



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

# 2018 CSMH Conference

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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!**

