

CR 93-25

CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF PUBLIC INSTRUCTION)

I, State Superintendent of the Department of Public Instruction and custodian of the official records of said Department, do hereby certify that the annexed rule relating to testing of limited-English speaking pupils or pupils having an exceptional educational need was duly approved and adopted by this Department on the first day of the month following publication in the Wisconsin Administrative Register.

I further certify that said copy has been compared by me with the original on file in this Department and the same is a true copy thereof, and of the whole of such original.

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12:30 pm  
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IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the official seal of the Department at General Executive Facility (GEF) 3, 125 South Webster Street, P.O. Box 7841, in the city of Madison, this 28<sup>th</sup> day of May, 1993.

*Lee Sherman Dreyfus* <sup>LSM</sup>  
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Lee Sherman Dreyfus  
Interim State Superintendent  
State Department of Public Instruction

**ORDER OF THE  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
REPEALING AND RECREATING RULES**

The state superintendent of public instruction hereby repeals and recreates ch. PI 16, relating to testing of limited-English speaking pupils or pupils having an exceptional educational need.

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**ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION**

Statutory authority: ss. 118.30(2)(b)2 and 227.11(2)(a), Stats.

Statute interpreted: s. 118.30, Stats.

1991 Wisconsin Act 269 requires the state superintendent to adopt or approve examinations that are designed to measure pupil attainment of knowledge in the 8th and 10th grades and make them available to all school districts at no charge beginning in the 1992-93 school year.

The Act requires the state superintendent to set criteria, by rule, regarding the testing of limited-English speaking pupils. The Act also allows school boards to determine whether a pupil with an exceptional educational need should be tested.

Specifically, s. 118.30(2)(b), Stats., allows a school board to:

1. Determine not to administer an examination to a pupil enrolled in a special education program under subch. V of ch. 115, Stats., or a pupil with limited-English speaking ability, according to criteria established by the state superintendent.
2. Modify the format and administration of an examination for a pupil described under 1 above.
3. Permit a limited-English speaking pupil to be examined in his or her native language.

The rules establish criteria and procedures to determine whether a pupil with limited-English speaking ability or a pupil with exceptional educational needs (EEN) may be exempt from taking a test under s. 118.30, Stats. If a limited-English speaking pupil is exempt from taking the examination, the school board must develop a policy and assessment procedures to determine the achievement level of the pupil in core subjects such as writing, reading and mathematics. The school board must also assist the pupil in career development and postsecondary education decisions.

The rules require school districts to do the following when testing a pupil with limited-English speaking ability or EEN:

1. Modify the format and administration of the test, if the pupil needs such accommodations.
2. Notify the parents of these pupils at least 30 days prior to the administration of the test regarding the pupil's inclusion in or exemption from taking the test.



1 115.76(3), Stats.

2 (3) "Limited-English speaking pupil" means a pupil as defined in s.  
3 115.955(7), Stats., and who meets the criteria set forth under s. PI 13.03.

4 (4) "Parent" includes the term legal guardian.

5 (5) "Test" means the examination administered to pupils enrolled in the  
6 8th and 10th grades as specified under s. 118.30, Stats.

7 SUBCHAPTER II

8 TESTING OF LIMITED-ENGLISH

9 SPEAKING PUPILS IN THE 8TH AND 10TH GRADES

10 PI 16.04 SCHOOL BOARD POLICY AND RESPONSIBILITY. (1) Each school board  
11 whose pupil population includes one or more limited-English speaking pupils  
12 shall adopt a policy regarding the testing of limited-English speaking pupils.  
13 The policy shall include all of the following:

14 (a) Procedures to be developed and used in testing limited-English  
15 speaking pupils under this chapter.

16 (b) Procedures which will be used for notification of the parent of the  
17 limited-English speaking pupil, as specified under s. PI 16.06.

18 (c) Any criteria in addition to that specified under s. PI 16.05 (1), if  
19 approved by the state superintendent, used to determine participation in the  
20 testing of limited-English speaking pupils.

21 (2) The policy shall provide for the following assurances:

22 (a) Decisions regarding testing will be made and documented on an  
23 individual basis for each limited-English speaking pupil.

24 (b) Test results will not be used as the sole criterion in exiting  
25 limited-English speaking pupils from a bilingual-bicultural education program  
26 or in determining grade promotion, eligibility for courses or programs,  
27 eligibility for graduation or eligibility for participation in postsecondary  
28 education opportunities.

29 (3) (a) A school board that exempts a limited-English speaking pupil  
30 from taking a test may not penalize the pupil by denying grade promotion,  
31 eligibility for courses or programs, eligibility for graduation or eligibility

1 for postsecondary education opportunities.

2 (b) A school board that exempts a limited-English speaking pupil from  
3 taking a test shall meet the following requirements:

4 1. Develop a policy and assessment procedures to determine the  
5 achievement level of limited-English speaking pupils in core subjects which  
6 include writing, reading and mathematics.

7 2. Assist limited-English speaking pupils in career development and  
8 postsecondary education decisions.

9 PI 16.05 TESTING OF LIMITED ENGLISH-SPEAKING PUPILS. (1) A school board  
10 may test a limited-English speaking pupil who meets the requirements under s.  
11 PI 13.03 (3) (d) or (e) or who has recently exited a bilingual-bicultural  
12 program. In determining whether to administer a test to a limited-English  
13 speaking pupil under this subsection, a school board shall apply and document  
14 all of the following criteria:

15 (a) Whether the pupil has had an opportunity to master the competencies  
16 for which he or she is being tested.

17 (b) Whether the pupil demonstrates test-taking skills.

18 (c) Whether a teacher of the limited-English speaking pupil has  
19 attested that the pupil has sufficient academic and English proficiency to  
20 take the test under this chapter with or without the modifications described  
21 under sub. (3).

22 (2) A school board shall exempt a limited-English speaking pupil who  
23 meets the criteria under s. PI 13.03(3)(a) to (c) from taking a test under  
24 this chapter.

25 (3) A school board which tests a limited-English speaking pupil under  
26 this chapter shall provide for modifying the format and administration of the  
27 test, if the pupil needs such accommodations. Any modifications made under  
28 this subsection shall maintain the validity of the test and may include one or  
29 more of the following:

30 (a) Provide the assistance of a qualified translator to translate  
31 instructions or read items from tests which do not assess reading competency.

1 (b) Provide small group or individual testing opportunities.

2 (c) Provide more practice tests or examples before the actual test is  
3 administered.

4 (d) Allow limited-English speaking pupils to use dictionaries and other  
5 educational aids while taking the test.

6 (e) Allow pupils as much time as necessary to complete the test.

7 (f) Allow any other method approved by the department.

8 PI 16.06 NOTIFICATION PROCEDURES. The school board shall do all of the  
9 following:

10 (1) Notify the parent of a limited-English speaking pupil at least 30  
11 days prior to the administration of the test, regarding the pupil's inclusion  
12 in or exemption from the test under this chapter. The notice shall be  
13 provided in English, the parent's native language or any other means to convey  
14 the following information:

15 (a) The criteria used in determining the pupil's inclusion in or  
16 exemption from the test.

17 (b) An explanation of how the results of the test will be used.

18 (2) Provide the test results of each limited-English speaking pupil to  
19 the pupil's parent. The results shall be provided in English, the parent's  
20 native language or any other means necessary to ensure the requirement under  
21 sub. (3) is met.

22 (3) Ensure that the limited-English speaking pupil's parent understands  
23 the provisions of the notices under this section.

24 SUBCHAPTER III

25 TESTING OF PUPILS WITH EEN

26 IN THE 8TH AND 10TH GRADES

27 PI 16.07 SCHOOL BOARD POLICY AND RESPONSIBILITY. (1) Each school board  
28 whose pupil population includes one or more pupils with an EEN shall adopt a  
29 policy regarding the testing of pupils with an EEN. The policy shall include  
30 all of the following:

1 (a) Procedures used in determining whether a pupil with EEN will be  
2 tested.

3 (b) Procedures used in administering a test to a pupil with EEN.

4 (c) Procedures used for notifying a parent of a pupil with EEN, as  
5 specified under s. PI 16.09.

6 (2) The policy shall provide for the following assurances:

7 (a) Decisions regarding testing will be made on an individual basis and  
8 will be documented in the pupil's IEP for each pupil having an EEN.

9 (b) Test results will not be used as the sole criterion in determining  
10 grade promotion, eligibility for courses or programs, eligibility for  
11 graduation or eligibility for participation in postsecondary education  
12 opportunities.

13 (3) A school board that exempts a pupil with EEN from taking a test, may  
14 not penalize a pupil by denying grade promotion, eligibility for courses or  
15 programs, eligibility for graduation or eligibility for postsecondary  
16 education opportunities.

17 16.08 TESTING OF PUPILS WITH EEN. (1) A school board may exempt a  
18 pupil with an EEN from taking a test under this chapter. The school board  
19 shall make this determination on an individual basis using each pupil's  
20 individualized education program.

21 (2) A school board which tests a pupil with an EEN under this chapter  
22 shall provide for modifying the format and administration of the test, if the  
23 pupil needs such accommodations. Any modifications made under this  
24 subsection, shall maintain the validity of the test.

25 PI 16.09 NOTIFICATION PROCEDURES. If the pupil's IEP does not address  
26 the decision regarding the pupil's participation in taking the test, the board  
27 shall do all of the following:

28 (1) Notify the parent of a pupil with EEN in writing, at least 30 days  
29 prior to the administration of the test, regarding the pupil's inclusion in or  
30 exemption from the test under this chapter. The notice shall include the  
31 following:

1 (a) The criteria used in determining the pupil's inclusion in or  
2 exemption from the test.

3 (b) An explanation of how the results of the test will be used, if  
4 tested.

5 (2) Provide the test results of each pupil to the pupil's parent.

6 (3) Ensure that the pupil's parent understands the provisions of the  
7 notices under this section.

The 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 28<sup>th</sup> day of May, 1993

  
Lee Sherman Dreyfus  
Interim State Superintendent

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