

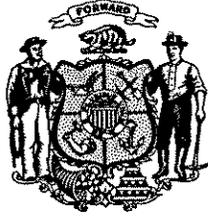
PI 11.14 PUPIL TEACHER
98-139 SUPERVISOR PARENTS

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

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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 98-139

AN ORDER to repeal PI 11.14 (1) (d), (2) (h) and (3) (c) and (d); to amend PI 11.14 (1) (title), (a) (intro.) and 1. and 2., (b) (intro.), (c), (e) (intro.), 1. and 5. and (f), (2) (g), (3) (b), (4) (b) and (5); to repeal and recreate PI 11.07; and to create PI 11.02 (5m), relating to transfer pupils with disabilities and surrogate parents.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

09-14-98 RECEIVED BY LEGISLATIVE COUNCIL.

10-09-98 REPORT SENT TO AGENCY.

RS:RW:jal;rv

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)]

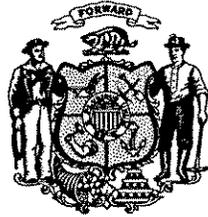
Comment Attached YES NO

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CLEARINGHOUSE RULE 98-139

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. In s. PI 11.07 (1), the term "transfer pupil with a disability" should be enclosed in quotation marks.
- b. In s. PI 11.07 (2) (b), the word "cannot" could be replaced with the phrase "is unable to" or "is not able to."
- c. In s. PI 11.07 (3) (c), the comma following the notation "subch. V" should be replaced by the word "of."

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

- a. In s. PI 11.07 (2) (c) and (3) (c), the clarity of the rule would be improved by adding "of the transfer pupil" at the end of the initial sentence of each paragraph.
- b. In s. PI 11.07 (2) (d), in the last sentence, the term "receiving board" should be replaced by "receiving LEA."
- c. The agency may wish to include an "initial applicability" provision to clarify the application of the rule.

REPORT TO
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE
CHILDREN WITH DISABILITIES - TRANSFER PUPILS AND SURROGATE PARENTS
ss. PI 11.07 and 11.14, Wisconsin Administrative Code

Wisconsin Statutory Authority - s. 227.11(2)(a), Stats.

Federal Statutory Authority - 42 USC 1412

Court Decisions Directly Relevant - None

Analysis of the Rule - Rule Effect - Reason for the Rule

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 proposed rules:

- Amend the section relating to transfer pupils to permit local educational agencies (LEAs) to treat out-of-state transfer pupils in the same manner as intrastate transfer pupils so that unnecessary delays in the provision of special education services does not occur.
- Delete the provision relating to surrogate parents that limits the number of children that may be appointed to the surrogate parent.

In addition, to make it easier for an LEA to obtain the services of a surrogate parent, the department will make the following changes:

- Delete the provision requiring a school board to notify the department of a surrogate parent's termination or resignation.
- Delete the provision prohibiting surrogate parents from serving as a surrogate parent as part of a job for a public agency.
- Delete the provision prohibiting surrogate parents from receiving payment for time spent acting as a surrogate parent.

The rule also makes several technical language and cross-reference modifications to coincide with the changes made in 1997 Wisconsin Act 164 and proposed changes made in CHR 98-068.

Agency Procedure for Promulgation

Notice to Legislative Council pursuant to s. 227.15, Stats., and proceeding under the ten day notice/hearing process pursuant to ss. 227.16 to 227.18, Stats.

Description of any Forms (attach copies if available) - None

Name and Telephone Number of Agency Liaison(s)

Paul Halverson, Director, Special Education, 266-1781
Lori L. Slauson, Administrative Rules Coordinator, Policy and Budget, 267-9127

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

The state superintendent of public instruction hereby proposes to repeal PI 11.14(1)(d), PI 11.14(2)(h), and PI 11.14(3)(c) and (d); to amend PI 11.14(1)(title), (a)(intro.) and 1. and 2., PI 11.14(1)(b)(intro.) and (c), PI 11.14(1)(e)(intro.), 1. and 5., PI 11.14(1)(f), PI 11.14(2)(g), PI 11.14(3)(b), PI 11.14(4)(b) and PI 11.14(5); to repeal and recreate PI 11.07 and to create PI 11.02(5m), relating to transfer pupils with disabilities and surrogate parents.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statute interpreted: Subch. V of ch. 115, 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 proposed rules:

- Amend the section relating to transfer pupils to permit local educational agencies (LEAs) to treat out-of-state transfer pupils in the same manner as intrastate transfer pupils so that unnecessary delays in the provision of special education services does not occur.
- Delete the provision relating to surrogate parents that limits the number of children that may be appointed to the surrogate parent.

In addition, to make it easier for an LEA to obtain the services of a surrogate parent, the department will make the following changes:

- Delete the provision requiring a school board to notify the department of a surrogate parent's termination or resignation.
- Delete the provision prohibiting surrogate parents from serving as a surrogate parent as part of a job for a public agency.
- Delete the provision prohibiting surrogate parents from receiving payment for time spent acting as a surrogate parent.

The rule also makes several technical language and cross-reference modifications to coincide with the changes made in 1997 Wisconsin Act 164 and proposed changes made in CHR 98-068.

SECTION 1. PI 11.02(5m) is created to read:

PI 11.02(5m) "IDEA" means the individuals with disabilities education act under 20 USC 1400 et. seq.

SECTION 2. PI 11.07 is repealed and recreated to read:

PI 11.07 (1) DEFINITIONS. In this sectionⁿ transfer pupil with a disability^{ll} 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 unable to} cannot 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. ^{cf. (} 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] board 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. 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, 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.

SECTION 3. PI 11.14(1)(title), (a)(intro.) and 1. and 2. are amended to read:

PI 11.14 SURROGATE PARENTS. (1)(title) BOARD LEA DUTIES. (a)(intro.) A board An LEA shall ensure that the rights of all children who are or are suspected to be children with ~~EEN~~ disabilities, who are residents of the district, are protected and it shall appoint a surrogate parent as provided under this section whenever one of the following occurs:

- ✓ 1. The board LEA cannot identify a parent of a child.
- ✓ 2. The board LEA is unable to discover the whereabouts of a parent after the board LEA has made reasonable efforts to locate a parent.

SECTION 4. PI 11.14(1)(b)(intro.) and (c) are amended to read:

✓ PI 11.14(1)(b)(intro.) At least annually a board an LEA shall review the appointment of each surrogate parent it has appointed. The board LEA shall consider whether there is still a need for a surrogate parent, whether the surrogate parent continues to meet the requirements under sub. (2), whether the surrogate parent has carried out his or her responsibilities as a surrogate parent and whether the surrogate parent has acted in the interest of the child he or she was appointed to represent.

✓ A board An LEA shall terminate and may only terminate an appointment if it finds one of the following:

(c) 1. Whenever a board intends to terminate the appointment of a surrogate parent it shall ~~send~~ provide a written notice to the surrogate parent of its intent. The notice shall be sent to the surrogate parent at least 10 calendar days before the termination becomes effective. The notice shall inform the surrogate parent of the reasons for the termination, the date the termination will be effective and the surrogate parent's right to request a hearing under ~~s. PI 11.10 s. 115.80, Stats.~~

2. A surrogate parent may request a hearing under ~~s. PI 11.10 s. 115.80, Stats.~~ to challenge the termination of his or her appointment. If a surrogate parent sends a request for a hearing before the effective date of the termination, ~~a board an~~ LEA shall continue the surrogate parent's appointment during the pendency of a hearing under ~~s. PI 11.10 s. 115.80, Stats.~~ or a court proceeding arising from such a hearing, unless the board and the surrogate parent agree otherwise.

SECTION 5. PI 11.14(1)(d) is repealed.

SECTION 6. PI 11.14(1)(e)(intro.), 1. and 5. are amended to read:

(e)(intro.) ~~A board~~ An LEA shall establish and be responsible for carrying out policies and procedures in accordance with this section for all of the following:

1. Identifying children who have been referred to ~~a board an~~ LEA under ~~s. PI 11.03(2) s. 115.777, Stats.~~, and children with ~~EEN~~ disabilities who need to have a surrogate parent appointed.

5. Ensuring that surrogate parents are allowed to function independently from, and are not subject to the influence of, the board LEA and any of its staff.

SECTION 7. PI 11.14(1)(f) is amended to read:

PI 11.14(1)(f) ~~A board~~ An LEA may contract for the recruitment and training of surrogate parents.

SECTION 8. PI 11.14(2)(g) is amended to read:

✓ PI 11.14(2)(g) Is not an employe of ~~a board, CESA, CHCEB,~~ the department, the LEA, or of an any other agency that is responsible for the care or education of the child. A person is not an employee of the department, the LEA, or another agency solely because he or she is paid by the department, the LEA or another agency to serve as a surrogate parent; and

SECTION 9. PI 11.14(2)(h) is repealed.

SECTION 10. PI 11.14(3)(b) is amended to read:

PI 11.14(3)(b) A surrogate parent that wishes to resign shall notify the appointing board LEA of the resignation at least calendar 30 days before the resignation takes effect.

SECTION 11. PI 11.14(3)(c) and (d) are repealed.

SECTION 12. PI 11.14(4)(b) is amended to read:

PI 11.14(4)(b) A surrogate parent shall represent a child in all matters related to this chapter and subch. V of ch. 115, Stats., including the screening, ~~EEN~~ special education referral, ~~M-team~~ evaluation, IEP and educational placement of the child and the provision of a free appropriate public education of the child.

SECTION 13. PI 11.14(5) is amended to read:

PI 11.14(5) Neither a surrogate parent nor the board LEA that appointed the surrogate parent nor the department may be found liable for the actions of the surrogate parent unless such actions constitute willful or wanton misconduct.

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 31st day of August, 1998


John T. Benson
State Superintendent