate without unnecessary jargon
- Know how to clarify issues with laypeople

Case example #1:

- Parents wanting the school district to fund both the educational and the mental health costs of residential treatment

16 year old young man
with psychosis and ASD.

Parents requested a special education evaluation, but this was not done. He deteriorated, was hospitalized and then went to RTC

Case example #2:

- Parents wanting the school district to fund both the educational and the mental health costs of residential treatment

15 year old young man who
had a history of multiple
psychiatric diagnoses and
treatments

A review of his files,
though, indicated a year in
RTC off meds where he
was noted to
manifest no diagnoses.

Case example #3:

14 year old young woman
with significant cognitive
impairment who was
repeatedly

molested by an antisocial male
teenager on school grounds

**District was accused of
negligence**

Case example #4:

11 year old girl who was fondled on the school bus.

The District was accused of negligence

Case example #5:

Clarification of diagnoses
as they relate to a student's
educational needs

12 year old young woman
with a history of numerous
diagnosis. File review
supported the diagnosis of
PANDAS, a diagnosis that
had not been made

(Pediatric Autoimmune
Neuropsychiatric Disorders
Associated with
Streptococcal Infections)

Case example #6:
Teacher was suspended
due to behavior that was
purported to be due to a
mental health disorder

Case Example #7:

Assessment of dangerousness

15 year old young man who

posted a picture of a gun

with the message, “I’m

bringing this to school on

Monday. You’re all dead.”

Case Example #8:

15 year old young woman with multiple problems at home but few problems at school. An educational evaluation concluded that she did not qualify for special education services

How to become an expert witness

**-Find an area of
your field that
interests you**

-Write articles

- Do research
- Give presentations
- Have a website
- Network

Good luck!

