

The following is a summary of the key changes to Section 11.36 (7) of the Wisconsin Administrative Rule addressing the identification for Emotional Behavioral Disability. 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](#).

Definition in Rule

Previous Rule

(a) Emotional behavioral disability, pursuant to s. 115.76 (5) (a) 5., Stats., means social, emotional or behavioral functioning that so departs from generally accepted, age appropriate ethnic or cultural norms that it adversely affects a child's academic progress, social relationships, personal adjustment, classroom adjustment, self-care or vocational skills.

(b) The IEP team may identify a child as having an emotional behavioral disability if the child meets the definition under par. (a), and meets all of the following:

1. The child demonstrates severe, chronic and frequent behavior that is not the result of situational anxiety, stress or conflict.
2. The child's behavior described under par. (a) occurs in school and in at least one other setting.

Revised Rule

(a) Emotional behavioral disability, pursuant to s. 115.76 (5) (a) 5., Stats., means a condition in which a child demonstrates frequent and intense observable behaviors, either over a long period of time or of sudden onset due to an emerging mental health condition which includes a diagnosis by a licensed mental health professional, which adversely affects the child's educational performance. The behaviors shall occur in an academic setting in school, in a non-academic setting in school and in the child's home or community.

Summary and Plain Language Description of Changes

The definition was revised and condensed for improved clarity and objectivity.

- Removed "so departs" and "generally accepted" to make language less ambiguous and subjective.

Revisions to Emotional Behavioral Disability Impairment Identification - Comparison with Plain Language: October 2021

- “Severe” and “chronic” were reworded to “intense” and “long period of time”, which more closely aligns to IDEA definition.
- 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.
- Academic progress, social relationships, personal adjustment, classroom adjustment, self-care, vocational skills replaced with “educational performance”. Specific areas that were removed from this paragraph are now addressed more objectively in (b)1-7.
- Made explicit that behaviors occur in BOTH academic and non-academic settings in school. Behaviors still required to occur in school and home or community.

Characteristic in Rule

Previous Rule

3. The child displays any of the following:

Revised Rule

(b) The IEP team may identify a child as having an emotional behavioral disability under par. (a) if the child exhibits at least one of the following:

Summary and Plain Language Description of Changes

- Change in language with the removal of the specific areas from par. (a) which are now addressed more objectively in par. (b)1-7.
- IEP teams must document that the child exhibits one or more of the characteristics through the added requirement of specific data sources and assessment practices found in par. (c).

Characteristic in Rule

Previous Rule

- a. Inability to develop or maintain satisfactory interpersonal relationships.

Revised Rule

1. Behaviors that interfere with the development and maintenance of age and grade appropriate interpersonal relationships.
-

Summary and Plain Language Description of Changes

- Removed deficit-based language of “inability”, which presumes or infers an unfixable problem and replaced with “behaviors that interfere” to focus assessments on barriers to relationship development.
- Removed “satisfactory” from language to make less ambiguous and subjective, and replaced with more objective “age and grade expectations” to reduce the impact of implicit or explicit bias in identification of an emotional behavioral disability.

Characteristic in Rule

Previous Rule

- b. Inappropriate affective or behavior response to a normal situation
-

Revised Rule

2. Observable affective or behavioral responses during routine daily activities inconsistent with the norms of the child or the child’s community.
-

Summary and Plain Language Description of Changes

- Removed subjective and ambiguous language, “inappropriate” and “normal” and replaced with “observable,” ensuring measurable behaviors are considered to enable more objective assessments when identifying an emotional behavioral disability.
- Added additional language to ensure consideration of the norms of the child and child’s community, including cultural and ethnic norms, and how they interact with the norms and culture of the school and classroom.

Characteristic in Rule

Previous Rule

Revisions to Emotional Behavioral Disability Impairment Identification - Comparison with Plain Language: October 2021

c. Pervasive unhappiness, depression or anxiety.

Revised Rule

3. Pervasive unhappiness, depression or anxiety.

Summary and Plain Language Description of Changes

- Unchanged

Characteristic in Rule

Previous Rule

d. Physical symptoms, pains or fears associated with personal or school problems.

Revised Rule

4. Physical symptoms or fears associated with personal or school problems.

Summary and Plain Language Description of Changes

- Removed “pains” as pains fall under the category of “physical symptoms”.

Characteristic in Rule

Previous Rule

e. Inability to learn that cannot be explained by intellectual, sensory or health factors.

Revised Rule

Revisions to Emotional Behavioral Disability Impairment Identification - Comparison with Plain Language: October 2021

5. Insufficient progress toward meeting age or grade level academic standards that cannot be explained by intellectual, sensory, or health factors.

Summary and Plain Language Description of Changes

- Removed deficit-based language, “inability to learn”, which infers an unfixable problem. Language change is designed to focus assessment on barriers to academic progress that may be present within the instruction, curriculum and educational environment.
- Added language to require measuring progress toward academic standards as a more objective and observable characteristic.
- Maintained specificity of “intellectual, sensory or health factors”, which aligns with IDEA definition, and to ensure IEP teams consider these factors as part of a comprehensive special education evaluation.

Characteristic in Rule

Previous Rule

f. Extreme withdrawal from social interactions

Revised Rule

6. Isolation from peers or avoidance of social interactions impacting the child’s access and engagement in instructional activities.

Summary and Plain Language Description of Changes

- Removed “extreme” to make language less ambiguous and subjective.
- Replaced “withdrawal from social interactions” to more clearly define observable behaviors, ensuring measurable behaviors are considered to enable more objective assessments when identifying an emotional behavioral disability.
- Added language to focus assessments on the impact of isolation and avoidance as a barrier to the student’s access and engagement in instructional activities, and the adverse effect on the student's learning, academic achievement or functional performance.

Characteristic in Rule

Previous Rule

g. Extreme aggressiveness for a long period of time.

Revised Rule

7. Patterns of behaviors across settings and individuals presenting risks to the physical safety of the child or others.

Summary and Plain Language Description of Changes

- Removed “extreme” to make language less ambiguous and subjective.
- Replaced “aggressiveness” with observable, measurable language to encourage more objective evaluations when making decisions on disability identification.
- Included “patterns of behavior across settings and individuals” 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 a specific setting, individual or relationship. This objective assessment and analysis of patterns are vital in order to reduce extreme racial disproportionality in the identification of emotional behavioral disability between racial and ethnic groups in Wisconsin.

Characteristic in Rule

Previous Rule

h. Other inappropriate behaviors that are so different from children of similar age, ability, educational experiences and opportunities that the child or other children in a regular or special education program are negatively affected.

Revised Rule

Removed

Summary and Plain Language Description of Changes

Revisions to Emotional Behavioral Disability Impairment Identification - Comparison with Plain Language: October 2021

- Removed due to ambiguity of the language and high potential that implicit or explicit bias, stereotypes or cultural differences could result in inappropriate identification and disproportionate representation of racial and ethnic groups.

Requirements in Rule

Previous Rule

(c) The IEP team shall rely on a variety of sources of information, including systematic observations of the child in a variety of educational settings and shall have reviewed prior, documented interventions. If the IEP team knows the cause of the disability under this paragraph, the cause may be, but is not required to be, included in the IEP team's written evaluation summary.

Revised Rule

- (c) The IEP team shall conduct a comprehensive evaluation and shall consider current data from all of the following:
1. The results of evidence-based positive behavioral interventions implemented within general education settings.
 2. Systematic observations of the child in both academic and non-academic settings documenting intensity, frequency, rate or duration of observable target behaviors, as well as other ecological factors that may be impacting the child's behavior.
 3. Interviews of the child and parent or family that include gathering information regarding the child and family's norms and values, as well as other ecological factors that may impact the child's behavior.
 4. Interviews of the child's teachers that include gathering information regarding the child's strengths and ecological factors that may impact the child's behavior.
 5. Interview of an LEA staff member, identified by the child, when possible, as having the most positive or a positive relationship with the child, that includes gathering information regarding the child's strengths and ecological factors that may impact the child's behavior. This subdivision does not apply if the LEA staff member described in this subdivision has already been interviewed under subd. 4.
 6. Review of educational information maintained by the LEA, including health, academic and disciplinary records.
 7. Results of standardized behavior rating scales, which are normed using nationally representative samples, from a minimum of two sources from school and one source from the home or community. If only one source from the school is familiar enough with the student to obtain valid rating scale results, as defined by publisher recommendations for the individual rating scale, then that shall be documented in the evaluation report. Nationally normed behavior rating scales shall include, when available, normative

Revisions to Emotional Behavioral Disability Impairment Identification - Comparison with Plain Language: October 2021

data that reflects the child's background. If the child's background is not included in the normative data of a standardized rating scale used, the evaluation report shall include an explanation.

Summary and Plain Language Description of Changes

- Added the requirement of specific data sources and assessment practices to enable more objective decisions, limit the use of subjective data and information, minimize impact of implicit and explicit bias on team decisions, reduce ambiguity and assist IEP teams in identifying the disability criteria of emotional behavioral disability.
- Required data sources and assessment activities ensure teams have enough objective data to determine if the student meets criteria for an emotional behavioral disability, identify disability-related needs and develop the student's IEP.
- Ensuring multiple specific data sources and data collection methods provides IEP teams with the ability to determine whether the preponderance of evidence documents and supports the identification of an emotional behavioral disability. This is an important factor in reducing the extreme racial disproportionality in emotional behavioral disability identifications.
- Required data sources and assessment practices better align with current trauma sensitive, mental health, Positive Behavior Interventions and Supports (PBIS) best practices.
- Providing, monitoring and documenting evidence-based positive behavioral interventions and monitoring their progress for a student suspected of having an emotional behavioral disability provides the IEP team with information and data that are critical for determining whether or not a student has an emotional behavioral disability and to identify the student's unique needs.
- Required observations across settings to take into consideration the impact of instruction, curriculum, environment, relationships, and other factors on a student's behavior. Observations across settings identify functions and patterns of behavior by considering when, where and under what conditions behaviors do and do not occur.
- Required interviews with multiple individuals allow for direct input from the student and family, and the consideration of the ethnic and cultural norms of the student and their family including how a student's culture may be reflected in both the absence or presence of behaviors.

Additional Requirements in Rule

Previous Rule

(d) The IEP team may not identify or refuse to identify a child as a child with an emotional behavioral disability solely on the basis that the child has another disability, or is socially maladjusted, adjudged delinquent, a dropout, chemically dependent, or a child whose

Revisions to Emotional Behavioral Disability Impairment Identification - Comparison with Plain Language: October 2021

behavior is primarily due to cultural deprivation, familial instability, suspected child abuse or socio-economic circumstances, or when medical or psychiatric diagnostic statements have been used to describe the child's behavior.

Revised Rule

(d) The IEP team shall consider the effects of any known history of trauma or mental health disorder on the child's functioning. The IEP team may not identify or refuse to identify a child as a child with an emotional behavioral disability based solely on a known history of trauma or mental health disorder.

Summary and Plain Language Description of Changes

- Removed language that is subjective and deficit-based.
- Added language that recognizes 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.
- Removed "social maladjustment" as there is no clear definition in IDEA and therefore may be difficult to differentiate between social maladjustment and emotional behavioral disability which leads to inconsistency in the identification of an emotional behavioral disability. The primary focus should be whether the student demonstrates frequent and intense observable behaviors, either over a long period of time or of sudden onset due to an emerging mental health condition which adversely affects the student's educational performance.

Additional Requirements in Rule

Previous Rule

Not included in the previous rule.

Revised Rule

(e) The IEP team shall discuss and determine, based on information and data collected in par. (c), whether behaviors are a result of a difference between the norms of the child's family and community or an emotional behavioral disability. The IEP team may not identify a

Revisions to Emotional Behavioral Disability Impairment Identification - Comparison with Plain Language: October 2021

child as a child with an emotional behavioral disability when there is evidence that the difference is the primary causal factor of the behaviors.

Summary and Plain Language Description of Changes

- Added consideration of 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.
- This requirement in the rule is explicitly included to address the extreme racial disproportionality in emotional behavioral disability identification in Wisconsin. IEP teams must consider, discuss and document the consensus determination that the behavioral characteristics identified in par. (b)1-(b)7 of the rule are due to an emotional behavioral disability and not the student or their family's cultural background, implicit or explicit biases within the culture and climate of the school environment, or institutional racism embedded in school or district policies and procedures.

Additional Requirements in Rule

Previous Rule

Not included in the previous rule.

Revised Rule

(f) The IEP team for a child being evaluated for emotional behavioral disabilities may include the LEA staff member, identified by the child, when possible, as having a positive or the most positive relationship with the child.

Summary and Plain Language Description of Changes

- Added inclusion of 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. It provides an opportunity for student voice and student choice when making an identification whenever possible.