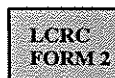


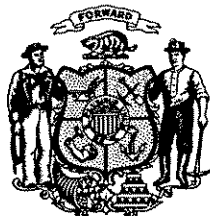
98-138 PI 11.35/36 ELIGIBILITY
CRITERIA - CHILD. & DISABILITIES

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CLEARINGHOUSE REPORT TO AGENCY

[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 98-138

AN ORDER to repeal PI 11.35 (title), (1), (1m) and (2) (title) and (intro.) and (2) (h); to renumber PI 11.35 (2) (a) to (k); to amend PI 11.36 (9) (b); to repeal and recreate PI 11.36 (1), (3), (4), (5), (6) and (7); and to create PI 11.35 (1) to (3) and 11.36, relating to eligibility criteria for children with disabilities.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

09-14-98 RECEIVED BY LEGISLATIVE COUNCIL.

10-12-98 REPORT SENT TO AGENCY.

RNS:JRH:kjf;jal

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)]

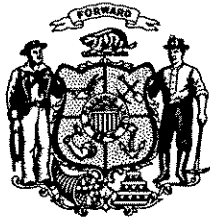
Comment Attached YES NO

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CLEARINGHOUSE RULE 98-138

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 September 1998.]

2. Form, Style and Placement in Administrative Code

a. The arrangement of the sections of Clearinghouse Rule (CHR) 98-138 does not correspond to proper drafting practices and creates confusion regarding what is intended. The text of a rule-making order should treat each provision of the Administrative Code (i.e., each decimal-numbered provision of the Administrative Code or subunit thereof) in the order that they appear in the Administrative Code as it exists at the time of drafting. [See s. 1.04 (1), Manual.] Also, it is not appropriate to renumber a provision and then repeal and recreate it. Instead, the existing provision should simply be repealed and a new provision created with the appropriate number at the appropriate place in the rule-making order. Thus, for example, the treatment clauses of CHR 98-138 could be replaced with the following:

SECTION 1. PI 11.35 (title) and (1) are repealed and recreated to read:

[Fill in text of new PI 11.35 (title) and (1).]

SECTION 2. PI 11.35 (1m) is repealed.

SECTION 3. PI 11.35 (2) (title), (intro.) and (a) are repealed.

SECTION 4. PI 11.35 (2) (b) and (c) are renumbered PI 11.36 (2) and (3).

SECTION 5. PI 11.35 (2) (d) is repealed.

.....

SECTION ___. PI 11.35 (2) (k) is renumbered PI 11.36 (10).

SECTION ___. PI 11.35 (2) and (3) are created to read:

[Fill in text of PI 11.35 (2) and (3).]

SECTION ___. PI 11.36 (title), (1), (3), are created to read:

[Fill in text of provisions of s. PI 11.36 newly created by CHR 98-138.]

However, *a better alternative* would be to create a new s. PI 11.345 containing the text of s. PI 11.35 as proposed by CHR 98-178; then repeal or renumber the provisions of existing s. PI 11.35, as appropriate; then create the remaining provisions of s. PI 11.36.

b. CHR 98-138 does not treat s. PI 11.35 (2) (ad) or (L). Thus, it is not clear what is intended to happen to those paragraphs.

c. SECTION 3 of CHR 98-138 states that s. PI 11.36 is created. However, that SECTION creates only s. PI 11.36 (title). The treatment clause of SECTION 3 should reflect that. Also, the section title should follow the format set forth in s. 1.05 (2) (b), Manual.

d. In s. PI 11.36 (1) (b) (intro.), “as follows:” should be added at the end. [See s. 1.03 (8), Manual.]

e. In s. PI 11.36 (6) (b) 2. (intro.), “See Appendix A.” should be placed in a note.

f. In s. PI 11.36 (6) (c) 1., “, Stats.” should follow the first statutory citation.

g. SECTIONS 19 and 20 should be combined as follows:

SECTION 19. PI 11.35 (2) (j) is renumbered PI 11.36 (9) and 11.36 (9) (b), as renumbered, is amended to read:

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the analysis contained in the report to the Legislative Council Rules Clearinghouse, the reference to “42 USC 1412” should be replaced by “20 USC 1412”. Also, it would be helpful to indicate in the citation the specific subunits of 20 USC 1412 that provide authority for the rule. Should 20 USC 1414 also be cited?

b. In SECTION 10 of CHR 98-138, “Chapter 459, Stats.” should be replaced by “ch. 459, Stats.”.

c. In s. PI 11.36 (6) (b) 2. b., the reference to “subpar. a.” should be to “subd. 2. a.”

d. In s. PI 11.36 (6) (b) 2. c., as proposed in SECTION 14 of CHR 98-138, “subds. 1. and 3.” should be substituted for “subd. 1. and 3.”

e. In s. PI 11.36 (6) (d), the reference to “criteria under subd. 1. and 2.” is incorrect. There are no subdivisions in par. (d).

f. In s. PI 11.36 (7) (b) 2., the reference to “subpar. a.” is incorrect. There are no subdivision paragraphs in subd. 2.

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

a. The terms used for various disabilities in the Administrative Code should be consistent with the terms used in the statutes. Specifically, the definition of “child with a disability” in s. 115.76 (5) (a), Stats., uses the terms “speech or language impairments,” “emotional disturbance” and “learning disabilities.” However, CHR 98-138 uses the terms “speech and language impairments,” “emotional behavior disabilities” and “specific learning disability.” These and any other similar inconsistencies should be eliminated.

b. Throughout CHR 98-108, references are made to “IEP team.” However, that term is not defined for the purposes of the rule. Also, throughout the rule, reference is made to “IQ standard score” which also is not defined. Is use of this term even necessary?

c. In s. PI 11.35 (3) (a), as created by SECTION 2 of CHR 98-138, “as currently structured” should be replaced by “as structured at the time the evaluation is conducted.” [See s. 1.01 (9) (b), Manual.]

d. The entire rule should be reviewed to ensure that it clearly states the persons to whom its various provisions refer or apply. Examples of changes that should be made include the following:

(1) In s. PI 11.35 (3) (b), as proposed in SECTION 2 of CHR 98-138, “in order to” should be replaced by “that will allow the child to.”

(2) In s. PI 11.35 (3) (c), Stats., “to the child” should be inserted after “effects.”

(3) In the first sentence of s. PI 11.35 (3) (d), “provided to the child” should be inserted after “related services.”

(4) In s. PI 11.36 (5) (b) 2., “his or her” should be inserted immediately preceding “educational performance.”

(5) In s. PI 11.36 (7) (b) h., as created by SECTION 16 of CHR 98-138, “other children” should be substituted for “others.”

e. Section PI 11.35 (3) (d), as proposed in SECTION 2 of CHR 98-138, should be reworded to indicate that it applies to a child already receiving a special education program. Also, in the second sentence of that paragraph, the meaning of the phrase “replacement content” should be clarified. In that sentence, “may” or “should” should replace “should” in order to indicate whether the action is mandatory or discretionary.

f. For consistency with the structure of other subdivisions of s. PI 11.36 (1), s. PI 11.36 (1) (b) 3. a. and b. in SECTION 5 of CHR 98-138, should be reworded to begin: “The child is age” Also, these subdivision paragraphs use the phrase “cognitive impairment,” rather than “cognitive disability.” See comment 5. a. Perhaps these provisions could be reworded to avoid the use of that phrase altogether. For example, s. PI 11.36 (1) (b) 3. a. might be reworded to state: “The child is age 3 to 6 years and has a standard score of”

g. Section PI 11.36 (1) (b) 3. a. and b. contain overlapping age brackets. Is it intended that both subdivision paragraphs apply to 6-year olds? If not, either “3 to 5” and “6 to 22” should be used or “3 to 6” and “7 to 22” should be used.

h. For consistency with the other subsections of s. PI 11.36, s. PI 11.36 (3), in SECTION 8 of CHR 98-138, should begin “Visual impairment means” rather than “A visual impairment means”

i. In s. PI 11.36 (5) (b) 2., as proposed in SECTION 12 of CHR 98-138, it appears that the phrase “the severe or profound range of phonological use” should be clarified, perhaps by referring to “the severely or profoundly impaired range of phonological use.”

j. In s. PI 11.36 (5) (b) 3. and 6., as proposed in SECTION 12 of CHR 98-138, what does it mean to say that the child performs at least “1.5 standard deviations below overall functioning”? Usually, standard deviations are measured relative to a mean or a norm.

k. In s. PI 11.36 (5) (b) 5., a comma should be inserted after “syllables.” Also, “at least or less than 10 percent” is confusing. Are all numbers not at least or less than 10%?

l. Section PI 11.36 (5) (b) 6. uses, as one of the criteria for identifying a child with a speech or language impairment, that the child’s “oral communication is inadequate.” How is adequacy measured or by what standard is it judged? Also in that subdivision, reference is made to a “global” norm-referenced test. What is such a test?

m. In s. PI 11.36 (6) (b) 1. (intro.), as proposed in SECTION 14 of CHR 98-138, “any of” or “all of”, whichever is intended, should be inserted preceding “the following.”

n. The phrases “Upon initial identification,” in s. PI 11.36 (6) (b) 1. (intro.) and 2. (intro.) need further clarification. If these provisions are intended to apply only the first time the child is evaluated and identified as a child with disabilities, but not for any subsequent reevaluations, then that result should be explicitly stated. Also, must the “multiple score instrument,” “single score instrument” and “standardized achievement and ability tests,” referred to in s. PI 11.36 (6) (b) 2. (intro.), be approved by the department? If not, it appears that these tests should be more explicitly described or identified.

o. It appears that s. PI 11.36 (6) (b) 2. b. is a continuation of, and should be combined with, s. PI 11.36 (6) (b) 2. a. It does not appear to be a separate exception.

p. In the Note following SECTION 22, the first letter of the second sentence should be capitalized.

q. The expected achievement formula set forth in Appendix A as proposed in CHR 98-138 is somewhat confusing to read. Perhaps, it would be clearer if stated as follows:

$$(SDa/SDi) \times (r) \times (IQ-100) + 100 = \text{---}$$

Also, in the line defining SD Discrepancy, the square root sign should extend over "1-r²".

**PROPOSED ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
CREATING/AMENDING RULES**

The state superintendent of public instruction hereby proposes to repeal PI 11.35(title), (1), (1m) and (2)(title) and (intro.), PI 11.35(2)(h); to renumber PI 11.35(2)(a), PI 11.35(2)(b), PI 11.35(2)(c), PI 11.35(2)(d), PI 11.35(2)(e), PI 11.35(2)(f), PI 11.35(2)(g), PI 11.35(2)(I), PI 11.35(2)(j), and PI 11.35(2)(k); to amend PI 11.36(9)(b); to repeal and recreate PI 11.36(1), PI 11.36(3), PI 11.36(4), PI 11.36(5), PI 11.36(6), and PI 11.36(7); and to create PI 11.35(1) to (3) and PI 11.36, relating to eligibility criteria for children with disabilities.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statute interpreted: s. 115.782, Stats.

In November 1996, the department held twelve informational hearings throughout the state relating to special education requirements under Chapter PI 11, Wisconsin Administrative Code. As a result of testimony presented at those hearings, the state superintendent appointed seven task forces to develop criteria determining the need for special education services and to modify eligibility criteria relating to:

- Cognitive disabilities.
- Visual impairments.
- Hearing impairments.
- Speech and language impairments.
- Specific learning disabilities.
- Emotional behavioral disabilities.

As a result of the task force recommendations, the proposed rules modify provisions relating to the identification of a child with a disability. Specifically, when evaluating a child with a potential disability, the rules require that an IEP team:

- May not use any single procedure as a sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child.
- Must determine if an impairment specified in this chapter adversely affects the child's educational performance, thereby requiring the need of special education and related services on the part of the child.
- Must determine the child's needs that cannot be met in the regular education program, modifications that can be made in the regular education program, potential harmful effects if the child does not receive special education, and whether any additions or modifications need to be made to the child's special education and related services in order for the child to meet his or her goals.

The proposed rules also set forth eligibility criteria to identify children with cognitive disabilities, visual impairments, hearing impairments, speech and language impairments, specific learning disabilities, and emotional behavioral disabilities. The multiple handicapped impairment has been eliminated since a child with multiple impairments would be identified under one or more of the existing impairments. Finally, other technical modifications have been made to update terminology and to renumber and reorganize the section relating to impairments.

rep. + rec. - 11.35 ?

SECTION 1. PI 11.35(title), (1), (1m) and (2)(title) and (intro.) are repealed.

SECTION 2. PI 11.35(1) to (3) ^{is} are created to read:

PI 11.35 DETERMINATION OF ELIGIBILITY. (1) An evaluation conducted by an IEP team under s. 115.782, Stats., shall focus on the consideration of information and activities that assist the IEP team in determining how to teach the child in the way he or she is most capable of learning. Specifically, the IEP team shall meet the evaluation criteria specified under s. 115.782(2)(a), Stats., when conducting tests and using other evaluation materials in determining a child's disability.

(2) A child shall be identified as having a disability if the IEP team has determined from an evaluation conducted under s. 115.782, Stats., that the child has an impairment under s. PI 11.36 that adversely affects the child's educational performance, and the child, as a result thereof, needs special education and related services.

(3) As part of an evaluation or reevaluation under s. 115.782, Stats., conducted by the IEP team in determining whether a child is or continues to be a child with a disability, the IEP team shall identify all of the following:

- (a) The child's needs that cannot be met through the regular education program as currently structured.
- (b) Modifications, if any, that can be made in the regular education program, such as adaptation of content, methodology or delivery of instruction to meet the child's needs identified under par. (a), in order to access the general education curriculum and meet the educational standards that apply to all children.
- (c) Potential harmful effects, if any, if the child does not receive special education.
- (d) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child, and to participate, as appropriate, in the general curriculum. Any such additions or modifications should include the extent to which the child requires replacement content, or supplementary aids, services, and other supports provided in regular education classes or other education-related settings to enable the child to be educated with nondisabled children to the maximum extent appropriate.

SECTION 3. PI 11.36 is created to read:

PI 11.36 AREAS OF IMPAIRMENT

*← cur title
rephrase*

num. sequence

SECTION 4. PI 11.35(2)(a) is renumbered PI 11.36(1).

SECTION 5. PI 11.36(1) is repealed and recreated to read:

PI 11.36(1) COGNITIVE DISABILITY. (a) Cognitive disability means significantly subaverage intellectual functioning that exists concurrently with related limitations in 2 or more adaptive skill areas and that adversely affects educational performance.

(b) The IEP team may identify a child as having a cognitive disability if the child meets the criteria under subd. 1. and 2. and subd. 3. a. or b. *← as follows:*

1. The child has an IQ standard score of 2 or more standard deviations below the mean, based on an assessment that includes at least one individually administered intelligence test developed to assess intellectual functioning. Alternatively, the IEP team may identify a child as having a cognitive disability if the child has an IQ standard score between one and two

standard deviations below the mean; if the child acts as does a child who has an IQ standard score below 70; if the child exhibits concomitant lags in intellectual functioning, adaptive skills and educational performance; if the child has been documented as having a cognitive impairment in the past; and if the child's condition is expected to last indefinitely.

2. The child has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments that include interviews of the parents, tests, and observations of the child in at least 2 of the following areas:

- a. Communication.
- b. Self-care.
- c. Home living skills.
- d. Social skills.
- e. Appropriate use of resources in the community.
- f. Self-direction.
- g. Health and safety.
- h. Applying academic skills in life.
- i. Leisure.
- j. Work.

3.a. The IEP team may identify a child aged 3 to 6 as having a cognitive impairment if the child has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in at least 2 of the following areas: academic readiness, comprehension of language or communication, or motor skills.

b. The IEP team may identify a child aged 6 to 22 as having a cognitive impairment if the child has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in at least 2 of the following areas: written language, mathematics, general information or reading.

NOTE: Cognitive disabilities manifests before age 18. An etiology should be determined when possible, so that the IEP team can use this information for program planning.

SECTION 6. PI 11.35(2)(b) is renumbered PI 11.36(2)

SECTION 7. PI 11.35(2)(c) is renumbered PI 11.36(3)

SECTION 8. PI 11.36(3) is repealed and recreated to read:

PI 11.36(3) VISUAL IMPAIRMENT. A visual impairment means a visual impairment that adversely affects a child's educational performance, even after the best conventional correction. The IEP team may identify a child as having a visual impairment after all of the following events occur:

(a) A teacher of the visually impaired conducts a functional vision evaluation which includes a review of medical history, formal and informal tests of visual functioning and the determination of the implications of the visual impairment on the educational and curricular needs of the child.

(b) A teacher of the visually impaired, in conjunction with the orientation and mobility specialist, evaluates the child at school, at the child's residence and in the community.

(c) An ophthalmologist or optometrist finds at least one of the following:

1. Central visual acuity of 20/70 or less in the better eye after conventional correction.
2. Reduced visual field of 50 degrees or less in the better eye.
3. Other physical conditions or ocular diseases that are permanent and irremediable.
4. Cortical visual impairment.
5. A degenerative condition that is or is likely to result in a significant loss of vision.

SECTION 9. PI 11.35(2)(d) is renumbered PI 11.36(4).

SECTION 10. PI 11.36(4) is repealed and recreated to read:

PI 11.36(4) HEARING IMPAIRMENT. Hearing impairment means any hearing loss, including deafness, that adversely affects educational performance. The evaluation of a child who is suspected of having a hearing impairment must include an evaluation by an audiologist licensed under Chapter 459, Stats.

SECTION 11. PI 11.35(2)(e) is renumbered PI 11.36(5)

SECTION 12. PI 11.36(5) is repealed and recreated to read:

PI 11.36(5) SPEECH AND LANGUAGE IMPAIRMENT. (a) Speech and language impairment means an impairment of speech or sound production, voice, fluency or language that significantly affects educational performance or social, emotional or vocational development.

(b) The IEP team may identify a child who meets any of the following criteria as having a speech and language impairment:

1. The child exhibits one or more errors in articulating sounds that persists beyond the age at which 90 percent of children of the same age can articulate the sounds and the child's conversational intelligibility is significantly affected or the child's conversational intelligibility significantly affects educational performance, as evaluated by at least one person other than a speech and language pathologist.
2. Forty percent of the child's patterns of sound are disordered, or the child scores in the severe or profound range of phonological use in formal testing and the child's conversational intelligibility is significantly affected or the child's conversational intelligibility significantly affects educational performance, as evaluated by at least one person other than a speech and language pathologist.
3. The child performs on a norm-referenced test of articulation or phonology at least 1.5 standard deviations below overall functioning, and the child's conversational intelligibility is significantly affected or the child's conversational

intelligibility significantly affects educational performance, as evaluated by at least one person other than a speech and language pathologist.

4. In the absence of an acute, respiratory virus or infection, the child exhibits atypical loudness, pitch, quality or resonance, as reported by at least one person other than a speech pathologist and the child's voice is moderately to severely impaired.

5. In absence of or with stress, struggle or avoidance, the child repeats, prolongs, or hesitates over syllables, words, phrases or sentences, revises sounds or uses interjections on at least or less than 10 percent of a 100-word sample, and these nonfluencies interfere with communication, as evaluated by at least one person other than a speech pathologist.

6. The child's oral communication is inadequate, as documented by a language sample or by a notation explaining why language sampling was not possible; and the child's performance on a global norm-referenced test designed to assess language functioning is at or below 1.5 standard deviations from overall functioning; and the child's receptive or expressive language interferes with oral communication, as judged by at least one person other than a speech pathologist.

(c) The IEP team may not identify a child who exhibits any of the following as having a speech and language impairment:

1. Mild, transitory or developmentally appropriate speech or language difficulties that most children experience at various times and to varying degrees.
2. Speech or language difficulties resulting from learning English as a second language, unless the child has a documented disorder of language acquisition and impairment in his or her primary language.
3. Difficulties with auditory processing without a concomitant documented oral speech and language impairment.
4. A tongue thrust that does not significantly reduce the child's intelligibility.
5. Elective or selective mutism or school phobia.

(d) The IEP team shall substantiate a speech and language impairment by having all of the following:

1. A representative speech or language sample of the child.
2. Information about the child's speech or language in unstructured activities.
3. Formal tests using normative data or informal tests using criterion-referenced data.

SECTION 13. PI 11.35(2)(f) is renumbered PI 11.36(6)

SECTION 14. PI 11.36(6) ~~is~~ repealed and recreated to read:

PI 11.36(6) SPECIFIC LEARNING DISABILITY. (a) Specific learning disability means a severe learning problem due to a disorder in one or more of the basic psychological processes involved in acquiring, organizing or expressing information and that manifests itself in school as an impaired ability to listen, reason, speak, read, write, spell or do mathematical calculations, despite appropriate instruction in the general education curriculum. Specific learning disability may include conditions such as perceptual disability, brain injury, minimal brain dysfunction, dyslexia and development aphasia.

(b) The IEP team may identify a child as having a specific learning disability if all of the following are true:

1. 'Classroom achievement.' Upon initial identification, the child's ability to meet the instructional demands of the classroom and to achieve commensurate with his or her age and ability levels is severely delayed in the following areas:

- a. Oral expression.
- b. Listening comprehension.
- c. Written expression.
- d. Basic reading skill.
- e. Reading comprehension.
- f. Mathematical calculation.
- g. Mathematical reasoning.

any of
all of

2. 'Significant discrepancy.' Upon initial identification, a significant discrepancy exists between the child's academic achievement in any of the areas under subd. 1 a. to g. and intellectual ability as documented by the child's composite score on a multiple score instrument or the child's score on a single score instrument. The IEP team may base a determination of significant discrepancy only upon the results of individually administered, standardized achievement and ability tests that are reliable and valid. A significant discrepancy means a difference between standard scores for ability and achievement equal to or greater than 1.75 standard errors of the estimate below expected achievement, using a standard regression procedure that accounts for the correlation between ability and achievement measures. See appendix A. This regression procedure shall be used except under any of the following conditions:

note

a. The regression procedure under this subdivision may not be used to determine a significant discrepancy if the IEP team determines that the child cannot attain valid and reliable standard scores for intellectual ability or achievement because of the child's test behavior, the child's language, another impairment of the child that interferes with the attainment of valid and reliable scores or the absence of valid and reliable standardized, diagnostic tests appropriate for the child's age.

b. If the IEP team makes such a determination under ^{subd. 2. a.} subpar. a., it shall document the reasons why it was not appropriate to use the regression formula and shall document that a significant discrepancy exists, including documentation of a variable pattern of achievement or ability, in at least one of the areas under subd. 1. a. to g. using other empirical evidence.

c. If the discrepancy between the child's ability and achievement approaches but does not reach the 1.75 standard error of the estimate cut-off under subd. 2.(intro.), the child's performance in any of the areas in subd. 1. a. to g. is variable, and the IEP team determines that the child meets all other criteria under subd. 1. and 3., the IEP team may consider that a significant discrepancy exists.

3. 'Information processing deficit.' The child has an information processing deficit that is linked to the child's classroom achievement delays under subd. 1. and to the significant discrepancy under subd. 2. The IEP team shall document its determination that the child has an information processing deficit with empirical evidence.

(c)1. The IEP team may not identify a child as having a specific learning disability if it determines that the significant discrepancy between ability and achievement is primarily due to environmental, cultural or economic disadvantage or any of the reasons specified under s. 115.782(3)(a) ^{parts} or any of the impairments under s. 115.76(5), Stats.

2. If the IEP team is concerned that a child has a significant discrepancy in oral expression or listening comprehension, the IEP team shall include a person qualified to assess speech and language impairments.

3. At least one observation in the general classroom setting by a team member other than the classroom teacher shall be conducted.

(d) Upon reevaluation, a child who met initial identification criteria under subd. 1. and 2. and continues to demonstrate a need for special education under s. PI 11.35(2) is a child with a disability under this section, unless the provision under par. (c)1. applies. If a child with a specific learning disability performs to their ability in the general education classroom without specially designed instruction, the IEP team shall determine whether the child is no longer a child with a disability.

SECTION 15. PI 11.35(2)(g) is renumbered PI 11.36(7).

SECTION 16. PI 11.36(7) is repealed and recreated to read:

PI 11.36(7) EMOTIONAL BEHAVIORAL DISABILITY. (a) Emotional behavioral disability means social, emotional or behavioral functioning that so departs from generally accepted, age appropriate ethnic or cultural norms that it adversely affects a child's academic progress, social relationships, personal adjustment, classroom adjustment, self-care or vocational skills.

(b) The IEP team may identify a child as having an emotional behavioral disability if the child meets the definition under par. (a), and meets all of the following:

1. The child demonstrates severe, chronic and frequent behavior that is not the result of situational anxiety, stress or conflict.
2. The child's behavior described under subpar. a. occurs in school and in at least one other setting.
3. The child displays any of the following:
 - a. Inability to develop or maintain satisfactory interpersonal relationships.
 - b. Inappropriate affective or behavior response to a normal situation.
 - c. Pervasive unhappiness, depression or anxiety.
 - d. Physical symptoms, pains or fears associated with personal or school problems.
 - e. Inability to learn that cannot be explained by intellectual, sensory or health factors.
 - f. Extreme withdrawal from social interactions.
 - g. Extreme aggressiveness for a long period of time.
 - h. Other inappropriate behaviors that are so different from children of similar age, ability, educational experiences and opportunities that the child or others in a regular or special education program are negatively affected.

(c) The IEP team shall rely on a variety of sources of information, including systematic observations of the child in a variety of educational settings and shall have reviewed prior, documented interventions. If the IEP team knows the cause of the disability under this paragraph, the cause may be, but is not required to be, included in the IEP team's written evaluation summary.

(d) The IEP team may not exclude a child from being identified under this paragraph solely on the basis that the child has another disability, or is socially maladjusted, adjudged delinquent, a dropout, chemically dependent, or a child whose behavior is primarily due to cultural deprivation, familial instability, suspected child abuse or socio-economic circumstances, or when medical or psychiatric diagnostic statements have been used to describe the child's behavior.

SECTION 17. PI 11.35(2)(h) is repealed.

SECTION 18. PI 11.35(2)(i) is renumbered PI 11.36(8)

SECTION 19. PI 11.35(2)(j) is renumbered PI 11.36(9)

SECTION 20. PI 11.36(9)(b) as renumbered is amended to read:

PI 36.(9)(b) Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic disorders and the effects of toxic substances or degenerative conditions may meet the criteria of one of the other ~~handicapping conditions~~ impairments under this section, ~~such as other health impairment, learning disability, or multiple handicapped.~~

SECTION 21. PI 11.35(2)(k) is renumbered PI 11.36(10)

SECTION 22. The note following PI 11.36(10) as renumbered is amended to read:

NOTE: With respect to the eligibility criteria under s. PI ~~11.35~~ 11.36, in September 1991 the U.S. department of education issued a memorandum clarifying state and local responsibilities for addressing the educational needs of children with attention deficit disorder (ADD). (See 18 IDELR 116). as a condition of receipt of federal funds under the Individuals with Disabilities Act (IDEA), the state and local school districts are bound to comply with the federal policy outlined in that memo. (See e.g. *Metropolitan school district of Wayne Township, Marion County, Indiana v. Davila*, 969 F. 2d 485 (7th cir. 1992)).

Pursuant to that federal policy memo, a child with ADD is neither automatically eligible nor ineligible for special education and related services under ch. 115, Stats. In considering eligibility, ~~a multidisciplinary team (M-team) an IEP team~~ an IEP team must determine whether the child diagnosed with ADD has one or more ~~handicapping conditions~~ impairments under ~~ch. 115, Stats., this section~~ this section and a need for special education. For example, pursuant to the federal policy memo, a child with ADD may be eligible for special education and related services under ch. 115, Stats., if the child meets the eligibility criteria for "other health impaired" or any other ~~condition impairment~~ impairment enumerated in ~~ch. 115, Stats. this section.~~ A copy of the federal policy may be obtained by writing the ~~Exceptional Education Mission~~ Special Education Team, Division for Learning Support: Equity and Advocacy, Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

SECTION 23. Appendix A is created to read:

Appendix A
Regression Formula for Calculating Significant Discrepancy Scores

Information needed for Calculation:

IQ/Ability Score	= _____	SD of IQ/Cognitive Test = _____	(SDi)
Achievement Score	= _____	SD of Achievement Test = _____	(SDa)
		Correlation between tests = 0. _____	(r)*

Formula:

Expected Achievement = $(SDa/SDi)r(IQ-100)+100 =$ _____

Discrepancy = Expected Achievement - Obtained Achievement Score =

SD Discrepancy = $SDa \sqrt{1-r^2}$ _____ =

Cut-off:

Discrepancy / SD Discrepancy =

If number is **greater than 1.75**, there is a significant discrepancy between achievement and ability scores

* If correlation between tests is unknown, use .62


When the test publisher provides tables for significant differences between ability and achievement scores (such as with the Weschler Intelligence Scale for Children- 3 and the Weschler Individual Achievement Test), these tables may be used in lieu of this formula. Cut-offs should be derived using a 1.75 Standard Error of Estimate (SEe) criterion so that the difference between expected and obtained scores in the bottom 4% of the distribution meet the standard for a significant discrepancy (i.e. 1.75 SEe units below the expected score).

SECTION 24. Cross-reference changes. In the sections of the rule listed in Column A, the cross-references shown in Column B are changed to the cross-references in Column C. *ASA*

Column A Rule Sections	Column B Old Cross-References	Column C New Cross-References
s. PI 11.36(8)(a) as renumbered	par. (g)	s. PI 11.36(7)
s. PI 11.36(8)(b) as renumbered	subd. 2.a. and b. subd. 2.c. through f.	subd. 1. and 2. subd. 3. through 6.
s. PI 11.36(9)(c) as renumbered	subd. 1.	par. (a)
s. PI 11.36(9)(d) as renumbered	this paragraph	this subsection

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 10th day of September, 1998


John T. Benson
State Superintendent