

Chapter PI 11

CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS

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PI 11.02 Definitions. In this chapter:

- (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.
- (5m) "IDEA" means the individuals with disabilities education act under 20 USC 1400 et. seq.
- (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.

History: Cr. Register, December, 1975, No. 240, eff. 1-1-76; am. (1)(b)5., Register, February, 1983, No. 326, eff. 3-1-83; am. (2)(c), Register, September, 1986, No. 369, eff. 10-1-86; r. and recr. (1) to (6), (8), (9), (11) to (17), (21), (22), (24), (25), (28) to (32), (34), (35), (38), (41), (42), (50) and (51) renum. from PI 11.01 (2) (f) and am., Register, May, 1990, No. 413, eff. 6-1-90; am. (45), cr. (1m), (1s) and (52m), Register, July, 1993, No. 451, eff. 8-1-93; emerg. am. (24), (25), r. (46), eff. 6-25-96, am. (23)(b), (24), (25), cr. (23)(h) to (k), r. (46), Register, January, 1997, No. 493, eff. 2-1-97; r. and recr. Register, September, 1998, No. 513, eff. 10-1-98; cr. (5m), Register, May, 2000, No. 533, eff. 6-1-00.

PI 11.07 Transfer pupils. (1) **DEFINITIONS.** In this section "transfer pupil with a disability" means a child with a disability under the IDEA whose residence has changed from an LEA in this state to another LEA in this state or from a public agency in another state to an LEA in this state.

(2) **TRANSFER PUPILS WITH DISABILITIES IN WISCONSIN.** (a) The purpose of this subsection is to ensure that there is no interruption of special education and related services when a child with a disability transfers from one LEA in this state to another LEA in this state.

(b) When an LEA receives a transfer pupil with a disability, the receiving LEA shall implement the IEP from the sending LEA until the receiving LEA adopts the sending LEA's IEP or develops its own IEP. To the extent that the receiving LEA is not able to implement the sending LEA's IEP, the receiving LEA shall provide services that approximate, as closely as possible, the sending LEA's IEP.

(c) The receiving LEA shall adopt the evaluation and the eligibility determination of the sending LEA or conduct an evaluation and eligibility determination of the transfer pupil. The receiving LEA shall adopt the IEP of the sending LEA or develop a new IEP. The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending LEA if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

(d) When an LEA receives a transfer pupil with a disability and the LEA does not receive the pupil's records from the sending LEA, the LEA shall request in writing the pupil's records from the sending LEA. The sending LEA shall transfer the pupil's records

to the receiving LEA within 5 working days of receipt of the written notice as required under s. 118.125(4), Stats.

(3) **TRANSFER PUPILS WITH DISABILITIES FROM OUTSIDE WISCONSIN.** (a) The purpose of this subsection is to permit an LEA to adopt the most recent evaluation and eligibility determination and IEP of a transfer pupil with a disability from a public agency in another state.

(b) When an LEA receives a transfer pupil with a disability from a public agency in another state, the LEA may provide special education and related services in accordance with the most recent IEP developed by the sending public agency until the LEA develops its own IEP or adopts the sending public agency's IEP.

(c) The LEA shall adopt the evaluation and the eligibility determination of the sending public agency or conduct a new evaluation and eligibility determination of the transfer pupil. If the LEA decides not to adopt the evaluation and eligibility determination of the sending public agency, the LEA shall initiate a special education referral of the child. The LEA shall complete the evaluation and develop an IEP and the placement in accordance with the requirements of subch. V of ch. 115, Stats., within 90 days of the date the child enrolls in the LEA. The LEA shall adopt the IEP of the sending public agency or develop a new IEP.

(d) The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending public agency if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

History: Cr. Register, May, 1990, No. 413, eff. 6-1-90; r. and recr. Register, December, 1995, No. 480, eff. 1-1-96; corrections in (1) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1998, No. 508; r. and recr. Register, May, 2000, No. 533, eff. 6-1-00.

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 employe 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 employe of the department solely because he or she is paid by the department to serve as a hearing officer.

(b) Is an employe 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.

History: Cr. Register, May, 1990, No. 413, eff. 6-1-90; emerg. r. and recr., eff. 6-25-96; r. and recr., Register, January, 1997, No. 493, eff. 2-1-97; r. and recr. Register, September, 1998, No. 513, eff. 10-1-98.

PI 11.14 Surrogate parents. **History:** Cr. Register, May, 1990, No. 413, eff. 6-1-90; emerg. am. (1) (c) 2., eff. 6-25-96; am. (1) (c) 2., Register, January, 1997, No. 493, eff. 2-1-97; reprinted to restore dropped copy; Register, April, 1998, No. 508; r. Register, May, 2000, No. 533, eff. 6-1-00.

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.

(7) **PHYSICAL THERAPISTS' LICENSURE AND SERVICE REQUIREMENTS.** (a) **Licensure.** A school physical therapist shall be licensed by the department under s. PI 3.37.

(b) **Caseload.** 1. 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:

- a. A minimum of 15 children.
 - b. A maximum of 30 children.
 - c. A maximum of 45 children with one or more school physical therapist assistants.
2. The caseload for a part-time school physical therapist may be pro-rated based on the specifications under subd. 1.
3. A caseload may vary from the specifications under subd. 1. or 2., if approved in the LEA's plan under s. 115.77 (4), Stats. The following shall be considered in determining whether the variance may be approved:

- a. Frequency and duration of physical therapy as specified in the child's IEP.
- b. Travel time.
- c. Number of evaluations.
- d. Preparation time.
- e. Student related activities.

(c) **Medical information.** The school physical therapist shall have medical information from a licensed physician regarding a child before the child receives physical therapy.

(d) **Delegation and supervision of physical therapy.** 1. The school physical therapist may delegate to a school physical therapist assistant only those portions of a child's physical therapy which are consistent with the school physical therapist assistant's education, training and experience.

2. The school physical therapist shall supervise the physical therapy provided by a school physical therapist assistant. The school physical therapist shall develop a written policy and procedure for written and oral communication to the physical therapist assistant. The policy and procedure shall include a specific description of the supervisory activities undertaken for the school physical therapist assistant which shall include either of the following levels of supervision:

- a. The school physical therapist shall have daily, direct contact on the premises with the school physical therapist assistant.
- b. The school physical therapist shall have direct, face-to-face contact with the school physical therapist assistant at least once every 14 calendar days. Between direct contacts, the physical therapist shall be available by telecommunication. The school

physical therapist providing general supervision under this subdivision shall provide an on-site reevaluation of each child's physical therapy a minimum of one time per calendar month or every tenth day of physical therapy, whichever is sooner, and adjust the physical therapy as appropriate.

3. A full-time school physical therapist may supervise no more than 2 full-time equivalent physical therapist assistant positions which may include no more than 3 physical therapist assistants.

4. Notwithstanding the provisions under this paragraph, the act undertaken by a school physical therapist assistant shall be considered the act of the supervising physical therapist who has delegated the act.

(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 on an IEP team.

(8) **SCHOOL PHYSICAL THERAPIST ASSISTANTS' QUALIFICATIONS AND SUPERVISION OF PHYSICAL THERAPY** (a) **Licensure.** A school physical therapist assistant shall be licensed by the department under s. PI 3.375.

(b) **Supervision.** The school physical therapist assistant providing physical therapy to a child under this section, shall be supervised by a school physical therapist as specified under sub. (7) (d).

(9) **OCCUPATIONAL THERAPISTS' LICENSURE AND SERVICE REQUIREMENTS.** (a) **Licensure.** The school occupational therapist shall be licensed by the department under s. PI 3.36.

(b) **Caseload.** 1. 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:

- a. A minimum of 15 children.
 - b. A maximum of 30 children.
 - c. A maximum of 45 children with one or more occupational therapy assistants.
2. The caseload for a part-time school occupational therapist may be pro-rated based on the specifications under subd. 1.

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

- a. Frequency and duration of occupational therapy as specified in the child's IEP.
- b. Travel time.
- c. Number of evaluations.
- d. Preparation time.
- e. Student related activities.

(c) **Medical information.** The school occupational therapist shall have medical information regarding a child before the child receives occupational therapy.

(d) **Delegation and supervision of occupational therapy.** 1. The school occupational therapist may delegate to a school occupational therapy assistant only those portions of a child's occupational therapy which are consistent with the school occupational therapy assistant's education, training and experience.

2. The school occupational therapist shall supervise the occupational therapy provided by a school occupational therapy assistant. The school occupational therapist shall develop a written policy and procedure for written and oral communication to the occupational therapy assistant. The policy and procedure shall include a specific description of the supervisory activities under-

taken for the school occupational therapist assistant which shall include either of the following levels of supervision:

a. The school occupational therapist shall have daily, direct contact on the premises with the school occupational therapy assistant.

b. The school occupational therapist shall have direct, face-to-face contact with the school occupational therapy assistant at least once every 14 calendar days. Between direct contacts, the occupational therapist shall be available by telecommunication. The school occupational therapist providing general supervision under this subdivision shall provide an on-site reevaluation of each child's occupational therapy a minimum of one time per calendar month or every tenth day of occupational therapy, whichever is sooner, and adjust the occupational therapy as appropriate.

3. A full-time school occupational therapist may supervise no more than 2 full-time equivalent occupational therapy assistant positions which may include no more than 3 occupational therapy assistants.

4. Notwithstanding the provisions under this paragraph, the act undertaken by a school occupational therapy assistant shall be considered the act of the supervising occupational therapist who has delegated the act.

(e) *Responsibility of 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 on an IEP team.

(10) **SCHOOL OCCUPATIONAL THERAPY ASSISTANTS' QUALIFICATIONS AND SUPERVISION.** (a) *Licensure.* A school occupational therapy assistant shall be licensed by the department under s. PI 3.365.

(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 (9) (d).

History: Cr. Register, December, 1975, No. 240, eff. 1-1-76; am. (7) (b) 1 and (8) (b) 1, Register, February, 1976, No. 242, eff. 3-1-76; am. (7) (b) 4 and (8) (b) 2, Register, November, 1976, No. 251, eff. 12-1-76; am. (1) and (8) (b) 4, Register, February, 1983, No. 326, eff. 3-1-83; r. (11) (b) and (c), renum. (11) (a) to be (11), Register, September, 1986, No. 369, eff. 10-1-86; renum. from PI 11.19, Register, May, 1990, No. 413, eff. 6-1-90; am. (7) (b) 4, Register, October, 1990, No. 418, eff. 11-1-90; am. (7) (a) and (8) (a), Register, March, 1992, No. 435, eff. 4-1-92; am. (1), (2) (intro.) and (3) (intro.), r. (2) (a) to (d), (3) (a), (b) and (11), r. and recr. (4) to (10), Register, July, 1993, No. 451, eff. 8-1-93; correction in (10) made under s. 13 93 (2m) (b) 7, Stats., Register, April, 1998, No. 508; r. (1) to (6), cr. (1) and (2), am. (7) (b) 1. (intro.), 3. (intro.), (e), (9) (b) 1. (intro.), 3 (intro.), (e) and (10) (b), Register, September, 1998, No. 513, eff. 10-1-98; am. (9) (c), Register, May, 2000, No. 533, eff. 6-1-00.

PI 11.35 Eligibility criteria. (1) **STANDARDS.** Children shall be determined to have a handicapping condition who have been identified, evaluated and classified as handicapped pursuant to this section. The minimum criteria for the determination of handicapping condition and eligibility for special education shall be consistent throughout the state.

(1m) **RE-EVALUATION.** A transition period shall be provided for moving a child out of special education who upon re-evaluation does not meet criteria in the rules.

(2) **HANDICAPPING CONDITION.** Educational needs resulting primarily from poverty, neglect, delinquency, social maladjustment, cultural or linguistic isolation or inappropriate instruction are not included under subch. V, ch. 115, Stats.

(a) *Cognitive disability.* Cognitive disability refers to significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior manifested during the developmental period. (AAMD definition—Grosman, 1973). (Standard deviation (S.D.) is used to signify variability from the mean. The mean is an average of the scores in a set; the standard deviation is an average of how distant the individual scores in a distribution are removed from the mean).

Table 1

Major considerations for determination of cognitive disability

I. Measured intelligence

Mild -2 to -3 S.D. Moderate -3 to -4 S.D.

Severe -4 to -5 S.D. Profound -6 S.D.

II. Adaptive functioning

A child is determined to be in the lower 2% of his or her age group on formal/informal criterions, scales and data in his or her ability to interact with others, manipulate objects and tools, move about in the environment and otherwise meet the demands and expectancies of the general society and environment. In addition, the child's adaptive abilities are in the lower 2% of his or her peer and age group on the referencè criterion particular to his or her specific socio-cultural community.

III. Academic functioning

Age 3-5	1.5 years behind on normative language, perception and motor development criterion.
6-9	2 years or more below normal grade achievement expectancies in language, motor and basic skill subjects, e.g., reading and mathematics.
10-14	3.5 years or more below normal grade achievement expectancies in language, motor and basic skill subjects, e.g., reading and mathematics.
15-20	5th grade or below achievement in language, motor and basic skill subjects, e.g., reading and mathematics.

(ad) Children who test between -1 and -2 S.D. on individual intelligence tests, e.g., borderline intelligence (AAMD definition) may be determined to be mentally retarded on a selective basis if they:

1. Exhibit pervasive depressed mental development similar in nature to children testing below -2 S.D. on the normal curve and if they:

- Have concomitant lags in cognitive, adaptive and achievement abilities.
- Have exhibited cognitive disability as documented from their developmental and school history.
- Are expected to have the condition indefinitely.

2. In determining cognitive disability the evaluators shall identify those children who are mentally retarded in conjunction with depressing socio-cultural influences.

3. A child with suspected developmental disabilities other than cognitive disability shall be referred to an M-team for determination of other handicapping conditions and EEN.

Note: For example, a child with the suspected condition of epilepsy may be determined to be physically handicapped.

(b) *Orthopedic impairment.* Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes, but is not limited to, impairments caused by congenital anomaly, such as a clubfoot or absence of some member; impairments caused by disease, such as poliomyelitis or bone tuberculosis; and impairments from other causes, such as cerebral palsy, amputations, and fractures or burns that cause contractures.

(c) *Visually handicapped.* A visual handicap is determined by functional visual efficiency including visual fields, ocular motility, binocular vision and accommodation. A visual handicap is determined by medical examination, e.g., by an ophthalmologist or optometrist.

1. Moderately visually handicapped means distance visual measurements of 20/70 and 20/200 in the better eye after correction. Near vision measurements of 14/56, e.g., Jaeger 10, or near vision equivalents.

1e. Severely visually handicapped means distance visual measurements of 20/200 to 20/400 in the better eye after correction. Near vision measurements of 14/140, e.g., Jaeger 17, or near vision equivalents.

1g. Profoundly visually handicapped means:

a. Distance visual measurements are 20/500 or less in the better eye after correction.

b. HM - the ability to perceive hand movement.

c. PLL - perceives and localizes light in one or more quadrants.

1m. Totally blind means:

a. LP - perceives but does not localize light.

b. No LP - no light perception.

1t. Peripheral field and central vision loss means peripheral field so contracted that the widest diameter of such fields subtends an angular distance no greater than 50°.

2. Ocular motility means loss of vision efficiency in either eye, due to double or binocular vision.

3. Lack of binocular vision means the inability to use the 2 eyes simultaneously to focus on the same object and to fuse the 2 images into a single image.

4. Lack of accommodation means the inability of the eye to hold a steady fixation for seeing at various distances, especially near.

5. Also included shall be diagnosed physical disabilities or handicapping conditions which may result in a visual handicap or affect visual functioning in the future.

(d) *Hearing handicapped.* 1. An auditory handicap is determined by medical (otologic) and audiologic evaluations. Examination shall be done by a physician specializing in diseases of the ear and evaluation by a certified clinical audiologist. The loss in hearing acuity affects the normal development of language and is a medically irreversible condition for which all medical interventions have been attempted. The hearing loss affects a child in varying degrees, depending on the time the loss was sustained.

a. The hard of hearing child means a child who, with a hearing aid, can develop a language system adequate to successful achievement and social growth. Audiological assessment should indicate at least a 30 db loss in the better ear in the speech range. Difficulty in understanding conversational speech as it takes place in a group necessitates special considerations.

b. Severely handicapped hearing child means a child who, with or without a hearing aid is unable to interpret adequately aural/oral communication. Audiological assessment indicates a minimum loss of 70 db in the better ear. Inability to discriminate all consonants and other difficulties appear as the loss becomes greater.

2. Characteristics of hearing impairment may not be readily apparent. Children react differently to similar losses and therefore an audiogram shall not be the sole criterion of significant EEN. Neither is the use or non-use of a hearing aid totally significant. Additional factors include inadequate, hesitant or no verbal communication, speech abnormality and, at times, aggressiveness due to misunderstanding. It is suggested that a continuing dialogue be maintained with the certified clinical audiologist in anticipation of a program recommendation.

(e) *Speech and language handicaps.* 1. Speech and language handicaps are characterized by a delay or deviance in the acquisition of prelinguistic skills, or receptive skills or expressive skills or both of oral communication. The handicapping condition does not include speech and language problems resulting from differences in paucity of or isolation from appropriate models.

2. Special considerations include:

a. Elective or selective mutism or school phobia shall not be included except in cooperation with programming for the emotionally disturbed.

b. Documentation of a physical disability resulting in a voice problem, e.g., nodules, cleft palate, etc., or an expressive motor problem, e.g., cerebral palsy, dysarthria, etc., shall not require the determination of a handicapping condition in speech and language.

(f) *Learning disabilities*. 1. The handicapping condition of learning disabilities denotes severe and unique learning problems due to a disorder existing within the child which significantly interferes with the ability to acquire, organize or express information. These problems are manifested in school functioning in an impaired ability to read, write, spell or arithmetically reason or calculate.

2. The child shall meet the criteria in subs. 2., 2m. and 2x. to be considered as having the handicapping condition of learning disabilities.

2m. A child whose primary handicapping condition is due to learning disabilities shall exhibit a significant discrepancy between functional achievement and expected achievement. A significant discrepancy is defined as functional achievement at or below 50% (.5) of expected achievement.

a. The child when first identified, shall have a significant discrepancy in functional achievement in 2 or more of the readiness or basic skill areas of math, reading, spelling and written language. To determine a significant discrepancy in the readiness areas the M-team shall consider the child's receptive and expressive language and fine motor functioning. A significant discrepancy in the single area of math, accompanied by less significant, yet demonstrable discrepancies in other basic skill areas may satisfy the academic eligibility criteria.

b. Functional achievement is defined as the child's instructional level in readiness and basic skill areas. Determination of functional achievement shall be based on a combination of formal and informal individualized tests, criterion-referenced measures, observations and an analysis of classroom expectations in basic skill areas.

c. The following formula shall be used to determine expected achievement: $I.Q. \times \text{years in school} = \text{Years in school}$ is defined as the number of years of school completed since enrollment in 5-year-old kindergarten. A child who entered first grade without benefit of kindergarten should have a factor of one year added to that child's total years in school for computational purposes.

d. The following formula yields a grade score to which the child's previously determined functional achievement level is compared. If the functional achievement level is at or below the grade score derived from the formula a significant discrepancy exists:

e. $I.Q. \times \text{Years in School} \times .5 = \text{Grade Score}$ (50% of expected achievement). This formula is inappropriate for children who have not completed 2 years in school. Children entering kindergarten or first grade who are achieving in readiness areas one or more years below expected achievement levels for their chronological age may be considered as having a significant discrepancy between their functional and expected achievement. See Appendix J for examples.

f. A child whose functional achievement approaches but is not at or below 50% of expected achievement may be considered to have met the academic functioning criterion if the child demonstrates variable performance between the sub-skills required for each of the areas of reading, writing, spelling, arithmetical reasoning or calculation and if the child meets all the other criteria used to identify the handicapping condition of learning disabilities. This determination shall be based on the M-team's collective judgment and the rationale shall be documented in the M-team report.

g. In attendance centers where the number of children functioning at or below 50% of expected achievement exceeds that which might be anticipated for the general population, additional efforts shall be made to substantiate that the child's functional achievement level is due to a disorder existing within the child and not due to those conditions enumerated in sub. (2).

h. Evidence shall exist that the learning disabilities are primarily attributable to a deficit within the child's learning system. Such evidence may include average or above average ability in some areas. In documenting this in-child variability academic and non-academic behaviors shall be considered.

2x. Children whose primary handicapping condition is due to learning disabilities shall exhibit normal or potential for normal intellectual functioning.

a. This measure of intellectual functioning may be established by a score above a minus one standard deviation on a single score intelligence instrument, or by a verbal or performance quotient of 90 or above on a multiple score intelligence instrument.

b. The instrument used to establish this measure shall be recognized as a valid and comprehensive individual measure of intellectual functioning.

c. If there is reason to suspect the test results are not true indices of a particular child's ability, then clarification of why the results are considered invalid shall be provided. Previous experience, past performance and other supportive data that intellectual functioning is average shall be present and documented in written form.

d. There may exist rare cases of severe language involvement which detrimentally affect the learning disabled child's ability to perform adequately on intelligence tests given the language emphasis of these instruments. In these rare situations the importance of the intellectual criteria may be reduced given substantial evidence to indicate average ability.

3. Learning problems, when primarily due to the following, shall be excluded from consideration as learning disabilities:

a. The other handicapping conditions specified in s. 115.76 (3), Stats.

b. Learning problems resulting from extended absence, continuous inadequate instruction, curriculum planning, or instructional strategies.

c. Discrepancies between ability and school achievement due to motivation.

d. Functioning at grade level but with potential for greater achievement.

(g) *Emotional disturbance*. 1. Classification of emotional disturbance as a handicapping condition is determined through a current, comprehensive study of a child, ages 0 through 20, by an M-team.

2. Emotional disturbance is characterized by emotional, social and behavioral functioning that significantly interferes with the child's total educational program and development including the acquisition or production, or both, of appropriate academic skills, social interactions, interpersonal relationships or intrapersonal adjustment. The condition denotes intraindividual and interindividual conflict or variant or deviant behavior or any combination thereof, exhibited in the social systems of school, home and community and may be recognized by the child or significant others.

3. All children may experience situational anxiety, stress and conflict or demonstrate deviant behaviors at various times and to varying degrees. However, the handicapping condition of emotional disturbance shall be considered only when behaviors are characterized as severe, chronic or frequent and are manifested in 2 or more of the child's social systems, e.g., school, home or community. The M-team shall determine the handicapping condition of emotional disturbance and further shall determine if the handicapping condition requires special education. The following

behaviors, among others, may be indicative of emotional disturbance:

- a. An inability to develop or maintain satisfactory interpersonal relationships.
- b. Inappropriate affective or behavioral response to what is considered a normal situational condition.
- c. A general pervasive mood of unhappiness, depression or state of anxiety.
- d. A tendency to develop physical symptoms, pains or fears associated with personal or school problems.
- e. A profound disorder in communication or socially responsive behavior, e.g., autistic-like.
- f. An inability to learn that cannot be explained by intellectual, sensory or health factors.
- g. Extreme withdrawal from social interaction or aggressiveness over an extended period of time.
- h. Inappropriate behaviors of such severity or chronicity that the child's functioning significantly varies from children of similar age, ability, educational experiences and opportunities, and adversely affects the child or others in regular or special education programs.

4. The operational definition of the handicapping condition of emotional disturbance does not postulate the cause of the handicapping condition in any one aspect of the child's make-up or social systems.

5. The manifestations of the child's problems are likely to influence family interactions, relationships and functioning or have an influence on specific individual members of the family. It is strongly recommended that extensive family involvement or assistance be considered in the evaluation and programming of the child.

6. The handicapping condition of emotional disturbance may be the result of interaction with a variety of other handicapping conditions such as learning, physical or cognitive disabilities or severe communication problems including speech or language.

7. An M-team referral for suspected emotional disturbance may be indicated when certain medical or psychiatric diagnostic statements have been used to describe a child's behavior. Such diagnoses may include but not be limited to autism, schizophrenia, psychoses, psychosomatic disorders, school phobia, suicidal behavior, elective mutism or neurotic states of behavior. In addition, students may be considered for a potential M-team evaluation when there is a suspected emotional disturbance, who are also socially maladjusted, adjudged delinquent, dropouts, drug abusers or students whose behavior or emotional problems are primarily associated with factors including cultural deprivation, educational retardation, family mobility or socio-economic circumstances, or suspected child abuse cases.

(h) *Multiple handicapped*. 1. A multiple handicapped child is one who has 2 or more handicapping conditions leading to EEN which may require programming considerations and are determined by an M-team composed of specialists trained, certified and experienced in the teaching of children with the EEN.

2. A multiple handicapped child shall have the right to any and all educational, supportive and related services essential to a free appropriate public education based on the individual needs of the child.

(i) *Autism*. 1. Autism means a developmental disability significantly affecting a child's social interaction and verbal and non-verbal communication, generally evident before age 3, that adversely affects learning and educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily

because the child has an emotional disturbance, as defined in par. (g).

2. The results of standardized or norm-referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessments, achievement assessments, observation, and work samples, shall be considered to identify a child under this paragraph. Augmentative communication strategies, such as facilitated communication, picture boards, or signing shall be considered when evaluating a child under this paragraph. To identify a child under this paragraph, the criteria under subd. 2. a. and b. and one or more criteria under subd. 2. c. through f. shall be met.

a. The child displays difficulties or differences or both in interacting with people and events. The child may be unable to establish and maintain reciprocal relationships with people. The child may seek consistency in environmental events to the point of exhibiting rigidity in routines.

b. The child displays problems which extend beyond speech and language to other aspects of social communication, both receptively and expressively. The child's verbal language may be absent or, if present, lacks the usual communicative form which may involve deviance or delay or both. The child may have a speech or language disorder or both in addition to communication difficulties associated with autism.

c. The child exhibits delays, arrests, or regressions in motor, sensory, social or learning skills. The child may exhibit precocious or advanced skill development, while other skills may develop at normal or extremely depressed rates. The child may not follow normal developmental patterns in the acquisition of skills.

d. The child exhibits abnormalities in the thinking process and in generalizing. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and judgment. Perseverant thinking and impaired ability to process symbolic information may be present.

e. The child exhibits unusual, inconsistent, repetitive or unconventional responses to sounds, sights, smells, tastes, touch or movement. The child may have a visual or hearing impairment or both in addition to sensory processing difficulties associated with autism.

f. The child displays marked distress over changes, insistence on following routines, and a persistent preoccupation with or attachment to objects. The child's capacity to use objects in an age-appropriate or functional manner may be absent, arrested or delayed. The child may have difficulty displaying a range of interests or imaginative activities or both. The child may exhibit stereotyped body movements:

(j) *Traumatic brain injury*. 1. Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; speech and language; memory; attention; reasoning; abstract thinking; communication; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and executive functions, such as organizing, evaluating and carrying out goal-directed activities. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

2. 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 under this section, such as other health impairment, learning disability, or multiple handicapped.

3. The results of standardized and norm-referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessment, achievement assessment, observation, work samples, and neuropsychological assessment data, shall be considered to identify a child who exhibits total or partial functional disability or psychosocial impairment in one or more of the areas described under subd. 1.

4. Before a child may be identified under this paragraph, available medical information from a licensed physician shall be considered.

(k) *Other health impairment.* Other health impairment means having limited strength, vitality or alertness, due to chronic or acute health problems. The term includes but is not limited to a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, or acquired injuries to the brain caused by internal occurrences or degenerative conditions, which adversely affects a child's educational performance.

(L) **SIGNIFICANT DEVELOPMENTAL DELAY.** 1. Significant developmental delay means children, ages 3, 4 and 5 years of age or below compulsory school attendance age, who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional or adaptive development.

2. All other suspected handicapping conditions, including cognitive disability, orthopedic impairment, visually handicapped, hearing handicapped, learning disability, speech and language handicapped, emotional disturbance, autism, traumatic brain injury, or other health impairment shall be considered before identifying a child's primary handicapping condition as significant developmental delay.

3. A child may be identified as having the handicapping condition of significant developmental delay when delays in development significantly challenge the child in two or more of the following five major life activities:

a. Physical activity in gross motor skills, such as the ability to move around and interact with the environment with appropriate coordination, balance and strength; or fine motor skills, such as manually controlling and manipulating objects such as toys, drawing utensils, and other useful objects in the environment.

b. Cognitive activity, such as the ability to acquire, use and retrieve information as demonstrated by the level of imitation, discrimination, representation, classification, sequencing, and problem-solving skills often observed in a child's play.

c. Communication activity in expressive language, such as the production of age-appropriate content, form and use of lan-

guage; or receptive language, such as listening, receiving and understanding language.

d. Emotional activity such as the ability to feel and express emotions, and develop a positive sense of oneself; or social activity, such as interacting with people, developing friendships with peers, and sustaining bonds with family members and other significant adults.

e. Adaptive activity, such as caring for his or her own needs and acquiring independence in age-appropriate eating, toileting, dressing and hygiene tasks.

4. Documentation of significant developmental delays under subd. 3 and their detrimental effect upon the child's daily life shall be based upon qualitative and quantitative measures including all of the following:

a. A developmental and basic health history, including results from vision and hearing screenings and other pertinent information from parents and, if applicable, other caregivers or service providers.

b. Observation of the child in his or her daily living environment such as the child's home, with a parent or caregiver, or an early education or care setting which includes peers who are typically developing. If observation in these settings is not possible, observation in an alternative setting is permitted.

c. Results from norm-referenced instruments shall be used to document significant delays of at least one and one-half standard deviations below the mean in 2 or more of the developmental areas which correspond to the major life activities. If it is clearly not appropriate to use norm-referenced instruments, other instruments, such as criterion referenced measures, shall be used to document the significant delays.

Note: With respect to the eligibility criteria under s. PI 11.35, 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) must determine whether the child diagnosed with ADD has one or more handicapping conditions under ch. 115, Stats., 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 enumerated in ch. 115, Stats. A copy of the federal policy may be obtained by writing the Exceptional Education Mission Team, Division for Learning Support: Equity and Advocacy, Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

History: Cr. Register, May, 1977, No. 257, eff. 6-1-77; am. (2) (intro.), Register, February, 1983, No. 326, eff. 3-1-83; r. (2) (c), renum. (2) (d) to (i) to be (2) (c) to (h), Register, September, 1986, No. 369, eff. 10-1-86; renum. from PI 11.34, Register, May, 1990, No. 413, eff. 6-1-90; r. and rec. (2) (b), cr. (2) (i) to (k), Register, April, 1995, No. 472, eff. 5-1-95; corrections made under s. 13.93 (2m) (b) 1., Stats., Register, March, 1996, No. 483; emerg. cr. (2) (L), eff. 6-25-96; cr. (2) (L), Register, January, 1997, No. 493, eff. 2-1-97; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2000, No. 533.