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## **EBD/LD: Primary vs. Secondary Disability**

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### Background:

There have been a number of discussions across our member districts about students who appear to meet criteria for both LD and EBD and how to best categorize these students in our Special Education system. The conversation is complicated by the nature and definition of each disability which lend themselves to interpretation depending on the student and circumstances of the referral and assessment. The definition of SLD in MN Rule 3525.1341 states that a Learning Disability “may occur with, but cannot be primarily the result of: visual, hearing, or motor impairment; cognitive impairment; emotional disorders; or environmental, cultural, economic influences, limited English proficiency or a lack of appropriate instruction in reading or math.” MN Rule 3525.1329 defining EBD states that “The established pattern of emotional or behavioral responses must adversely affect educational or developmental performance, including intrapersonal, academic, vocational, or social skills; be significantly different from appropriate age, cultural, or ethnic norms; and be more than temporary, expected responses to stressful events in the environment. The emotional or behavioral responses must be consistently exhibited in at least three different settings, two of which must be educational settings, and one other setting in either the home, child care, or community. The responses must not be primarily the result of intellectual, sensory, or acute or chronic physical health conditions.

To provide member districts with guidance in decision making, the WCED Administrative team offers the following recommendation:

### WCED Recommendation:

There is no legal rule regarding what can be primary and what can be secondary disabilities. The placement decision is about best practice and determining what might have caused something else to happen and what is the best way to meet the needs of the student being evaluated and served. In general, it is not necessary to do both a primary and secondary disability for a student who appears to meet both EBD and LD criteria. Sample scenarios:

### Scenario #1

A student has a significant discrepancy between ability and achievement and meets criteria for SLD and also meets criteria for EBD. The team needs to discuss if the pattern of behaviors caused the student to fall behind academically and qualify SLD. If the answer is yes, and the team feels the behavior has been a factor for years and likely “caused” the discrepancy, then the team should qualify the student EBD and address his/her needs under that umbrella. It would not be necessary to do a primary and a secondary since you can meet both the academic

and behavioral needs as part of the EBD IEP. One aspect of the EBD definition acknowledges that EBD may adversely affect educational performance.

### Scenario #2

If a student has been struggling academically for some time and significant behaviors just started or primarily occur during difficult academic times, then the team could qualify the student SLD. Meeting the student's needs academically might eliminate the behaviors. A behavioral goal could be a part of the IEP or added later if behaviors don't go away in spite of the academic help. It would not be necessary to add EBD as secondary disability or to assess and change the disability to EBD prior to a three year reevaluation because you need to have behavioral goals. Present Levels of Academic Achievement and Functional Performance in the IEP can be used to share data, current information, and ER information that documents a need to add specialized instruction for a new goal area.

In both scenarios, the ER and PWN should indicate the team's decision in regard to meeting both eligibility areas and how they decided to choose one over the other.

### Scenario #3

There are rare reasons to do both full criteria. One example: a student who was in a day treatment with EBD primary and SLD secondary. The student truly had both and they weren't related to each other. It took a few years to figure that out though. The student had a mental illness and a very severe learning disability in reading. The ER went back and forth over the years regarding primary and secondary but the IEP always had goals in both areas.

It would not be uncommon to see a student with both academic and behavioral needs change categories during the reevaluation process. Ultimately, this may be a student who does become an example of a primary EBD, secondary LD placement.