

98-068-PI 11-CHILDREN & DISABILITIES

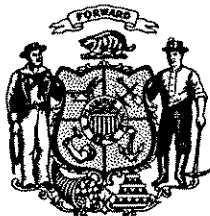
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-068**

AN ORDER to repeal PI 11.01, 11.03 to 11.06, 11.08 to 11.10, 11.13, 11.15 to 11.23, 11.24 (1) to (6), 11.25 to 11.34, 11.36 to 11.37, Appendix B, Appendix H and Appendix I; to amend PI 11.24 (7) (b) (intro.), 3. (intro.) and (e), 11.24 (9) (b) 1. (intro.), 3. (intro.) and (e) and 11.24 (10) (b); to repeal and recreate PI 11.02 and 11.12; and to create PI 11.24 (1) and (2), relating to children with disabilities.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

05-06-98 RECEIVED BY LEGISLATIVE COUNCIL.

06-03-98 REPORT SENT TO AGENCY.

RNS:RW:kjf;jt

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

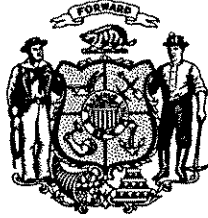
Comment Attached      YES       NO

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## CLEARINGHOUSE RULE 98-068

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### 2. Form, Style and Placement in Administrative Code

- a. The rule repeals and recreates s. PI 11.02. The recreated section should retain its title and the (intro.) "In this chapter:".
- b. In s. PI 11.02 (3), "Department of Public Instruction" should be all lower case.
- c. In s. PI 11.02 (4), a comma should replace the colon.
- d. In the treatment clause of SECTIONS 3 and 4, "are" should replace "is."
- e. In the treatment clause of SECTION 10, "1." should be inserted after "(b)."
- f. In s. PI 11.24 (7) (e), "School" should be lower case.

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

The clarity of the rule would be improved if additional description of the provisions being repealed were enumerated in the analysis prepared by the agency. Also, where appropriate, the agency may wish to indicate which provisions are being repealed with the expectation that local school districts will determine how to proceed and which provisions are being repealed because specific portions of 1997 Wisconsin Act 164 will govern these determinations. A statement regarding the reason and intent for repeal of the three Appendices (B, H and I) would also be helpful.

PROPOSED ORDER OF THE  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
AMENDING RULES

The state superintendent of public instruction hereby proposes to repeal PI 11.01, PI 11.03 to PI 11.06, PI 11.08 to 11.10, PI 11.13, PI 11.15 to PI 11.23, PI 11.24(1) to (6), PI 11.25 to PI 11.34, PI 11.36 to PI 11.37, Appendix B, Appendix H, and Appendix I; to amend PI 11.24(7)(b)(intro.), 3.(intro.) and (e), PI 11.24(9)(b)1.(intro.), 3.(intro.) and (e), and PI 11.24(10)(b); to repeal and recreate PI 11.02 and PI 11.12 and to create PI 11.24(1) and (2), relating to children with disabilities.

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ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: s. 227.11(2)(a), Stats.

Statute interpreted: Subchapter V, Chapter 115, Stats.

These proposed rules will modify Chapter PI 11, Wisconsin Administrative Code, to conform with the Individuals with Disabilities Education Act amendments of 1997 (IDEA 1997) and subchapter V, of Chapter 115, as amended by 1997 Wisconsin Act 164. The state statute represents the most sweeping revision to special education law in this state since 1973.

The new statute increases local flexibility and accountability in the design and delivery of special education to respond to local needs. Pursuant to the statutory revision, many of the programming and reporting requirements in current rule will be eliminated in this proposal as the department moves away from rules that impose a single model on every local education agency.

Further, the new statute significantly revises the procedures relating to the evaluation, development of an individualized education program and placement of children with disabilities. Much of the current rules are in direct conflict with the newly enacted statutory process. This proposal eliminates rules that conflict with state or federal law. It also eliminates rules which address areas adequately addressed in state statute or federal statute or regulations in an effort to reduce regulatory complexity and potential incongruence between state rule and federal law. Finally, this proposal makes technical language changes relating to hearing officers and physical and occupational therapy related services to reflect new statutory provisions.

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*Def. in title A.*  
SECTION 1. PI 11.01 is repealed.

SECTION 2. PI 11.02 is repealed and recreated to read:

PI 11.02(1) "Child" has the meaning defined under s. 115.76(3), Stats.

✓(2) "Child with a disability" has the meaning defined under s. 115.76(5), Stats.

✓(3) "Department" means the Wisconsin Department of Public Instruction.

✓(4) "Division" means the division for learning support: equity and advocacy which is established under s.

15.373(1), Stats., and which has the authority granted under s. 115.77, Stats.

✓(5) "Hearing officer" has the meaning defined under s. 115.76(8), Stats.

✓(6) "Individualized education program" or "IEP" has the meaning defined under s. 115.76(9), Stats.

✓(7) "Local education agency" or "LEA" has the meaning defined under s. 115.76(10), Stats.

✓(8) "Parent" has the meaning defined under s. 115.76(12), Stats.

11.08 Ind Educ. Evaluation  
11.09 - Notice + Consent  
11.10 - Hearings

*and 11.03*  
SECTION 3. PI 11.03 to PI 11.06 *is* repealed. - Special Education Screening + SEN Referrals  
SECTION 4. PI 11.08 to PI 11.10 *is* repealed. *11.04 - M-Teams*  
SECTION 5. PI 11.12 is repealed and recreated to read: *11.05 IEPs*  
*11.06 Placement Offer*  
*(11.07 Transf. Pupils)*

✓ PI 11.12 HEARING OFFICERS. (1) IMPARTIALITY. No person may be appointed as a hearing officer to conduct a hearing under s. 115.80, Stats., if that person meets any of the following criteria:

(a) Is an employee of the department or a public agency that is involved in the education or care of the child who is the subject of the hearing. A person who otherwise qualifies to conduct a hearing under this paragraph is not an employee of the department solely because he or she is paid by the department to serve as a hearing officer.

(b) Is an employee of or under contract to a local education agency as defined in s. 115.76(10), Stats., a cooperative educational service agency created in ch. 116, Stats., or a county children with disabilities education board as defined in s. 115.817, Stats.

(c) Has a personal or professional interest which would conflict with his or her objectivity in the hearing.

✓ (2) HEARING OFFICERS; APPOINTMENT. (a) The division shall maintain a list of persons who are available for appointment as hearing officers. The list shall include a statement of the qualifications of each of those persons. The division may not put a person's name on the list unless he or she meets both of the following:

1. The person is an attorney licensed to practice law in Wisconsin.
2. The person has completed the hearing officer training approved by the division as described in par. (b).

(b) Before a person's name may initially be put on the list in par. (a), he or she shall attend an initial training program approved by the division. Annually thereafter each person shall attend a refresher course approved by the division. The division may charge fees of persons attending the training courses.

SECTION 6. PI 11.13 is repealed. - Ed Placement During Appeals

SECTION 7. PI 11.15 to PI 11.23 are repealed. *11.15 Monitor + Compl. Proc*  
*11.16 Rights at Adulthood*

SECTION 8. PI 11.24(1) to (6) are repealed. *11.17 Director*

SECTION 9. PI 11.24(1) and (2) are created to read: *11.18 Asst. Director*  
*11.19 Prog. Sup. A*  
*11.20 Prog. Sup. B*

*11.21 P/STeacher*  
*11.22 Sch. Psych*  
*11.23 Sch. SW*  
*11.24 (1)-(6) Relat*  
*Scr*

PI 11.24 RELATED SERVICE: PHYSICAL AND OCCUPATIONAL THERAPY. (1) LEGISLATIVE INTENT. Subchapter V, ch. 115, Stats., gives an LEA the authority to establish physical therapy and occupational therapy services. The authority contained in s. 115.88, Stats., is limited to approving special physical or occupational therapy services for children with disabilities.

(2) IEP TEAM. If a child is suspected to need occupational therapy or physical therapy or both, the IEP team for that child shall include an appropriate therapist. / |

SECTION 10. PI 11.24(7)(b)(intro.), 3.(intro.) and (e) are amended to read:

PI 11.24(7)(b)1.(intro.) Except as specified under subds. 2. and 3., the caseload for a full-time school physical therapist employed for a full day, 5 days a week, shall be as follows:

3.(intro.) A caseload may vary from the specifications under subd. 1. or 2., if approved in the LEA's plan of service under sub. (2) s. 115.77(4), Stats. The following shall be considered in determining whether the variance may be approved:

(e) Responsibility of school physical therapist. A School physical therapist under this subsection shall conduct all physical therapy evaluations and reevaluations of a child, participate in the development of the child's IEP, and develop physical therapy treatment plans for the child. A school physical therapist may not be represented by a school physical therapist assistant at an M-team meeting on an IEP team.

SECTION 11. PI 11.24(9)(b)1.(intro.), 3.(intro.) and (e) are amended to read:

PI 11.24(9)(b)1.(intro.) Except as specified under subds. 2. and 3., the caseload for a full-time school occupational therapist employed for a full day, 5 days a week, shall be as follows:

3. (intro.) A caseload may vary from the specifications under subd. 1. or 2., if approved in the LEA's plan of service under sub. (2) s. 115.77(4), Stats. The following shall be considered in determining whether the variance may be approved:

(e) Responsibility of a school occupational therapist. A school occupational therapist under this subsection shall conduct all occupational therapy evaluations and reevaluations of a child, participate in the development of the child's IEP, and develop occupational therapy treatment plans for the child. A school occupational therapist may not be represented by a school occupational therapy assistant at an M-team meeting on an IEP team.

SECTION 12. PI 11.24(10)(b) is amended to read:

PI 11.24(10)(b) Supervision. The school occupational therapy assistant providing occupational therapy to a child under this section shall be supervised by a school occupational therapist as specified under sub. (8) (9) (d).

SECTION 13. PI 11.25 to PI 11.34 are repealed.

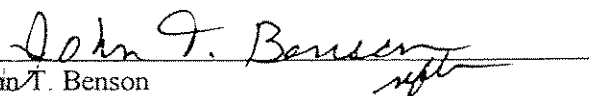
SECTION 14. PI 11.36 and PI 11.37 are repealed.

SECTION 15. Appendix B, Appendix H and Appendix I are repealed.

- (11.35 - Elig. Criteria) <sup># Systems</sup> <sub>Prog Types</sub>
- 11.36 - Reimbursement <sub>Least Rest. Alt.</sub>
- 11.37 Ex. Ed Child. Records
- 11.25 - Diagnostic Teacher
- 11.26 Self-Cont Complete Prog Type
- 11.27 Self-Cont. Modified Prog Type
- 11.28 " " Integrated "
- 11.29 Resource Room Prog Type
- 11.30 Itinerant Prog Type
- 11.31 Homebound Instr. Type
- 11.32 Prog Levels
- 11.33 Spec Ed Prog Aides
- 11.34 Rel. w/ Avl. Sector

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 6th day of May, 1998

  
John T. Benson  
State Superintendent

FISCAL ESTIMATE

ORIGINAL  UPDATED)

LRB or Bill No./Adm. Rule No.  
1997 WA 164/Ch. PI 11, Wis. Adm. Code

DOA-2048 (R10/92)

CORRECTED  SUPPLEMENTAL

Amendment No. If Applicable

Subject: Special Education Programs for Children with Disabilities

Fiscal Effect

**INDETERMINABLE**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Increase Existing Revenues
- Decrease Existing Appropriation
- Decrease Existing Revenues
- Create New Appropriation

- Increase Costs-May be possible to Absorb Within Agency's Budget  Yes  No
- Decrease Costs

Local:  No local government costs

**SEE NARRATIVE**

- 1.  Increase Costs
  - Permissive  Mandatory
- 2.  Decrease Costs
  - Permissive  Mandatory

- 3.  Increase Revenues
  - Permissive  Mandatory
- 4.  Decrease Revenues
  - Permissive  Mandatory

5. Types of Local Governmental Units Affected:
- Towns  Villages  Cities
  - Counties  Others CESAs, CHCEBs
  - School Districts  WTCS Districts

Fund Sources Affected

- GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

1997 Wisconsin Act 164 reconciles the reauthorization of the federal special education law (the Individuals With Disabilities Education Act Amendments of 1997) and Wisconsin's special education law embodied in the statutes and the administrative code.

Many of the current provisions under ch. PI 11 are in direct conflict with the Act. The proposed rule eliminates provisions that conflict with state or federal law. It also eliminates rules which address areas adequately addressed in state statute or federal statute or regulations in an effort to reduce regulatory complexity and potential incongruence between state rule and federal law. Finally, the proposed rule makes technical language changes to reflect new statutory provisions.

There is no significant fiscal effect to the administrative rule, therefore, this fiscal note is based on the fiscal effect of 1997 Wisconsin Act 164 relating to children with disabilities.

It is assumed that most local education agencies (LEAs) will incur some additional administrative costs resulting from the modifications included in the Act. However, most of the increased costs can be attributed to the original changes in federal law. For example, the federal law newly requires that a regular education teacher be included on the individual education program (IEP) team. This previously was required for children with learning disabilities, and local education agencies frequently chose to include regular teachers on the IEP teams for other children as well. The department is unable to estimate what new effect this change in the federal law will have on LEA costs.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Department of Public Instruction

Lori Slauson (608) 267-9127

Authorized Signature/Telephone No.

*Gina Frank-Reece*  
Gina Frank-Reece (608) 266-2804

Date

4/29/98



The following are some examples of the changes made by this Act which would affect LEA costs:

- The separate multidisciplinary-team (M-team) structure will be eliminated and responsibility for evaluation, IEP development and placement will be assigned to a single IEP team which will include parents and a regular education teacher. It is assumed that this modification will streamline assessment and program development processes in many cases, saving time and resources of school staff and parents.
- Separate meetings for evaluation, IEP and placement decisions will be permitted, but no longer required. These decisions will be made by a single IEP team and may be made at one meeting or in several meetings depending on the individual circumstances. Based on interviews with hundreds of parents during on-site monitoring over the past two years, the department believes that parents would choose a single meeting in 75% of initial reviews and fully 95% of reevaluations. This will result in saving time and resources of school staff and parents.
- Currently, each member of an M-team must prepare an individual evaluation report on each child. This Act eliminates that requirement. Instead those participants on the IEP team who administer tests, assessments or other evaluation material as part of an evaluation or reevaluation are required to prepare a written summary of findings that will assist the IEP team with program planning. The written summary of findings will be made available to the IEP team. The IEP team will produce a single evaluation report that includes documentation of determination of eligibility. In addition, parents are notified of their right to receive a copy of this evaluation report upon request at any point following the determination of eligibility and before the IEP team continues with its decision making process. This change will reduce time spent on paperwork. This will result in cost-savings; however, the department is unable to quantify the amount of savings due to the individualized nature of each evaluation.
- Currently, a LEA is required to evaluate a child prior to providing special education and to re-evaluate each child with a disability every three years. Evaluations may subject a child with a disability to unnecessary and repetitive tests. This Act revises the process for evaluation by allowing the IEP team to review existing data, including prior interventions and the results of those interventions, and to use this information along with input from parents to determine what, if any, additional data is needed to determine the child's eligibility for special education. This change will reduce time devoted to unnecessary or repetitive testing of children with disabilities.
- Currently, LEAs submit to the department extensive data relating to every special education staff member and his or her work assignment. The LEA is required to receive department approval for any staff changes. Each LEA submits an application for funds that is totally separate from all of the state data reporting and program approval documentation. This Act will combine state and federal special education reports and applications into a single unified plan that is written in narrative form, understandable and available to school staff, parents and the general public. The required elements and schedules for state and federal reporting processes will be consolidated. The new data reporting process should result in time and cost savings to LEAs and the department in that only changes to the originally submitted plan will need to be reported after the first year.

This legislative proposal will significantly reduce, if not eliminate, the need for the Department of Public Instruction to continually revise statutes and administrative rules in order to be in compliance with federal law. Under the provisions of this Act, paperwork at the LEA level will be reduced, leaving teachers and other staff, such as school psychologists, more time for teaching and working with students and parents.

While the department is unable to precisely estimate the cost savings or new costs to LEAs that will result from this Act, additional federal revenues have recently been allocated to states to support the changes in the IDEA.