

**Wyoming Department of Education
Special Education Programs Division**

Reference Guide:

**Emotional Disability: Identification and
Determination of IDEA Eligibility**

Mental health has a complex interactive relationship with a child's physical health and his or her ability to succeed in school, at work, and in society. This guidance will examine the school district's obligation to identify, locate, evaluate, and determine eligibility for students who may qualify under the IDEA disability category of Emotional Disability (ED).

Mental health disorders are the most common diseases of childhood- more than the number of cancer, diabetes, and AIDS combined. The *2015 Children's Mental Health Report to Congress* estimated that 23 percent of all school-age children experience psychiatric disorders, with about half of those occurring before the age of 14. Wyoming students, however, categorized under the IDEA as Emotionally Disabled comprised only 5 percent of the total number of students with disabilities in the state, and less than one percent of the state's K-12 student population (2018-19 WDE-684).

Children and adolescents may suffer from a wide range of mental health issues. Some mental disorders in children may be readily apparent to parents and school staff, but in other cases, they may be "hidden illnesses." Some children suffer silently through the school day, trying to contain explosive feelings. Others may experience paralyzing anxiety that prevents them from walking out the door in the morning, never even making it to school. There are students who frequently visit the school nurse's office with somatic complaints that may camouflage anxiety and/or depression. Some adolescents engage in "cutting," or self-mutilation. And some attempt or commit suicide.

Approximately 50% of students age 14 and older living with a mental illness drop out of high school. Youth with unidentified mental disorders also tragically end up in jails and prisons.¹ In spite of the magnitude of the problem, a lack of awareness and negative stigma about mental health issues may keep a large number of young people from getting the help they need. Parents and school staff may be reluctant to consider ED eligibility because they are concerned that a student with mental illness may be stigmatized by an ED classification or they hesitate to use the ED classification with younger children. Children with emotional disabilities are reportedly the most under-identified IDEA category of all students with disabilities.²

¹ See National Alliance on Mental Illness (NAMI) website *Facts on Children's Mental Health in America* (July 2010) at http://www.nami.org/Template.cfm?Section=federal_and_state_policy_legislation&template=/ContentManagement/ContentDisplay.cfm&ContentID=43804.

² Dori Barnett, Ed.D., *A Grounded Theory for Identifying Students with Emotional Disturbance: Promising Practices for Assessment, Intervention, and Service Delivery*, Contemporary school Psychology, Vol. 16 at p. 21 (2012).

CHILD FIND

Child Find is a statutory mandate that requires school districts to identify, locate, and evaluate students with disabilities who have or are suspected of having disabilities and need special education and related services in order to address those disabilities. *34 CFR §300.111*. A child identified through the Child Find process is not automatically classified as a student with a disability, eligible for special education services. Children identified through the child find process must be evaluated in order to determine eligibility for special education. *34 CFR §300.301*. Child Find includes the obligation to identify, locate and evaluate students suspected of having disabilities, even if they are earning passing grades or advancing from grade to grade. *34 CFR §300.8*. Child Find requires school districts to have in place policies and procedures that will enable district personnel to locate children suspected of having disabilities who may be in need of special education.

The IDEA and WDE Rules Chapter 7: *Services for Children with Disabilities* impose an affirmative duty on school districts to identify, locate, and evaluate students who have emotional disabilities or are suspected of having emotional disabilities and need special education as a result; therefore, school districts may not wait for parents or other professionals to request that a child be identified and evaluated, or wait to refer a student for special education services. This Child Find obligation may be challenging, but it is critically important for students with mental health issues who are experiencing an adverse impact on their educational performance and require specialized instruction in order to derive meaningful educational benefits. [WDE Rules Chapter 7: Services for Children with Disabilities](#)

Some potential challenges encountered by school personnel in identifying children with mental illness issues include the following:

- Mental illness can be a “hidden illness” – students and parents may attempt to conceal the illness for fear of negative social stigma.
- Mental illness symptoms may be more apparent in the student’s home than in the school setting, yet they may impact educational performance.
- Some school staff may be unfamiliar with symptoms of mental illness and may inadvertently attribute declining educational performance or behavior to causes other than the student’s mental health.

School districts are responsible for identifying, locating, and evaluating ALL children with disabilities in need of special education and related services who reside within the district’s educational jurisdiction, *not just students enrolled in the district*. The Child Find obligation includes children with disabilities attending **private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities**. It also includes children with disabilities who are highly mobile.

A common misconception about Child Find is that academically proficient students who demonstrate mental health issues cannot or should not be evaluated for special education because eligibility under the IDEA requires that the student’s disability

adversely impact his or her educational performance. On the contrary, if a district suspects that a student may have a disability, the district is required to conduct a comprehensive evaluation, regardless of the child's academic performance or demonstrated aptitude. Educational performance comprises more than academics; it also includes the child's ability to function mentally, socially and emotionally. A district's Child Find obligation clearly includes children who are suspected of having a disability, but are receive passing grades or "advancing from grade to grade." 34 CFR §300.8. In other words, a child's academic performance does not automatically exclude him or her from be found eligible as a child with a disability.

As school districts consider their obligation to identify, locate, and evaluate students suspected of having disabilities, school personnel should be aware of the following Child Find triggers:

- Parental input regarding mental illness
- Receipt of parents' private evaluation reports documenting student's mental illness and/or listing diagnostic formulations*
- Disciplinary code violations
- Traumatic circumstances or events
- Absenteeism
- Difficulty remaining in classes
- Difficulty with social relationships
- Report of student as the target or perpetrator of bullying incidents
- Families that demonstrate high mobility
- Withdrawal, unhappiness, or depression
- Frequent somatic complaints
- Inappropriate classroom behavior
- Precipitous decline in grades or erratic educational performance
- Inability to work with peers in pairs (e.g., lab partners) or in groups
- Expression of angry or violent feelings
- Violent or aggressive behavior
- Signs of cutting, scars, or other evidence of self-harm
- Suicidal ideation relayed or reported to school staff
- Suicide attempts

* DSM (*The Diagnostic and Statistical Manual of Mental Disorders*) diagnoses may trigger the school district's child find obligation to identify and evaluate a student, but a DSM diagnosis does not automatically ensure that the student meets IDEA criteria for a disability classification.

Failure to satisfy child find obligations may expose a school district to subsequent FAPE violations, and may entitle a student to compensatory education or tuition reimbursement. In order for a school district to satisfy its FAPE obligations, it must first satisfy its child find responsibilities.

EMOTIONAL DISABILITY – ELIGIBILITY UNDER THE IDEA AND WDE CHAPTER 7 RULES: SERVICES FOR CHILDREN WITH DISABILITIES

DEFINITION of EMOTIONAL DISABILITY

34 CFR §300.8(c)(4) and

Wyoming Chapter 7 Rules: Services for Students with Disabilities, Section 4. Identification, Evaluation, and Eligibility Determinations.

(v) Emotional Disability means a condition exhibiting one (1) or more of the following characteristics **over a long period of time** and **to a marked degree** that **adversely affects a child's educational performance**:

- an inability to learn that cannot be explained by intellectual, sensory, or health factors;
- an inability to build or maintain satisfactory interpersonal relationships with peers or teachers;
- inappropriate types of behavior or feelings under normal circumstances;
- a general pervasive mood of unhappiness or depression; or
- a tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term **does not apply to children who are socially maladjusted**, unless they have an Emotional Disability, as defined in these rules.

What constitutes “a long period of time”?

The standard for duration is not precisely specified. OSEP *Letter to Anonymous, August 11, 1989, 213 IDELR 247* specifies “several months” as an appropriate standard. The intention of this phrase is to avoid identifying a student as eligible for special education who is temporarily reacting to a situational trauma. The characteristics must be evident over time as well as across situations.

What constitutes “a marked degree”?

The qualifying condition of severity requires that the problems are significant and apparent to school staff members who observe the student in a variety of settings and situations. A comparison is made with the student's appropriate peer group. The behavior and emotions exhibited must be more severe or frequent than typically expected for individuals of the same age, gender and cultural group. OSEP *Letter to Anonymous, August 11, 1989, 213 IDELR 247*

What constitutes an “adverse affect on educational performance”?

As a necessary condition to determining special education eligibility for a student with an emotional disability, the evaluation team must determine that educational performance is adversely affected as a result of dysfunctional school-related behaviors

and/or affective reactions. Evidence must exist that supports a relationship between the student's school-related behaviors and/or affective relations and decreased educational performance. While adverse effect on educational performance may imply a difference between the student's academic performance and reasonable, not optimal, expectations of performance, the definition of educational performance *cannot be limited to academics*.

When determining if a student's emotional disturbance has an adverse effect on educational performance, evaluation teams must consider all aspects of the child's functioning at school, including academic, social/emotional, cognitive, communication, vocational and independent living skills. An adverse effect can be manifested through behavioral difficulties at school; impaired or inappropriate social relations; impaired work skills, such as being disorganized, tardy; having trouble getting to school on time; and difficulty with following the rules.

Indicators of educational performance can include present and past grades, attendance reports, report cards and reports of progress (social emotional and/or academic), achievement test scores, school disciplinary records, measures of ongoing classroom performance such as curriculum-based assessment (formative and summative assessments), Positive Behavior Interventions and Supports (PBIS) data, work samples, observations, and data relative to responses to tiered and targeted interventions.

Various types of standards must be applied when making judgments about student progress to determine what constitutes adverse effect on educational performance. The student's overall performance should demonstrate a significant difference between actual and expected school performance. While determining a student's cognitive abilities and level of academic achievement may be useful, the focus should be placed on the student's overall performance in school and his or her response to interventions as illustrated in the data resulting from progress monitoring activities.

Some students attain adequate achievement test scores, but do not demonstrate appropriate academic progress (i.e. a severe and chronic pattern of failing to persevere with tasks and complete classroom assignments that leads to repeated failure in subject matter courses.) In this case, the student's resulting failure in subject matter courses can be considered an adverse effect. However, it must also be noted that a free and appropriate public education (FAPE) must be available to any child with a disability who needs special education and related services, *even if the child has not failed or been retained in a course or grade and is advancing from grade to grade. CFR §300.101(c)*. For example, a gifted student with Asperger's syndrome could be eligible under the Autism classification and require services to address behavioral or social needs. *Letter to Anonymous, 55 IDELR 172 (OSEP 210)*. Therefore, as is the case for any student with a disability, the determination of whether a student's emotional status "adversely affects educational performance" must be made on a case by case basis and is dependent on the unique needs of the particular child.

This position is clarified by the Office of Special Education Programs (OSEP) in a March 8, 2007, *Letter to Clark*, 48 IDELR 77, where "educational performance" as used in the IDEA and its implementing regulations is defined as not limited to academic performance. Furthermore, based upon the IDEA definitions of a child with a disability in *34 CFR §300.8(a)(1)* and specifically the definition of a child with an emotional disturbance, along with the definition of special education found in *34 CFR §300.39*, it is clear that special education and specialized instruction encompass more than only academic instruction. Adverse effect on educational performance cannot, therefore, be based solely on discrepancies in age or grade level performance in academic subject areas. [March 8, 2007, Letter to Clark, 48 IDELR 77](#).

Under what circumstances is a student considered "socially maladjusted"?

In the context of Emotional Disability eligibility, social maladjustment is viewed as "a persistent pattern of violating societal norms through such behaviors as truancy, substance abuse, perpetual struggles with authority, poor motivation for schoolwork, and manipulative behavior." *Colorado Department of Education, Social Maladjustment Topic Brief, Nov. 2015*. A child who demonstrates social maladjustment characteristics solely, cannot not be identified as Emotionally Disabled; however, a child with social maladjustment characteristics should not be precluded from being identified as ED if that child meets the ED criteria. Once ED criteria are met, any evidence of social maladjustment is irrelevant for purposes of determining eligibility for special education.

In *W.G. v. New York City. Dept. of Educ.*, 801 F. Supp. 2d 142, 111 LRP 35770 (S.D.N.Y. 2011), the court found that the record did not support the presence of an emotional disturbance where W.G.'s academic problems were found to be the result of truancy, and his school refusal was the product of a conduct disorder, narcissistic personality tendencies, and substance abuse rather than of depression. Some courts have focused on 'conduct disorder' as opposed to 'mood disorder' diagnoses in drawing the distinction; some use the term "*juvenile delinquency*." However it is described, the distinction between an emotional disability and other underlying social or behavioral problems is significant. The IDEA does not require school districts to undertake the responsibility of forcing a child physically to attend school when the child is neither unable to attend nor impeded by an emotional condition to a marked degree in following through on his ability to attend.

The regulatory framework under IDEA specifically carves out "socially maladjusted" behavior from the definition of emotional disturbance. This exclusion makes sense, considering the population targeted by the statute. Children often act out and test boundaries. Teenagers can be unruly. Adolescence is a time of social maladjustment for many people.³ Any definition that equated simple bad behavior with serious emotional disturbance would exponentially enlarge the burden IDEA places on state and local education authorities. *Springer v. Fairfax Co. Sch. Bd.*, 134 F.3d 659, 664 (4th Cir. 1998).

³ *Mental Health and Child Find*, Julie P. Passman, Esq., Special Education Advocacy, (2018). <https://nysba.org/NYSBA/Coursebooks/Fall%202013%20CLE%20Coursebooks/Special%20Education%20Update/Topic-9-Passman-Materials.pdf>

EMOTIONAL DISABILITY ELIGIBILITY CRITERIA

Wyoming Chapter 7 Rules: Services for Students with Disabilities, Section 4. Identification, Evaluation, and Eligibility Determinations.

(v) (A) Emotional Disability eligibility criteria:

Eligibility is established through a comprehensive evaluation in accordance with the requirements of these rules. The initial evaluation shall be conducted by qualified professionals as, determined appropriate by the school district or public agency. The initial evaluation process shall include recommendations for social, emotional, or behavioral instruction from a qualified diagnostician, such as a licensed psychologist, school psychologist, psychiatrist, or other qualified professional. The initial evaluation process shall be comprehensive and address all areas of need resulting from the suspected disability.

In accordance with the requirements of these rules, **a child is identified as a child with an Emotional Disability if the following criteria are met:**

- (I) Documentation from regular education positive behavioral interventions evidences that the **behavior adversely affects the child's educational performance.**
- (II) The child continues to exhibit **behavioral or emotional characteristics over a long period of time and to a marked degree** that adversely affects the child's educational performance as evidence by **one (1) or more of the following:**
 - (1.) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - (2.) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - (3.) Inappropriate types of behavior or feelings under normal circumstances;
 - (4.) A general pervasive mood of unhappiness or depression; or
 - (5.) A tendency to develop physical symptoms or fears associated with personal or school problems.
- (III) The term does not apply to children who are socially maladjusted, unless it is determined that they have an Emotional Disability consistent with the criteria above.

In order for a child to qualify under the IDEA as a child with an emotional disability, a child must exhibit one (1) or more of the five characteristics specified in WDE Chapter 7 Rules: *Services for Children with Disabilities*, Section 4(v) over a long period of time and to a marked degree that adversely affects the child's educational performance, AND all three (3) Emotional Disability eligibility criteria must be met, as per WDE Chapter 7 Rules: Services for Students with Disabilities, Section 4(v)(A). (See *Attachment A – WDE Model Forms, E-ED, Emotional Disability Eligibility Criteria Form.*)

<https://edu.wyoming.gov/in-the-classroom/special-programs/special-programs-forms/>

CASE STUDIES

1. Jason is an 11th grade student who is failing 6 of his 7 classes, according to his first quarter grade report. Until this year, he was a good student, earning A's and B's in most of his classes. For the first two months of school he has refused to complete homework assignments, preferring to socialize with his friends, smoke marijuana, and play video games. The school conducted a comprehensive evaluation that showed he is in the above average range in all academic areas and did not note any mental health concerns. He doesn't like to be nagged, but usually seems happy and amused. His mother says he gets along with everyone in the family and he is rarely sick. Does Jason meet the Emotional Disability eligibility criteria?

While all IDEA eligibility determinations must be made on a case-by-case basis and must consider the unique needs of the particular child, based upon the information provided in this case study, Jason most likely would not meet the Emotional Disability eligibility criteria for the following reasons:

- *The evaluation showed no concerns about his intellectual, sensory or health factors;*
 - *He is able to build and maintain interpersonal relationships;*
 - *He does not present a general pervasive mood of unhappiness or depression;*
 - *He does not show physical symptoms or fears associated with personal or school problems,*
 - *In general, he behaves appropriately under normal circumstances.*
 - *He has only exhibited the excessive absenteeism and failing grades for a relatively short period of time (first two months of school).*
 - *Social maladjustment cannot be ruled out.*
2. Melanie is a Pre-K student who visits the nurse's office frequently 2-3 times per day. She often complains of stomach aches and wants to go home. She tends to be a loner, and seems happiest when she can isolate within the classroom with a book or sit by herself on the playground. She cries frequently and easily, especially when she says she is being bullied by other children. She is above average in letter recognition skills, number concepts, and she is beginning to read simple books. Her teachers feel she needs a lot of personal support, but decided that she does not need to be evaluated for special education because she is so smart. Do you agree? Why or why not?

Based on the information provided in this case study, Melanie exhibits several Child Find trigger behaviors, including:

- *Difficulty remaining in class*
- *Difficulty with social relationships*
- *Report of student as the target of bullying incidents*
- *Withdrawal, unhappiness, or depression*
- *Frequent somatic complaints*

The fact that Melanie is performing at an above-average level academically does not relieve the district (or public agency) of its obligation to conduct a comprehensive evaluation if they feel she might require special education and related services to address her social-emotional needs.

3. Curt is a 5th grade student who earns average grades. His teachers describe him as “a nice kid, “quiet,” “withdrawn,” and “respectful.” He misses school 1-2 times per week, often on Mondays, but he usually makes up his assignments. His mother says Curt hates school, and frequently asks to stay home, which she allows because she says, “When I was a kid I hated school, too.” She says Curt has always been a worrier, and he has always had trouble making and keeping friends. He has never been referred to the school behavior team because, as one teacher put it, “he gets along great at school.” Do you think the district is meeting its Child Find obligation for this student? Why or why not?

Curt may be an example of a child with a “hidden” mental illness, who suffers silently throughout the day, only to experience paralyzing levels of anxiety and depression when it is time to return to school. Because he does not act out at school and he earns passing grades, his other educational needs may be minimized or overlooked by school personnel. The fact that he is absent on a regular basis, has trouble with social relationships, and his mother reports that he is frequently worried are all Child Find trigger behaviors that might warrant further investigation and possibly comprehensive evaluation.

If you have questions about Child Find or IDEA Emotional Disability Eligibility in Wyoming, contact:

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Eligibility Criteria Form
Emotional Disability Chapter 7, Section 4(d)(v)

Name of Student	Date of Birth	Date of Eligibility Determination

Emotional Disability means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: an inability to learn that cannot be explained by intellectual, sensory or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless they have an emotional disability, as defined.

Initial Eligibility Criteria for Emotional Disability

All statements must be checked Yes.

- Yes** **No** Documentation from regular education positive behavioral interventions evidences that the behavior adversely affects the child's educational performance.
- Yes** **No** The child continues to exhibit behavioral or emotional characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance as evidenced by one (1) or more of the following:
(check all that apply)
- An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - Inappropriate types of behavior or feelings under normal circumstances;
 - A general pervasive mood of unhappiness or depression; or
 - A tendency to develop physical symptoms or fears associated with personal or school problems.
- Yes** **No** Social maladjustment is ruled out as the sole cause of the child's behavioral difficulties, and even if social maladjustment is present, the child meets the criteria for Emotional Disability above.