

Date of Hearing: March 20, 2024

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 2173 (Addis) – As Introduced February 7, 2024

SUBJECT: Special education: emotional disability

SUMMARY: States that the term “emotional disturbance,” as defined in the federal Individuals with Disabilities Education Act (IDEA), and used throughout the Education Code and the California Code of Regulations, as it relates to the provision of special education services, may also be known as “emotional disability” under state law.

EXISTING LAW:

- 1) Establishes the federal IDEA which requires that eligible children receive a free, appropriate education (FAPE) in the least restrictive environment (LRE), and that eligible children receive special education and related services. (20 U.S.C. 1400)
- 2) Establishes, in IDEA, 13 disability categories entitling students to rights under the law, including a category of “emotional disturbance.”
- 3) Defines, in the federal IDEA, in state law for children birth to age 3 and in other references, and in state regulations for students age 3 through 21, “emotional disturbance” to mean 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:
 - a) An inability to learn that cannot be explained by an intellectual, sensory, or health factor;
 - b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - c) Inappropriate types of behavior or feelings under normal circumstances;
 - d) A general pervasive mood of unhappiness or depression;
 - e) A tendency to develop physical symptoms or fears associated with personal or school problems; and
 - f) States that emotional disturbance includes schizophrenia and does not apply to children who are socially maladjusted. (Section 300.8(c)(4) of Title 34 of the Code of Federal Regulations, Education Code (EC) 8205, 56337, 56441.11, 60900.1, California Code of Regulations (CCR) Title V Section 3030)
- 4) Defines “children with severe disabilities” to mean children with exceptional needs from birth to 21 years of age, inclusive, with profound disabilities to include those with serious emotional disturbances. (EC 8208)

- 5) Identifies, in state regulations, which credentials authorize teachers to serve students with emotional disturbance. (CCR 80047.2)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. The author states, “No child should be told that they are ‘emotionally disturbed.’ This outdated and inappropriate term stigmatizes students from the moment they enter the special education system, decreasing access to important services. AB 2173 is a simple fix that eliminates confusion while maintaining compliance with federal standards.”

Bill would allow, not require, use of a new term and would not change the category itself.

This bill would allow the term “emotional disability” to be used in lieu of “emotional disturbance” for purposes of state law, but would not change the criteria for eligibility for services under state or federal law. As this term derives from federal law, it is not possible to change the name of the category outright, but it is possible to allow a different term, defined to have the same meaning, for purposes of state law.

Emotional Disturbance label long viewed as stigmatizing. Research confirms that the term “emotionally disturbed” is often viewed as stigmatizing by parents and educators. One study reports:

The term ‘emotional disturbance’ (ED) has been a source of controversy in the United States since its introduction in 1975 (as part of legislation, the Education for All Handicapped Children Act). The lack of connection to diagnostic criteria and the stigma attached to the term have been associated with its criticism from a broad and diverse range of stakeholder groups, including young people, families, researchers, educators, and mental health professionals. (Walker, 2011)

Study finds “emotional disability” a preferred term among students. A 2011 study (Walker, 2011) reported on a survey conducted of educators, clinicians, family advocates, families, and young people in Maryland to assess the preferred terminology to describe emotional disturbance. The term with the greatest frequency of endorsement (30%) was “emotional/behavioral disability, with the exception of students, who preferred ‘emotional or behavioral disorder’ (30%) or ‘emotional disability’ (30%). (Walker, 2011)

Stigma associated with this label may deter parents from seeking eligibility for services.

According to materials provided by the author from the San Diego Volunteer Lawyer Program, the term emotional disturbance can negatively impact the identification of students for support in a variety of ways:

Because California regulations list the category as ‘emotional disturbance, there is no avoiding the term for a special education team. The evaluating school psychologist must review the legal definition with parents at an initial assessment and, if they agree to services, ‘emotional disturbance’ will appear on the front page of their child’s IEP for the rest of their school career.

In addition, the term hampers the participation of youth in the IEP process. Despite best practices encouraging the inclusion and active participation of students in their own IEP

meetings, teachers and guardians are often hesitant to include the youth when they know ‘emotional disturbance’ is going to be discussed.

‘Emotional Disturbance’ may also cause underidentification of qualifying students. First, school staff may be unwilling to propose emotional disturbance eligibility out of concern that it will follow a student for the rest of their education and potentially bias future teachers against them...Fears of labeling are understandable but failure to qualify a student who may need it can block future services and deny a student legal protections.

The term also can create a misleading perception regarding what is required to qualify under this category. While emotional disturbance’s legal definition includes mild mental health issues like ‘a general pervasive mood of unhappiness or depression’ which affects a student’s educational performance, the term itself evokes images of violent or psychotic behavior. However, it is well established that ‘emotional disturbance’ can include common anxiety and depressive disorders if they significantly impact a student’s education.

Other states have changed this label. An analysis conducted by the State Education Department of the State of New York in 2020 found that:

- The term “emotional disturbance” or “serious emotional disturbance” is used by 27 states;
- “Emotional disability” or “serious emotional disability” is used by 12 states;
- A variation of “emotional/behavioral disability or disorder” is used by 8 states;
- “Emotional impairment” is used by 2 states;
- “Behavior disorder” is used by one state; and
- Two of the states that did not use “emotional disturbance” as their primary terminology, used this as a secondary descriptor.

The State of New York subsequently changed its label to “emotional disability,” in 2022.

History of problems with the “emotional disturbance” label. One study of the “emotional disturbance” label highlights concerns from its first use in federal law in 1977:

The federal definition of ED is based upon work carried out by Eli Bower in the 1960s as part of a California state-funded initiative aimed at “identifying California students who were in need of receiving services because of their severe behavioral and emotional problems.” (Bower, 1981 pp 115–6; Merrell & Walker, 2004).

Bower’s terminology and definition were accepted into Public Law 94–142 (IDEA, 1977), which provided overall guidance on school-based services for young people with disabilities, with few edits. Exceptions were the addition of the ‘social maladjustment clause’ (which excludes some acting-out young people from receiving the label and special education services) and the title, which was altered to ‘emotional disturbance’ instead of ‘emotional

handicap.’ Merrell and Walker (2004) remark that Bower’s definition had a foundational influence in its attempt to conceptualize mental health disorders in young people and its impact on learning at the time of its introduction in the 1960s. In 1977, Hallahan and Kauffman argued that the ED term and definition were problematic along a number of dimensions, and failed to provide clear behavioral markers to assist with relevant decision making, for example on whether a ‘disability’ was actually present.

Concern was also expressed that the definition relied heavily on adult perception, and that a child or adolescent is considered disturbed ‘when an adult authority says he is.’ Gruttadaro (2004) concurred that the ED label is set apart from other special education categories by its lack of connection to psychiatric terminology and/or diagnostic criteria, and that it is, instead, assigned on the basis of adult observation of student behavior. This lack of adherence to specific, definable criteria (such as test scores and standardized observational measures) creates an opportunity for wide variation between professionals, school districts, and schools regarding how the term ED is actually applied and how students are classified for services. While the term ED is commonly used by educators, it lacks meaning for mental health professionals, as ED is not a diagnostic category within the psychiatric nomenclature, such as that used in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition.

Even with the changes in IDEA 1997 and 2004, many of the early concerns expressed by Hallahan and Kauffman (1977) still remain. The current definition of ED as defined in IDEA 2004 continues to be associated with ambiguity and confusion.

Arguments in support. The Coalition for Adequate Funding for Special Education writes, “Over the years, the term emotional disturbance has been criticized for inappropriately stigmatizing children, especially young children. In some instances, parents have opposed classification and the receipt of special education services simply to avoid the ‘emotional disturbance’ label.

AB 2173 would permit California to use the less offensive term ‘emotional disability’ in state law while at the same time ensuring compliance with the IDEA, which still uses the term “emotional disturbance’ in federal statute.”

Related legislation. SB 354 (Ochoa Bogh) of the 2023-24 Session would have required the Commission on Teacher Credentialing (CTC) to revise its administrative services credential standards and performance expectations with a focus on inclusive learning environments; and required the California Department of Education (CDE), in consultation with the CTC, to develop and disseminate guidance on the ways in which inclusive classrooms may be staffed. This bill was vetoed by the Governor, who stated:

Serving students with disabilities in inclusive settings is an essential strategy for improving the academic achievement of these and all students, and one that my Administration, like the author, is committed to advancing. However, this bill is substantially similar to SB 1113 of 2022, which I vetoed, and several of the same concerns remain. In particular, portions of this bill are subject to an appropriation and should be considered as part of the annual budget process.

In partnership with the Legislature, we enacted a budget that closed a shortfall of more than \$30 billion through balanced solutions that avoided deep program cuts and protected education, health care, climate, public safety, and social service programs that are relied on

by millions of Californians. This year, however, the Legislature sent me bills outside of this budget process that, if all enacted, would add nearly \$19 billion of unaccounted costs in the budget, of which \$11 billion would be ongoing.

With our state facing continuing economic risk and revenue uncertainty, it is important to remain disciplined when considering bills with significant fiscal implications, such as this measure.

SB 1113 (Ochoa Bogh) of the 2021-2022 Session was substantially similar to SB 354 (Ochoa Bogh) of the 2023-24 Session. This bill was vetoed by the Governor, who stated:

I commend the author's dedication to supporting inclusion for all students. Serving students with disabilities in inclusive settings is an essential strategy for improving the academic achievement of these and all students, and one that my administration is committed to advancing. In fact, working with legislative partners we have provided \$32 million over the past few years to directly support educators in implementing inclusive practices through a number of systemic investments, including recent investments to expand the Supporting Inclusive Practices Project.

Portions of this bill are either subject to an appropriation or are duplicative of other efforts, and therefore add unnecessary cost pressures to future budgets. However, the concept related to the administrative services credential has merit. I encourage the author to work with the Commission on Teacher Credentialing to consider incorporating Universal Design for Learning during its next comprehensive update of the administrative services credential.

SB 692 (Cortese), Chapter 919, Statutes of 2022, requires that the CDE publish local educational agency (LEA) data related to federal measures of LRE students with disabilities on its website, and include it as a resource on the Dashboard.

AB 1914 (O'Donnell) of the 2019-20 Session would have established the Supporting Inclusive Practices project, to be administered by the CDE; required the CDE and the CTC to issue guidance on clarifying the ways in which inclusive classrooms and placements may be staffed under current law; required that one member of the Instructional Quality Commission (IQC) have expertise in UDL, and required the CDE to issue guidance clarifying the ways in which early education inclusive placements may be established and expanded under current law. This bill was held in the Assembly Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Charter School Association
Coalition for Adequate Funding for Special Education
Educate. Advocate.
Santa Barbara County Special Education Local Plan Area
SELPA Administrators of California
Yolo County SELPA

Opposition

None on file

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