



Summary of Rule Change for Emotional Behavioral Disability

The following is a summary of the changes to Section 1 PI 11.36 (7) of the Wisconsin Administrative Rule addressing identification for Emotional Behavioral Disability (EBD). Individualized Education Program (IEP) teams must use the new criteria to identify an emotional behavioral disability for referrals for special education dated on or after December 1, 2021. The updated rule may be found at [Wisconsin Legislature CR 20-073 Rule Text](#).

Urgent Need for Change

Given the high stakes of determining whether any student, in particular students from inequitably and underserved groups, has an Emotional Behavioral Disability, IEP teams need to be vigilant about making accurate, disability category determinations and have strategies and systems in place to address potential bias throughout the evaluation process. Between 2010 and 2020, Black students, Indigenous students, and students identified as two or more races were twice as likely to be labeled as having an Emotional Behavioral Disability in Wisconsin. In addition, during the 2018-2019 school year, Black students made up 9.1% of the total student population but 17.3% of students labeled with an emotional behavioral disability.

Being identified as a student with emotional behavioral disability is perhaps the most consequential label that can be placed on a child. Students labeled with an emotional behavioral disability receive less positive feedback and more negative feedback than their peers and are much more likely to be suspended or expelled from school. In nearly all postsecondary outcomes measured, students identified as having an emotional behavioral disability fare worse than their peers, including income, employment, independent living and participating in postsecondary education. If you are a non-white student who is labeled with an emotional behavioral disability, you face even more barriers. Seventy five percent of black students identified as having an emotional behavioral disability have been suspended at least once.

The solution to this problem of systemically contributing to the school-to-prison pipeline is not to stop identifying students with an emotional behavioral disability. Nor is the solution solely to learn about, discuss and aspire to culturally responsive practices. Indeed, a student can be subjected to systemic racism, trauma, or experience a lack of access to resources AND have an emotional behavioral disability. The solution is complex, but it involves conducting evaluations that incorporate Culturally Responsive and Trauma Sensitive Practices within an objective data-based decision making process.

Definition in Rule

The language in the rule was revised and condensed for clarity and objectivity, as well as to make the rule less ambiguous and subjective. Thus, the rule revision:

- Reworded language throughout the rule to more closely align with the federal definition described in the Individuals with Disabilities Education Act (IDEA).
- Added consideration of “sudden onset due to an emerging mental health condition” to allow for circumstances when there may be a high frequency or intensity of observable behaviors over a shorter period of time or multiple acute episodes. A diagnosis of a mental health condition by a licensed mental health professional is not required if the condition of ‘long period of time’ has been met; nor is a diagnosis by a licensed mental health professional sufficient evidence of an emotional behavioral disability. If the student has a diagnosis by a licensed mental health professional, the IEP team will document and consider the diagnoses while conducting the requirements in par. (c)1-7 to investigate whether the symptoms of the diagnoses are evident at school and adversely affect the student’s educational performance.
- Made explicit that behaviors occur in BOTH academic and non-academic settings in school. Observable behaviors are still required to occur in school and in the home or the community.

Clearly Defined Characteristics in the Rule

When considering an emotional behavioral disability, Wisconsin’s rule defines the characteristics in clearly defined, observable, and measurable terms.

- Deficit based language was removed and replaced with behaviors described in an objective, observable manner to limit impact of potential implicit or explicit bias by an individual or individuals on the IEP team, as well as to establish that the behavior is not in response to instruction, curriculum, or a specific setting. Objective assessment and analysis is vital in order to reduce extreme racial disproportionality in the identification of emotional behavioral disability between racial and ethnic groups in Wisconsin.
- Language changes were designed to focus assessments used for identifying an emotional behavioral disability on barriers to interpersonal relationships, academic progress, or the student’s access and engagement in instructional activities as well as the adverse effect on the student’s learning, academic achievement, or functional performance.
- IEP teams must document that the child exhibits one or more of the characteristics of an emotional behavioral disability through the added requirement of specific data sources and assessment practices.

Requirement of Objective Measurements and Data in Rule

Wisconsin’s rule requires objective assessments and data which allows teams to focus on the student’s strengths and disability-related needs, and limits subjectivity and potential bias.

In addition to collecting information on the whole child to make an identification of the disability category, as well as inform IEP development and not miss anything, assessments and data sources required to document the characteristics of an emotional behavioral disability are intended to:

- Increase objective, data-based decisions and reduce the influence of subjective or biased opinions regarding student's behavior.
- Ensure team has data related to the student's disability- related needs in order to develop an IEP.
- Ensure the preponderance of evidence supports and documents student meeting one or more of the seven characteristics of emotional behavioral disability.
- Acknowledge the impact of cultural and ecological factors on student social, emotional and behavioral functioning.
- Align evaluation activities with current best practices in:
 - Trauma Sensitive Schools
 - Student Mental Health
 - Culturally Responsive Practices
 - Equitable Multi Level Systems of Support
- Limit the impact of implicit bias and reduce reporter bias, in order to reduce the extreme racial disproportionality in the identification of an emotional behavioral disability in Wisconsin.

Additional Requirements in the Rule

Additional requirements were added to the rule which assist IEP teams to:

- Recognize that a trauma history or mental health disorder does not necessitate special education services, nor does it preclude a student from being eligible for special education services. Determining the impact of trauma or mental health disorder on the student's ability to access, engage, and make progress within the educational setting will be one of the tasks of the IEP team as they examine the potential identification of an emotional behavioral disability.
- Take into consideration the norms of the student's family and community, which include cultural and ethnic norms, so that IEP teams take into account the importance and influence of race, gender, sexual orientation, socioeconomic status, and other factors on a student's behavioral response. This requirement recognizes the importance of the student's real-world experiences, cultural and ethnic background, and cultural and ethnic influences. IEP teams are required to determine if the student's behavioral response is due to an emotional behavioral disability or primarily due to a mismatch between aspects of the student's home culture and the school culture.
- Provide an opportunity for student voice and student choice when making an identification whenever possible, by adding a specific staff member chosen by the student to provide adult perspective on the student's strengths and assets as well as reduce the impact of implicit or explicit bias and reporter bias.

For a side-by-side comparison of the previous rule and current rule, see the Revisions to Emotional Behavioral Disability Identification Comparison Chart - Side by Side or Revisions to Emotional Behavioral Disability Identification Comparison Chart - Alternate Format.