



**TO:** P-12 Education Committee

**FROM:** James N. Baldwin 

**SUBJECT:** Proposed Amendments of Sections 200.1 and 200.4 of the Regulations of the Commissioner of Education Relating to the Disability Classification "Emotional Disturbance"

**DATE:** March 3, 2022

**AUTHORIZATION(S):** 

### **SUMMARY**

#### **Issue for Discussion**

Should the Board of Regents amend sections 200.1 and 200.4 of the Regulations of the Commissioner of Education relating to the disability classification "emotional disturbance"?

#### **Reason(s) for Consideration**

Review of Policy.

#### **Proposed Handling**

The proposed amendment is being presented to the P-12 Education Committee for discussion at the March 2022 Regents meeting. A copy of the proposed rule is attached (Attachment A).

#### **Procedural History**

A Notice of Proposed Rule Making will be published in the State Register on March 30, 2022 for a 60-day public comment period in accordance with the State Administrative Procedure Act (SAPA). Supporting materials are available upon request to the Secretary of the Board of Regents.

#### **Background Information**

The Department recommends amendment of the special education classification of "emotional disturbance." The Individuals with Disabilities Education Act 2004 (IDEA)

is a federal law that makes available a free appropriate public education to eligible children with disabilities and ensures special education and related services to those children. Federal regulations define “child with a disability” as a child who meets one of thirteen classifications (34 CFR 300.8). One classification is “a serious emotional disturbance (referred to in this part as ‘emotional disturbance’) ....”. This regulation further defines the 13 classifications used in the definition of a “child with a disability,” including “emotional disturbance.”

Consistent with federal regulations, section 200.1(zz)(4) of the Commissioner’s regulations defines “emotional disturbance” as follows:

Emotional disturbance 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:

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

The term emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

Committees on special education (CSE) are required to identify a disability classification on students’ individualized education programs (IEPs). However, special education and related services must be based solely on the student’s individual needs, not the student’s classification.

A survey of the 50 states reveals a range in the terminology used for the classification of emotional disturbance. Seven different terms are used by states as follows:

- The term “emotional disturbance” or “serious emotional disturbance” is used by 27 states, including New York State;
- “Emotional disability” or “serious emotional disability” is used by 13 states;
- A variation of “emotional/behavioral disability or disorder” is used by six states;
- “Emotional impairment” is used by two states;
- “Behavior disorder” is used by one state; and
- “Emotional regulation impairment” is used in one state.

The five territories of the United States use the terms emotional disturbance or serious emotional disturbance and emotional disabilities. Please see Attachment B for additional information specific to the terms used in other states and territories.

In January 2020, the Board of Regents discussed replacing the term “emotional disturbance” in section 200.1(zz)(4) of the Commissioner’s regulations. At that time, it was recommended that the Department seek stakeholder input on suggestions for replacement terminology. These efforts were delayed due to the COVID-19 pandemic. Beginning in spring 2021, the Office of Special Education (OSE) engaged stakeholders in a discussion regarding a change to the term “emotional disturbance.” OSE consulted with the following organizations:

- The Commissioner’s Advisory Panel for Special Education Services;
- OSE’s Youth Advisory Panel;
- The Statewide Network for Special Education;
- The Staff/Curriculum Development Network of New York State;
- The Council of Administrators of Special Education;
- The Long Island Association of Special Education Administrators; and
- Advocacy and parent organizations with coordination from the New York City Department of Education (NYCDOE)

The overwhelming consensus was that the term “disturbance” has a negative connotation and should not be used in New York State. In these discussions, the most frequently mentioned replacement terms included emotional disability, emotional dysregulation disability, emotional behavioral dysregulation, social emotional impairment, and emotional health impairment.

In October 2021, in consultation with the New York City Department of Education, OSE issued a Survey on Changing the Name of the Disability Classification: Emotional Disturbance, seeking suggestions from the public for replacement terminology. The survey was posted online from October 8 through November 12, 2021. OSE received 1,098 responses. When completing the survey, stakeholders were asked to select all of the constituency group(s) they represent. Of the respondents, 25 percent were a parent or family member of a child with a disability, individual with a disability, or a student with a disability who had an IEP. Please see Attachment C for additional details on the various constituencies of respondents.

Additionally, approximately 89 percent of respondents indicated that the term emotional disturbance had a negative connotation and supported a change in terminology. From a list of five potential replacement terms, (i.e. emotional disability, emotional dysregulation disability, emotional/behavioral dysregulation, social emotional impairment and emotional health impairment), the top three proposed terms that were ranked first by stakeholders on a survey were emotional/behavioral dysregulation, social emotional impairment, and emotional disability. Other suggested terms included emotional behavioral impairment, emotional behavioral disability, behavioral impairment, mental health impairment, mental health disability, social emotional disability, and emotional regulation disability.

In response to stakeholder engagement discussions, the survey results, and the review of replacement terms used by other states and territories, the Department proposes to amend sections 200.1(zz) and 200.4(j) of the Commissioner’s regulations to replace the term “emotional disturbance” with “emotional disability.”

### **Related Regents Items**

January 2020: [Special Education Disability Classification “Emotional Disturbance”](https://www.regents.nysed.gov/common/regents/files/120p12d1.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/120p12d1.pdf>)

### **Recommendation**

Not applicable.

### **Timetable for Implementation**

Following the 60-day public comment period required under SAPA and public hearings as required by the Individuals with Disabilities Education Act, it is anticipated that the proposed rule will be presented to the Board for permanent adoption at the July 2022 meeting. If adopted at the July 2022 meeting, the proposed amendment will become effective on July 27, 2022.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305, 4402 and 4403.

1. Paragraphs (1), (4), and (6) of subdivision (zz) of section 200.1 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional [disturbance] disability as defined in paragraph (4) of this subdivision. A student who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the criteria in this paragraph are otherwise satisfied.

(4) *Emotional [disturbance] 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 student's educational performance:

- (i) an inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (ii) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (iii) inappropriate types of behavior or feelings under normal circumstances;
- (iv) a generally pervasive mood of unhappiness or depression; or

(v) a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional [disturbance] disability.

(6) *Learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, as determined in accordance with section 200.4(j) of this Part. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing or motor disabilities, of an intellectual disability, of emotional [disturbance] disability, or of environmental, cultural or economic disadvantage.

2. Subparagraph (ii) of paragraph (3) of subdivision (j) of section 200.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(ii) The CSE determines that its findings under this paragraph are not primarily the result of a visual, hearing, or motor disability; an intellectual disability; emotional [disturbance] disability; cultural factors; environmental or economic disadvantage; or limited English proficiency.

3. Clause (f) of subparagraph (i) of paragraph (5) of subdivision (j) of section 200.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(f) the determination of the CSE concerning the effects of a visual, hearing, or motor disability; an intellectual disability; emotional [disturbance] disability; cultural

factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

## Terminology Used by States and Territories for the Term Emotional Disturbance

State	Terminology
Alabama	Emotional Disability
Alaska	Emotional Disturbance
Arkansas	Emotional Disturbance
Arizona	Emotional Disability
California	Emotional Disturbance
Colorado	Serious Emotional Disability
Connecticut	Emotional Disturbance
Delaware	Emotional Disability
Florida	Emotional/Behavioral Disability
Georgia	Emotional and Behavioral Disorder
Hawaii	Emotional Disability
Idaho	Emotional Behavioral Disorder
Illinois	Emotional Disability
Indiana	Emotional Disability
Iowa	Behavior disorder (or emotional disturbance)
Kansas	Emotional Disturbance
Kentucky	Emotional-Behavioral Disability
Louisiana	Emotional Disturbance
Maine	Emotional Disturbance
Maryland	Emotional Disability
Massachusetts	Emotional Impairment
Michigan	Emotional Impairment
Minnesota	Emotional or Behavioral Disorders
Mississippi	Emotional Disability (also referred to as serious emotional disturbance)
Missouri	Emotional Disturbance
Montana	Emotional Disturbance
Nebraska	Emotional Disturbance
Nevada	Emotional Disturbance
New Hampshire	Emotional Disturbance
New Jersey	Emotional Regulation Impairment
New Mexico	Emotional Disturbance
New York	Emotional Disturbance
North Carolina	Emotional Disability or Serious Emotional Disability

<b>State</b>	<b>Terminology</b>
North Dakota	Emotional Disturbance
Ohio	Emotional Disturbance
Oklahoma	Emotional Disturbance
Oregon	Emotional Disturbance
Pennsylvania	Emotional Disturbance
Rhode Island	Emotional Disturbance
South Carolina	Emotional Disability
South Dakota	Emotional Disturbance
Tennessee	Emotional Disturbance
Texas	Emotional Disturbance
Utah	Emotional Disturbance
Vermont	Emotional Disturbance
Virginia	Emotional Disability
Washington	Emotional/Behavioral Disability
West Virginia	Emotional/Behavioral Disorder
Wisconsin	Emotional Behavioral Disability
Wyoming	Emotional Disability

<b>U.S. Territories</b>	<b>Terminology</b>
American Samoa	Emotional Disturbance
Guam	Emotional Disabilities
Puerto Rico	Emotional Disturbance (“Disturbio Emocional”)
Northern Mariana Islands	Serious Emotional Disturbance/Emotional Disturbance
U.S. Virgin Islands	Emotional Disturbance

Updated 12/17/21

**Changing the Term Emotional Disturbance  
Survey Participants (Stakeholders) Summary  
November 2021**

<b>Stakeholder Constituency</b>	<b>Number</b>
Advocate/Advocacy Organization	77
Behavior Specialist	2
Community Organization Member	15
Committee on Preschool Special Education (CPSE)/Committee on Special Education (CSE) Chairperson	6
District or Program Administrator	142
Educational Organization/Provider/Association	48
General Education Teacher	46
Impartial Hearing Officer	2
Individual with a Disability	54
Institution of Higher Education Faculty	29
Institution of Higher Education Administrator	2
Mental Health Specialist	3
Other School or District Staff	289
Paraprofessional	6
Parent Attorney	1
Parent or Family Member of a Child with a Disability	356
Parent	2
Psychologist	10
Related Service Provider	206
School Nurse	2
School Psychologist	43
Social Worker/Counselor	4
Special Education Administrator	138
Special Education Teacher	203
State Agency Employee	29
Student	1
Student with an Individualized Education Program (IEP)	46
<b>Total</b>	<b>1762</b>

When completing the survey, stakeholders were asked to select all of the constituency group(s) they represent. They could select all that apply and/or write-in their constituency group. Those highlighted in the chart above were the constituency groups that were listed in the survey. Those not highlighted were write-in constituencies. There were 1,762 stakeholder constituencies associated with 1,091 of the 1,098 survey respondents. Seven respondents didn't check any stakeholder identity. Of the respondents, 25.8 percent were a Parent or Family Member of a Child with a Disability, Individual with a Disability or a Student with an Individualized Education Program (IEP).