

contract and the contract has been approved by the superintendent. The special transportation required shall be reimbursed at 70% of excess costs. See PI 11.36 (2) (a) 1.

(a) Where the board through the M-team recommendations and findings has made a determination that a program exists in the LEA that meets the student's needs but the parent chooses a private school placement, only the transportation provisions of s. 121.54 (2) (b) 1., Stats., apply.

(4) Pursuant to s. 115.78 (2), Stats., private special education schools shall submit to the division, on a form developed by the division, a yearly report on enrollments, types and levels of service, licensure of personnel and any other information required. This information is required by the division for its annual development of a state directory of public/private EEN services.

History: Cr. Register, May, 1977, No. 257, eff. 6-1-77; am. (1) (intro.), Register, February, 1983, No. 326, eff. 3-1-83; renum. from PI 11.31 and am. Register, May, 1990, No. 413, eff. 6-1-90.

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 s. PI 11.04 and this section. The minimum criteria for the determination of handicapping condition and eligibility for special education shall be consistent throughout the state.

(a) 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.* 1. 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 reference 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.

2. 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:

- a. Exhibit pervasive depressed mental development similar in nature to children testing below -2 S.D. on the normal curve and if they:
 - i. Have concomitant lags in cognitive, adaptive and achievement abilities.
 - ii. Have exhibited cognitive disability as documented from their developmental and school history.
 - iii. Are expected to have the condition indefinitely.

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

4. 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. Visual fields. a. 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.

b. 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.

c. Profoundly visually handicapped means:

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

ii. HM - the ability to perceive hand movement.

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

d. Totally blind means:

i. LP - perceives but does not localize light.

ii. No LP - no light perception.

e. 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.

a. Special considerations include:

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

ii. 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. Criteria for identification. The child shall meet the criteria in subd. 2. a. and b. to be considered as having the handicapping condition of learning disabilities.

a. 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.

i. 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.

ii. 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.

iii. The following formula shall be used to determine expected achievement: I.Q. x years in school. 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.

iv. 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:

I.Q. x Years in School x .5 = 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.

v. 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.

vi. 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).

vii. 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.

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

i. 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.

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

iii. 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.

iv. 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 nonverbal 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 communi-

cation, picture boards, or signing shall be considered when evaluating a child under this paragraph. To identify a child under this paragraph, the criteria under subpars. a and b and one or more criteria under subpars. 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.

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 recr. (2) (b), cr. (2) (i) to (k), Register, April, 1995, No. 472, eff. 5-1-95.

PI 11.36 Reimbursement. (1) **INTENT.** Contingent upon prior receipt of the appropriate annual plan of services for each respective area, and operation of the program in accordance with s. 115.88, Stats., and the rules, the superintendent shall authorize reimbursement for costs involved in operating and maintaining said program.

(a) The LEA shall submit, on appropriate financial claims for each program area such information and data as required by the division, for fiscal review and approval for reimbursement of the program through state general purpose revenue categorical aids.

(b) If required, the LEA shall submit any other reports, including evidence of compliance with the rules or federal and state statutes or both.

(2) **REIMBURSEMENT FOR SPECIAL EDUCATION INSTRUCTIONAL/ADMINISTRATIVE COSTS.** (a) The rate of state aid reimbursement for each approved qualified licensed special education teacher and special education

program aide shall be 70% of salary and fringe benefits pursuant to s. 115.88 (1), Stats.

1. State categorical aids are currently on a sum certain basis, which means that if total fiscal claims exceed the annual appropriation requested by the department, proration shall take place.

2. The individual who spends less than full-time in special education services shall be reimbursed on a pro rata basis.

(b) An exception to par. (a) relates to special education teachers and special education program aides employed in hospitals or convalescent homes for physically and other health impaired children, wherein the board of the district in which the hospital or convalescent home is located shall be reimbursed for 100% of the actual costs incurred for instruction, pursuant to s. 115.88 (4), Stats.

(c) Reimbursement for directors/supervisors. See PI 11.17 (3) and par. (a) 1.

(3) REIMBURSEMENT FOR SUPPORTIVE SERVICES PERSONNEL. (a) Supportive services personnel shall include physical therapists, occupational therapists, and therapy aides.

Note: No other health treatment service shall be reimbursable.

1. The LEA shall receive 70% reimbursement of salaries and fringe benefits of these personnel. Refer to sub. (2) (a) 1.

2. See PI 11.24 (5) (d) note for reimbursement for new program units. For continuing program units operating outside orthopedic schools a maximum of \$400 per unit shall be allowed. Any exceptions to this limitation shall be negotiated in advance with the division program area supervisor. No limitation shall apply for orthopedic schools.

(4) REIMBURSEMENT FOR RELATED SERVICES. (a) Related services means transportation services or others designated by the superintendent.

(b) Pursuant to s. 115.88 (2), Stats., the excess costs involved in providing special additional transportation services required as part of the individual educational program shall be reimbursed to the LEA at 70% of the division approved claim after payment of general transportation aids.

1. Transportation, when required, to medical, vocational, or other community supportive services related to the individual educational program, shall meet the test of such additional or special transportation needs.

2. For EEN children, the 2 mile limitation for general transportation shall not apply.

(c) Any child attending regular classes who, upon medical prescription, requires special transportation shall receive such transportation.

Next page is numbered 155