



State of Wisconsin  
Department of Public Instruction

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JUL 21 2000

John T. Benson  
State Superintendent

Steven B. Dold  
Deputy State Superintendent

July 11, 2000

The Honorable Fred Risser  
President, Wisconsin Senate  
Room 220 South State Capitol  
Madison, WI 53702

The Honorable Scott Jensen  
Speaker, Wisconsin Assembly  
Room 211 West State Capitol  
Madison, WI 53702

Dear Gentlemen:

The following rule is in final draft form and is submitted to you for referral to the appropriate standing committees:

CHR 98-138

Sincerely,

A handwritten signature in cursive script that reads "John T. Benson" with a small flourish at the end.

John T. Benson  
State Superintendent

**NOTICE OF RULES IN FINAL DRAFT FORM**

NOTICE IS HEREBY GIVEN To the presiding officers of each house of the legislature that the proposed rules are in final draft form according to the procedure set forth in s. 227.19, Stats.

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

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

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**ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION**

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

Statute interpreted: s. 115.782, Stats.

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

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

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

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

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

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

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

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

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

**SECTION 4.** PI 11.35(2)(b) is renumbered PI 11.36(2).

**SECTION 5.** PI 11.35(2)(c), (d), (e) and (f) are repealed.

**SECTION 6.** PI 11.35(2)(g) and (h) are repealed.

**SECTION 7.** PI 11.35(2)(i), (j), (k), (L) and the note that follows are renumbered PI 11.36(8), (9), (10), (11) and the note will follow and as renumbered, PI 11.36(9)(b), (11)(b), (c)(intro.), (d)(intro.), and the note are amended to read:

PI 11.36(9)(b) Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic disorders and the effects of toxic substances or degenerative conditions may meet the criteria of one of the other ~~handicapping conditions~~ impairments under this section, ~~such as other health impairment, learning disability, or multiple handicapped.~~

(11)(b) 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~~ impairments under this section shall be considered before identifying a child's primary ~~handicapping condition~~ impairment as significant developmental delay.

(c)(intro.) 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:

(d)(intro.) Documentation of significant developmental delays under ~~sub. 3 par. (c)~~ and their detrimental effect upon the child's daily life shall be based upon qualitative and quantitative measures including all of the following:

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

Pursuant to that federal policy memo, a child with ADD is neither automatically eligible nor ineligible for special education and related services under ch. 115, Stats. In considering eligibility, ~~a multidisciplinary team (M team)~~ an IEP team must determine whether the child diagnosed with ADD has one or more ~~handicapping conditions~~ impairments under ~~ch. 115, Stats., this section~~ and a need for special education. For example, pursuant to the federal policy memo, a child with ADD may be eligible for special education and related services under ch. 115, Stats., if the child meets the eligibility criteria for "other health impaired" or any other ~~condition~~ impairment enumerated in ~~ch. 115, Stats this section.~~ In addition, 34 CFR 300.7 (c) (9) (i) now specifically lists ADD and attention deficit hyperactivity disorder among the health problems which may result in disability based on other health impairment. A copy of the federal policy may be obtained

by writing the ~~Exceptional Education Mission~~ Special Education Team, Division for Learning Support: Equity and Advocacy, Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

**SECTION 8.** PI 11.35(2) and (3) are created to read:

PI 11.35(2) A child shall be identified as having a disability if the IEP team has determined from an evaluation conducted under s. 115.782, Stats., that the child has an impairment under s. PI 11.36 that adversely affects the child's educational performance, and the child, as a result thereof, needs special education and related services.

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

(a) The child's needs that cannot be met through the regular education program as structured at the time the evaluation was conducted.

(b) Modifications, if any, that can be made in the regular education program, such as adaptation of content, methodology or delivery of instruction to meet the child's needs identified under par. (a), that will allow the child to access the general education curriculum and meet the educational standards that apply to all children.

(c) Additions or modifications, if any, that the child needs which are not provided through the general education curriculum, including replacement content, expanded core curriculum or other supports.

**SECTION 9.** PI 11.36(title), (1), (3), (4), (5), (6), and (7) are created to read:

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

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

1. a. The child has a standard score of 2 or more standard deviations below the mean on at least one individually administered intelligence test developed to assess intellectual functioning.

b. The child has a standard score between 1 and 2 standard deviations below the mean on at least one individually administered intelligence test, the child has been documented as having a cognitive disability in the past, and the child's condition is expected to last indefinitely.

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

a. Communication.

b. Self-care.

c. Home living skills.

d. Social skills.

e. Appropriate use of resources in the community.

- f. Self-direction.
- g. Health and safety.
- h. Applying academic skills in life.
- i. Leisure.
- j. Work.

3.a. The child is age 3 through 5 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in at least 2 of the following areas: academic readiness, comprehension of language or communication, or motor skills.

b. The child is age 6 through 21 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in general information and at least 2 of the following areas: written language, reading, or mathematics.

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

(3) VISUAL IMPAIRMENT. Visual impairment means even after the best medical intervention or correction a child's visual functioning significantly adversely affects his or her educational performance. The IEP team may identify a child as having a visual impairment after all of the following events occur:

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

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

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

(c) An orientation and mobility specialist, or teacher of the visually impaired in conjunction with an orientation and mobility specialist, evaluates the child to determine if there are related mobility needs in home, school, or community environments.

(4) HEARING IMPAIRMENT. Hearing impairment, including deafness, means a significant impairment in hearing, with or without amplification, whether permanent or chronically fluctuating, that significantly adversely affects a child's educational performance including academic performance, speech perception and production, or language and communication skills. A current evaluation by an audiologist licensed under ch. 459, Stats., shall be one of the components for an initial evaluation of a child with a suspected hearing impairment.

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

(b) The IEP team may identify a child as having a speech or language impairment if the child meets the definition under par. (a) and meets any of the following criteria:

1. The child's conversational intelligibility is significantly affected and the child displays at least one of the following:

a. The child performs on a norm-reference test of articulation or phonology at least 1.75 standard deviations below the mean for his or her chronological age.

b. Demonstrates consistent errors in speech sound production beyond the time when 90% of typically developing children have acquired the sound.

2. One or more of the child's phonological patterns of sound are at least forty percent disordered or the child scores in the moderate to profound range of phonological process use in formal testing and the child's conversational intelligibility is significantly affected.

3. The child's voice is impaired in the absence of an acute, respiratory virus or infection and not due to temporary physical factors such as allergies, short term vocal abuse, or puberty. The child exhibits atypical loudness, pitch, quality or resonance for his or her age and gender.

4. The child exhibits behaviors characteristic of a fluency disorder such as stress, struggle, avoidance, blocks, repetitions, prolongations, hesitations, or revisions of syllables, words, phrases, or sentences and these behaviors significantly interfere with his or her communication.

5. The child's oral communication is inadequate, as documented by all of the following:

a. Performance on norm referenced measures that is at least 1.75 standard deviations below the mean for chronological age.

b. Performance in activities is impaired as documented by informal assessment such as language sampling, observations in structured and unstructured settings, interviews, or checklists.

c. The child's receptive or expressive language interferes with oral communication. When technically adequate norm referenced language measures are not appropriate as determined by the IEP team to provide evidence of a deficit of 1.75 standard deviations below the mean in the area of oral communication, then two measurement procedures shall be used to document a significant difference from what would be expected given consideration to chronological age, developmental level, and method of communication such as oral, manual, and augmentative. These procedures may include additional language samples, criterion reference instruments, observations in natural environments and parent reports.

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

1. Mild, transitory or developmentally appropriate speech or language difficulties that children experience at various times and to various degrees.

2. Speech or language performance that is consistent with developmental levels as documented by formal and informal assessment data unless the child requires speech or language services in order to benefit from his or her educational programs in school, home, and community environments.

3. Speech or language difficulties resulting from dialectical differences or from learning English as a second language, unless the child has a language impairment in his or her native language.

4. Difficulties with auditory processing without a concomitant documented oral speech or language impairment.

5. A tongue thrust which exists in the absence of a concomitant impairment in speech sound production.

6. Elective or selective mutism or school phobia without a documented oral speech or language impairment.

7. A child's medical condition that precludes valid identification of an impairment based on a physician's report.

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

1. Formal measures using normative data or informal measures using criterion referenced data.

2. Some form of speech or language measures such as developmental checklists, intelligibility ratio, language sample analysis, minimal core competency.

3. Information about the child's oral communication in natural environments.

4. Information about the child's augmentative or assistive communication needs.

(e) An IEP team shall include a department-licensed speech or language pathologist and information from the most recent assessment to document a speech or language impairment and the need for speech or language services.

(6) **SPECIFIC LEARNING DISABILITY.** (a) Specific learning disability, pursuant to s. 115.76 (5) (a) 10., Stats., means a severe learning problem due to a disorder in one or more of the basic psychological processes involved in acquiring, organizing or expressing information and that manifests itself in school as an impaired ability to listen, reason, speak, read, write, spell or do mathematical calculations, despite appropriate instruction in the general education curriculum. Specific learning disability may include conditions such as perceptual disability, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.

(b) The IEP team shall base its decision of whether a child has a specific learning disability on formal and informal assessment data on intellectual ability, academic achievement, and learning behavior from sources such as standardized tests, error analysis, criterion referenced measures, curriculum-based assessments, student work samples, interviews, observations, and an analysis of the child's response to previous interventions, classroom expectations, and curriculum in accordance with s. 115.782, Stats. The IEP team may identify a child as having a specific learning disability if all of the following are true:

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

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

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

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

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

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

NOTE: Appendix A specifies the recommended regression formula for calculating significant discrepancy scores.

3. 'Information processing deficit.' The child has an information processing deficit that is linked to the child's classroom achievement delays under subd. 1. and to the significant discrepancy under subd. 2. An information processing deficit means a pattern of severe problems with storage, organization, acquisition, retrieval, expression, or manipulation of information rather than relative strengths and weaknesses. The IEP team shall document the reasons for and data used to make its determination that the child has an information processing deficit.

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

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

3. A child who is found to have a significant discrepancy between ability and achievement in the single area of oral expression or listening comprehension and who meets criteria for speech and language impairment under s. PI 11.36 (5) and who demonstrates a need for special education under s. PI 11.35 (2) shall be considered to have a primary impairment in the area of speech and language.

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

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

(7) EMOTIONAL BEHAVIORAL DISABILITY. (a) Emotional behavioral disability, pursuant to s. 115.76 (5) (a) 5., Stats., means social, emotional or behavioral functioning that so departs from generally accepted, age appropriate ethnic or cultural norms that it adversely affects a child's academic progress, social relationships, personal adjustment, classroom adjustment, self-care or vocational skills.

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

1. The child demonstrates severe, chronic and frequent behavior that is not the result of situational anxiety, stress or conflict.
2. The child's behavior described under par. (a) occurs in school and in at least one other setting.
3. The child displays any of the following:
  - a. Inability to develop or maintain satisfactory interpersonal relationships.
  - b. Inappropriate affective or behavior response to a normal situation.
  - c. Pervasive unhappiness, depression or anxiety.
  - d. Physical symptoms, pains or fears associated with personal or school problems.
  - e. Inability to learn that cannot be explained by intellectual, sensory or health factors.
  - f. Extreme withdrawal from social interactions.
  - g. Extreme aggressiveness for a long period of time.

h. Other inappropriate behaviors that are so different from children of similar age, ability, educational experiences and opportunities that the child or other children in a regular or special education program are negatively affected.

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

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

**SECTION 10. Initial applicability.** This rule applies to evaluations conducted by IEP teams on or after July 1, 2001 to determine whether a child is or continues to be a child with a disability.

**SECTION 11.** Appendix A is created to read:

Appendix A  
Regression Formula for Calculating Significant Discrepancy Scores

Information needed for Calculation:

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

Formula:

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

Discrepancy = Expected Achievement - Obtained Achievement Score =

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

Cut-off:

Discrepancy / SD Discrepancy =

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

\* If correlation between tests is unknown, use .62

When the test publisher provides tables for significant differences between ability and achievement scores (such as with the Weschler Intelligence Scale for Children- 3 and the Weschler Individual Achievement Test), these tables may be used in lieu of this formula. Cut-offs should be derived using a 1.75 Standard Error of Estimate (SEe) criterion so that the

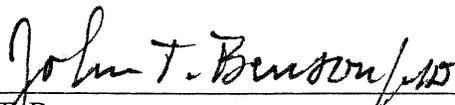
difference between expected and obtained scores in the bottom 4% of the distribution meet the standard for a significant discrepancy (i.e. 1.75 SEe units below the expected score).

**SECTION 13. Cross-reference changes.** In the sections of the rule listed in Column A, the cross-references shown in Column B are changed to the cross-references in Column C.

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

The proposed rules contained in this order shall take effect on July 1, 2001, as provided in s. 227.22(2)(b), Stats.

Dated this 11<sup>th</sup> day of July, 2000

  
 \_\_\_\_\_  
 John T. Benson  
 State Superintendent

FISCAL ESTIMATE

ORIGINAL  UPDATED)

LRB or Bill No./Adm. Rule No.  
PI 11.35 and 11.36

DOA-2048 (R10/92)

CORRECTED  SUPPLEMENTAL

Amendment No. If Applicable

Subject: Eligibility Criteria for Children with Disabilities

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation  Increase Existing Revenues
- Decrease Existing Appropriation  Decrease Existing Revenues
- Create New Appropriation

- Increase Costs-May be possible to Absorb Within Agency's Budget  Yes  No
- Decrease Costs

Local:  No local government costs

- 1.  Increase Costs  
 Permissive  Mandatory
- 2.  Decrease Costs  
 Permissive  Mandatory

- 3.  Increase Revenues  
 Permissive  Mandatory
- 4.  Decrease Revenues  
 Permissive  Mandatory

5. Types of Local Governmental Units Affected:

- Towns  Villages  Cities
- Counties  Others \_\_\_\_\_
- School Districts  VTAE Districts

Fund Sources Affected

- GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule specifies criteria used in determining the need for special education. The rules also modify the eligibility criteria used to identify children with cognitive disabilities, visual impairments, hearing impairments, speech and language impairments, specific learning disabilities and emotional behavioral disabilities.

The eligibility criteria modified in these rules should not result in altering the size of the population of children identified as having a disability. Therefore, the rules are not expected to have a local or state fiscal effect.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Department of Public Instruction

Lori Slauson (608) 267-9127

Authorized Signature/Telephone No.

*Gina Frank-Reece*  
Gina Frank-Reece (608) 266-2804

Date

8/24/98

**FINAL REPORT**  
**CLEARINGHOUSE RULE 98-138**  
**CHAPTER PI 11**  
**- ELIGIBILITY CRITERIA FOR CHILDREN WITH DISABILITIES -**

**Analysis by the Department of Public Instruction**

Statutory authority: s. 227.11(2)(a), Stats.  
Statute interpreted: s. 115.782, Stats.

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

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

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

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

The proposed rules also set forth eligibility criteria to identify children with cognitive disabilities, visual impairments, hearing impairments, specific learning disabilities, speech or language, and emotional behavioral disabilities. The multiple handicapped impairment has been eliminated since a child with multiple

impairments would be identified under one or more of the existing impairments. Other technical modifications have been made to update terminology and to renumber and reorganize the section relating to impairments.

Public hearings to consider the proposed rule were conducted by the department on December 1, 1998, in Chippewa Falls and Wausau; December 2, 1998, in Rice Lake; December 3, 1998, in Ashland; December 7, 1998, in Portage, December 8, 1998, in Oshkosh and Fenimore; December 9, 1998, in La Crosse and Gillett; December 10, 1998, in Green Bay; December 14, 1998, in Madison; and December 15, 1998 in Milwaukee. Persons were asked to register in favor, generally in favor (except for . . .), against, generally against (except for . . .), or for information only. Persons testified on the following rule subjects: The need for special education (need), cognitive disabilities (CD), emotional behavioral disabilities (ED), specific learning disabilities (LD), hearing impairments (HI), visual impairments (VI), and speech and language impairments (SL).

*Chippewa Falls Hearing, December 1, 1998*

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Ruth Adix	Self	N/A			X
Barb Breen	Eau Claire Area School District	CD, ED, LD, HI, VI, SL			X
Mary Brunstad	CFAUSD	CD, ED, LD, HI, VI, SL			X
Dave Burke	Self	CD, ED, LD, HI, VI, SL	X		
Suzette Eppler	Chippewa Falls School District/Self	N/A			X
Don Hauser	Eau Claire Schools	Need	X		
Gayle Holte	CESA 10	CD, ED, LD, HI, VI, SL	X		
Berta Johnson	Self	All	X		
Jerry M. Johnson	Menomonie Area School District	ED			X
Mary J. Joslin	CESA 10	N/A			X
Ronald P. Krueger	Chippewa Falls Public Schools	CD, ED, LD	X		
Bonnie Lindsay	Self	Need, LD	X		

Wausau Hearing, December 1, 1998

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Kathy Bertolino-Jolin	CESA 9	HI SL	X	X	
Suzanne Brandt	Self	CD	X		
Michael J. Gontarr	Self	LD, HI, SL	X		
Judy Grimm	Self	HI	X		
Eric P. Hartwig	MCCDEB	CD, ED, LD	X		
John Kaufman	Merrill Area Public Schools	All	X		
Jim Larson	Self	HI SL	X	X	
Bev Lonsdorf	Self	CD	X		
Judy Martin	WSPA	ED, LD, SL	X		
Larry A. Nelson	Antigo School District	HI, SL	X		
Teresa O'Connell	Wausau School District	CD, ED, LD, HI, VI, SL		X	
Jim Pedersen	Tomahawk Schools	CD, ED, LD, HI, VI, SL	X		
Barbara K. Rademaker	Mosinee School District pathologists	SL		X	
Sharon Rybacki	Self	LD	X		
Jane Schoepke	Merrill Area Public Schools	All			X
Mary Skadahl	Parent Educator Connection & CESAs 9, 10, 11, and 12	CD, ED, LD, HI, VI	X		
Deborah J. Stocco	Mosinee Schools	N/A			X
John Tobakos	Wausau School Board	N/A			X
Cathy Wahl	DC Everest Area School District	N/A			X
Ann Wicklund	Wausau School District	SL CD HI	X X	X	

*Rice Lake Hearing, December 2, 1998*

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Sally Carlson	Self, CESA 11, St. Croix Valley Disability Coalition	N/A	X		
Aura Lea Carrell	Rice Lake High School special education faculty	CD, ED, LD, HI, VI, SL	X		
Tom Hall	WCASS	LD, HI, SL	X		
Mary Kampa	CESA 11	ED, LD	X		
Kathy Laffin	Self	CD, ED, LD, HI, VI, SL	X		
Kurt Lindau	Ladysmith-Hawkins School District	N/A			X
Sue Lohmeier	Self	LD	X		
Peter Olson	Ladysmith-Hawkins School District	CD, ED, LD, HI, VI, SL			X
Vicky Ondell	Self	N/A	X		
Jennifer Starck	CESA 10	All	X		

*Ashland Hearing, December 3, 1998*

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Sharon E. Baertsch	Self	ED, LD, SL			X
John Eyerly	Self, Ashland Schools	CD, ED, LD, HI, VI, SL	X		
Stewart Holman	Self	LD			X
Maureen Johnson	Superior School District	Need CD ED LD HI VI SL	X X X X X	X	
John Kiewit	CESA 12	CD	X	X	

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Susan Kovach	CESA 12	All			X
Thomas Potterton	Hayward Public Schools & CESA 12	CD,ED,LD,SL	X		
Don Rosin	Great Lakes Inter-Tribal Council	All	X		

*Portage Hearing, December 7, 1998*

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Dave Ament	Baraboo Schools	CD ED LD HI VI SL	X X X  X	   X X	
Barbara L. Beahm	Self	LD			X
Deb Berger	Baraboo Middle School	N/A			X
Jerry Bohren	Self	N/A			X
Linda Brinkman	Self	Need			X
Jeannine Cummings	Portage Community Schools	N/A			X
Sue Dietsch	WACBD/WACCB/D/Self	Need	X		
Robert Harm	Portage Community Schools	N/A	X		
Diane Hatfield	Self	N/A	X		
Stephanie Lovas	Self	Need			X
Charlotte M. Millard	Self	N/A			X
Diane Petrusky	Self	Need,LD			X
Diane Spencer	Portage Community Schools	N/A	X		
Sue Wellnitz	CESA 5	N/A	X		
Fred Wollabuy	CESA 5	CD,ED,LD,HI,VI,SL	X		
David E. Zeman	Self	LD	X		

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Amela S. Zeman	Self	LD	X		

*Oshkosh Hearing, December 8, 1998*

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Anna D'Amelio	Self	Need			X
Sandy Ansfield	Neenah Joint School District	CD SL	X	X	
Barbara Behlen	Self	SL			X
JoAnn Boisen	Self	CD, ED, LD	X		
Bert Chiang	UW-Oshkosh	LD	X		
Mary Drecktrah	UW-Oshkosh	Need, ED, LD	X		
Ed Hawkinson	CESA 6	CD, ED, LD, HI, VI, SL		X	
Russ Kaping	Waupun School District	CD, ED, LD, SL			X
Jan Koermer	Self	Need, SL	X		
Fran Kubick	Self	N/A			X
Michael Lackas	CESA 6	CD, LD	X		
Karen McGarry	Self	ED			X
Luther Olsen	Self	N/A			X
Corinne Quadland	PEP	All			X
Linda Reiff	Self	CD, ED, LD, HI, VI, SL	X		
Joan Spillner	Self	N/A			X
Linda Tarbert	Self	HI	X		
Lisa Tomberlin	CESA 6	VI	X		
Vicki Warren	CESA 6	VI	X		
David Webster	Oshkosh Area School District	CD, ED	X		
Gloria Wegner	Self	CD, ED, LD, HI, VI, SL	X		

Fennimore Hearing, December 8, 1998

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Barb Biddick	CESA 3	N/A			X
Melissa Boutott	CESA 3	N/A			X
Barb Ebben	Self	LD			X
Mary R. Green	Lancaster Community School District and CESA 3	CD, ED, LD, HI, VI, SL	X		
Kris Kneller	Mt. Horeb Area School District	CD, ED, LD, HI, VI, SL	X		
Dawn Koenigs	Self	LD	X		
Judy Nugent	Self	SL			X
Mary Steck	Self	SL	X		
Thomas J. Stuckey	CESA 3	All	X		
John Triphan	CESA 3	ED	X		
Rick Walters	CESA 3	HI, VI			X
Sandye Yoight	Telegraph Herald	N/A			X

La Crosse Hearing, December 9, 1998

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Mary Cleaver	La Crosse School District	HI	X		
Michele Cook	Self	ED	X		
Kristin Dittman	Self	LD			X
Mark Dyar	CESA 4	Need, CD, ED, LD	X		
Pam Foegen	La Crosse School District	N/A	X		
Pam Pager Green	Onalaska School District	N/A			X
Hal Hiebert	UW-La Crosse	N/A	X		

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Theresa Hundt	La Crosse School District	CD,ED,LD,VI,SL			X
Renee Keip	Self	LD			X
Jandra LeGrand	Self	LD			X
Julie Mack	Family and Children's Center	N/A			X
Christi Pfaff	Self	LD			X
Tom Rhorer	Self	N/A			X
Steve Ross	La Crosse School District	N/A	X		
Mary Wirkus-Pallaske	Self	LD,SL			X

*Gillett Hearing, December 9, 1998*

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Charles J. Hastert	Self	All	X		
Marycarolyn Jodgzinski	CESA 8	SL	X		
Catherine B. Kellogg	Self	HI	X		
Susan Proctor	Self	HI	X		
Monica Gatzow	Florence County School District	N/A			X
Kathryn Geimer-Chojnacki	Green Bay Schools	All	X		
Susan Goron	Syble Hopp School & Brown County CDEB	CD	X		
Jeff Koehn	Florence School District	All	X		
Robert Lennon	DePere School District	CD,LD,HI,VI,SL	X		
Michael J. Retzinger	Self	SL		X	
Scott R. Thompson	Wrightstown Community School District	All	X		
Barb Van Haren	Self, Howard School District, WCASS	CD,ED,LD,HI,VI,SL	X		
Steve Warner	DePere Schools	N/A			X
Donald Zander	Ashwaubenon School District & WCASS	N/A	X		

Madison Hearing, December 14, 1998

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Kristin Aasen-Gowan	Self	All			X
Carter M. Ayres	Self	CD, ED, LD, HI, VI, SL	X		
Polly Brandes	Self	CD, ED, LD, HI, VI, SL	X		
Erin C. Dyer	Self	SL	X		
Martha Foster	Self	Need, LD	X		
Rita Gross-Hahn	Self	N/A			X
Kim Hogan	Wis. Coalition for Advocacy	All			X
Jack Jorgensen	Madison Metro. School District	CD, ED, LD, HI, VI, SL	X		
Jackie Kaplan	Self	SL	X		
Tom Kellner	Jefferson School District	CD, ED, LD, HI, VI, SL	X		
Lawrence J. Ketterman	Whitewater Public School	SL	X		
Barbara Koechley	SL teachers at McFarland schools	SL	X		
Sue Krueger	Self	CD	X		
Barbara Leadholm	Self & Middleton-Cross Plains Area School District	All	X		
Colleen Lodholz	Madison Schools	Need, SL	X		
Malena Ojalora	Madison Metro. School District	CD, SL			X
Laura J. Pinger	Madison Metro. School District	SL	X		
Donna Rosinski	Autism Society of America	Need			X
Marsha Spees	Riverdale Schools	HI		X	
Jeff Spitzer-Resnick	Wis. Coalition for Advocacy Quality Education Coalition	All	X		
Sarah Stuckey	Self	Need, CD, ED, LD, SL	X		
Pat Thiessen	Monona Grover High School	Need, ED, LD			X
Anne Thompson	Lodi School District	CD, ED, LD, HI, VI, SL	X		
Delon Underbakke	Madison Metro. School District	CD	X		
Curtis W. Weber	Madison Metro. School District	All	X		
Barb Zimmerman	Self & Beloit School District	CD	X		

Milwaukee Hearing, December 15, 1998

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Vinnifred Ludwig Aitch	Self & Washington High School	Need	X		
Tom Balliet	Self	All	X		
Anne Blom	Self	SL	X		
E. A. Brickner	Self	ED		X	
Wendy Buetner	Greendale Public Schools	ED,LD			X
Raksha Chand	Milwaukee School Social Work Association	N/A		X	
Janice Clark	Milwaukee Public Schools	SL	X		
Jean E. Davidson	Dane County LDA	Need,LD	X		
Barbara Dowas	Elmbrook Schools	All			X
Elaine Drinan	Self	LD	X		
Patrick Du Saint	Self	Need		X	
Katerine M. Emanuele	Milwaukee Public Schools	Need,LD		X	
Kathy Erdman	Self	CD,ED,LD,HI,SL	X		
Joyce Fisher	Self	N/A		X	
Patricia A. Franzen	Milwaukee Public Schools	Need,CD		X	
Susan Geraghtag	Parents of Whitefish Bay speech students	CD,HI,SL		X	
Teresa Grinker	Milwaukee Public Schools-Washington High School	Need,CD,ED,LD			X
R. Halsey-Schmidt	Self	SL	X		
Michael Halstead	Germantown School District	All			X
Barbara Ingram	Self	N/A		X	
Cheryl Jamrozy	Milwaukee Public Schools	HI	X		
Michelle Jetzer	Bruce Elementary School	N/A			X
Rebecca Kassulke	Milwaukee Public Schools	All		X	
Nancy C. Kiefer	Milwaukee Public Schools	CD,ED,LD		X	
Peter Knotek	Racine Education Association	All		X	
Cynthia Kohl	Self	SL	X		
Jean Kranendonk	Milwaukee Public Schools	CD		X	

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Sarah Kubetz	Self	CD		X	
Lisa Kujawa	Milwaukee Public Schools	HI		X	
Rebecca T. Lancy	Milwaukee Public Schools	SL		X	
Marilyn Lane	Milwaukee Public Schools	LD	X		
Amy LaPlante	Milwaukee Public Schools	CD, ED, LD, SL		X	
Stephanie Lichtig	Waukesha School District	CD, ED, LD			X
Mary Alice W. Martines	Self	N/A			X
Susan Martzahl	Milwaukee Public Schools	All			X
Dick Marx	Wisconsin Social Workers Assoc.	CD	X		X
Jane Miller	Self	LD	X		
		ED	X		
Yovira M. Moroney	Self	N/A			X
Floyd Mosley	Milwaukee Public Schools	Need, ED	X		
Adrienne Nerad	Milwaukee Public Schools	CD, ED, LD, HI, VI, SL		X	
Lourdos Ocampo	Milwaukee Social Social Work Association & Milwaukee Public School Social Work Bilingual Unit	Need, CD, ED, LD		X	
Amy E. Olson	Milwaukee Public Schools	N/A			X
Dennis Oulahan	Self	CD		X	
Lynda Thompson Palecek	Wisconsin School Psychologists Association.	N/A			X
William Petropollos	Self	All			X
Tom Phillipson	We Care Parents' Network	Need, CD, ED, LD		X	
Corrie Porter	Self	N/A	X		
Margaret Preston	Milwaukee Public Schools	All		X	
Shirley A. Reynolds	Self	SL		X	
Harriet Russo	Milwaukee Public Schools	CD		X	
Jerome Salaja	Self	Need, CD, LD		X	
Carla Sikorski	Milwaukee Public Schools	CD, ED, LD, HI, VI, SL		X	
Nancy Simuel	Self	ED		X	

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Equie Skubal	Self	LD			X
even L. Smith	Self	N/A		X	
stell Sprewer	Milwaukee Public Schools	N/A			X
an Stanzel	Milwaukee Public Schools	ED		X	
aren Stolber	UW-Milwaukee	LD	X		
Patricia Toman	Milwaukee Public Schools	All		X	
Mike Vanderwood	Self	CD, ED, LD	X		
atalie Voss	UW-Whitewater	N/A			X
aren Weinberg	Milwaukee Public Schools	CD, ED, LD, HI, VI, SL		X	
athy Wiegand	Milwaukee Public Schools	Need, CD, ED, LD		X	
Mary Wilson	Self	N/A			X
ames Wisniewski	Self	N/A		X	

*The following persons submitted written testimony:*

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Craig Belknap	Self	SL			X
Roger Berg	Wisconsin School Psychologists Association	LD	X		
Peg Cokins & Stephanie Rahn	Big Foot Area Schools Assoc.	SL			X
S. Patrice M. Colletti	Self	CD VI HI SL LD	X X X X X		X

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Eileen Dagen	CESA 1	ED	X		
David Damgaard	Wausau School District	LD			X
Mary Pat Dean	Self	SL			X
Paula Desotelle	Gibraltar Area Schools	SL			X
Elizabeth A. Dickson & Ed Schriner-Schmitt	Sturgeon Bay School District	CD			
Sigrud Peot		ED	X		
Gretchen Schmelzer					
Deb Doyle					
Gregory Dietz	CESA 10	CD, VI, HI, SL	X		
Barb Ditschert	Self	VI			X
Sue Endress	Family Assistance Center for Education, Training and Support	All			X
William Frankenberger	UW-Eau Claire	N/A			X
Patricia French	Green Bay Area Schools	SL			X
Joyce Fuehrer-Mancl	Self	SL			X
Ruth Fuller	La Crosse School District	LD			X
Nola Furmanek	Self	SL			X
Mary Geiss	Self	SL			X
Wayne P. Graczyk	Hustisford School District	N/A			X
Susan Geraghty & Diane Butler	Self	SL			X
Patricia K. Nicholas					
Diane R. Senfrisee					
Judith A. Comundelsen					
Karen M. Schultz					
Ann Barry					
Peter C. Kyntheh					
Shirley A. Reynolds					
Barbara Gillespie	Self	LD			X

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Jeanne Gullo	Self	SL			X
Christina Hall-Smith	Lake Geneva Schools	SL			X
Judy Halverson	Self	ED, LD			X
Kathleen M. Hart-Braun & Anthony J. Braun	Self	SL			X
Colleen C. Haubner	Milwaukee Public Schools	CD, HI, SL			X
Kerry M. Hesselthalen	Self	SL			X
Cheryl L. Hock	Milwaukee Public Schools	All			X
Theresa M. Holford	Self	SL			X
Sherry L. Hovey	Self	SL			X
Carol P. Hubbard & Lisa Knudten	UW-Milwaukee	SL			X
Matt Kallio	Self	CD	X		
Patrick T. Kane	CESA 2	All			X
Robert Kirby	Self	OHI			X
Carolyn Klatt	Green Bay Area Schools	SL			X
Dorothy Klein	Self	CD, LD			X
Anne Kleinschmidt	Self	SL			X
Sonali Knohk & Mary T. Keiterman Michele Zolkar Ruth Angelici Brenda Post Kathryn Werve Mary Hawkins Kathy Randle Janice Duncan Janine Sparliding Christina Simons Eve Dutkiewicz Christine Payerl Katherine Hellwig	Self	SL			X

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Mary Kay Madisen					
Gerald Fetherston					
Carolyn Bertog					
Wendy Batten-Morey					
Romy Loppnow					
Julie Redman					
Tim Fulton					
Heather Kelley					
Tonya Naylor					
Rachel Seliga					
Jeana Sturino					
Sharon Andreol					
Janet Breitenbach					
Camille Thibaudeau-Meyers					
Sherry Willems					
Gwenn M. Kuhlman					
Jan Konkol	Self	SL			X
Barbara A. Konopacki	Self	SL			X
Dawn Krebsbach	Self	SL			X
Dan Krupp	Self	LD		X	
Teresa Lane-Grapsas	Self	SL			X
Pat Langton	Self	LD			X
Dorothy K. Lingren	Greenfield School District	SL			X
Kim Littell	Self	CD, VI, SL, LD, ED			X
Robert J. Lorenz	New London School District	All			X
Lori J. Loveless	Self	VI			X
Thomas O. Malone	Self	SL			X
Nancy McKinley	Self	SL			X
Barb Natelle	Brown County Handicapped Schools	CD	X		
Renee Nedden	Self	SL			X
John Nelson	Rice Lake Area Schools	All	X		
James B. Neubert	Little Chute Area School District	CD, ED, LD, SL, HI			X

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
udi O'Brien	Self	OHI			X
Melinda O'Brien	Delavan-Darien Elementary Schools	SL			X
Dorie Pagel	CESA 7	LD,ED,CD,SL,VI,HI			X
Clark Pearson & Susan Skipper	Kewaskum School District	HI,ED,LD, SL		X	
Deborah S. Pope	Self	SL			X
Jean Propst	Iowa-Grant School District	SL			X
Tracy A. Reese	Self	SL			X
Mary Lee Reineking	Self	SL			X
Judith M. Romzani	Self	SL			X
B.J. Rosenzweig	Superior School District	SL			X
Lori Rudeen-Marohl	Green Bay Area Schools	SL			X
John L. Ruck	Menasha Joint School District	All			X
Jerry Runice	Berlin Area School District	N/A			X
Sara Sadowsky	Northern Ozaukee School District	SL			X
Judith Salus & Steve Kerchoff	Wisconsin Association for Children with Behavior Disorders	ED			X
David Schollmeier	Self	LD	X		
Craig Seibert	Green Bay Area Schools	CD,LD,ED,ADD			X
Faith Beam	School Psychology Department				
Tracie Wurm					
Kathryn Shug	Learning Disabilities Assoc. of Dane County	LD,SL	X		
Douglas H. Smith	Manawa School District	SL,ED,CD,VI			X
Holly Sperberg	Self	SL			X
Sheryl Stiemann	Self	SL			X
Teresa Stoltenberg	Self	SL			X
Nancy R. Sweet	Hudson School District	SL,LD,ED,VI,HI,CD			X
Kenneth Tapp	Self	VI			X
Karen Terrill	Self	SL			X
Susan Tucker	Self	SL			X

NAME	ORGANIZATION	SUBJECT	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Richard Turk	Walworth CHCEB	CD, VI, HI, SL, LD			X
Vivian Weber-Pagel	Stevens Point Area School District	SL			X
Molly Weberpal	Green Bay Area School District	SL			X
Gary Weismer	UW-Madison, Department of Communicative Disorders	SL			X
Peg Welsh	Green Bay Area School District	SL			X
Debra Whelan	Self	SL			X
Jerry Wieland	Green Bay Area School District	SL			X
Susan Winter	Self	SL			X
Fred Wollenburg	CESA 5	CD	X		
		VI	X		
		ED	X		
		SL			X
		LD			X
Janet Wanamaker	Neenah Joint School District	SL			X
Sue McCarthy					
Doreen Larson					
Melissa					
Timmerman					
Cindy Rieck					
Susan Yorio	Self	SL			X
Ann Yudchitz	Self	SL			X
Amy Zdroik	Self	SL			X

*Changes made as a result of oral or written testimony*

- The initial applicability section has been changed. The rule applies to evaluations conducted by IEP teams on or after July 1, 2000.
- Eligibility criteria relating to speech and language have been rewritten.
- For clarity, technical changes have been made to provisions relating to the determination of eligibility under s. PI 11.35, cognitive disabilities under s. PI 11.36(1) and visual impairments under s. PI 11.36(3).

*Responses to Clearinghouse Report:*

2. Form, Style and Placement in Administrative Code:

- a. Recommendation accepted, the treatment clauses have been changed to correspond to proper drafting practices.
- b. Section PI 11.35(2)(ad) and (L) are now included in the treatment clauses under CHR 98-138.
- c. See response to a. above.
- d. Recommendation accepted, changes made.
- e. The reference to "See Appendix A." has been replaced by a note.
- f. Recommendation accepted, changes made.
- g. See response to a. above.

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

- a. The reference to "42 USC 1412" has been replaced by "20 USC 1412." This cite is sufficient to provide for rule authority.
- b. Recommendation accepted, changes made.
- c. Recommendation accepted, changes made.
- d. Recommendation accepted, changes made.
- e. In s. PI 11.36 (6) (d), the reference to "criteria under subs. 1. and 2." has been changed to "criteria under par. (b) 1. and 2."
- f. The reference to "subpar. a." under s. PI 11.36 (7) (b) 2., has been replaced by a reference to "par. (a)."

5. Clarity, Grammar, Punctuation and Plainness:

- a. The term "speech and language" has been changed to "speech or language" to be consistent with statutory language. To more closely align to statutory terminology, the subsections relating to learning disabilities and emotional behavioral disabilities have been modified to read:

“PI 11.36 (6) SPECIFIC LEARNING DISABILITY. (a) Specific learning disability, pursuant to s. 115.76 (5) (a) 10., Stats., means . . . .”

“(7) EMOTIONAL BEHAVIORAL DISABILITY. (a) Emotional behavioral disability, pursuant to s. 115.76(5)(a)5., Stats., means . . . .”

- b. The term “IEP team” is defined under s. PI 11.02 (6). The term “IQ standard score” has been deleted.
- c. Recommendation accepted, changes made.
- d. (1) Recommendation accepted, changes made.  
(2) Section PI 11.35 (3) (c) has been repealed.  
(3) Section PI 11.35 (3) (d) has been renumbered s. PI 11.35 (3) (c) and has been rewritten.  
(4) Section PI 11.36 (5) (b) 2. has been rewritten.  
(5) Recommendation accepted, changes made.
- e. Section PI 11.35 (3) (d) has been renumbered to be PI 11.35 (3) (c) and has been rewritten.
- f. Recommendation accepted. The provisions under s. PI 11.36 (1) (b) 3. a. and b. have been reworded to begin “The child is age . . . .” By rewording the provision, the phrase “cognitive impairment” has been eliminated.
- g. Section PI 11.36 (1) (b) 3. a. and b. has been rewritten so the age brackets within those provisions will not be overlapped.
- h. Recommendation accepted, changes made.
- i. Section PI 11.36 (5) (b) 2. has been rewritten and no longer uses the phrase “the severe or profound range of phonological use.”
- j. Section PI 11.36 (5) has been rewritten. Standard deviations are now measured relative to a mean rather than functioning.
- k. Section PI 11.36 (5) has been rewritten. A comma has been inserted after “syllables” under s. PI 11.36 (5) (b) 4.
- l. Section PI 11.36 (5) has been rewritten. Standards to determine whether a child’s oral communication is inadequate are now listed under s. PI 11.36 (5) (b) 5.
- m. In s. PI 11.36 (6) (b) 1. (intro.), “any of” has been inserted preceding “the following.”

n. The intent is that this criteria be met the first time a student is identified as learning disabled. Once identified, the child need not display serious classroom achievement deficits or significant discrepancies in accordance with criteria in order to continue to qualify upon reevaluation. The department does not approve tests. Section 115.782, Stats., requires all tests to be valid and reliable for the purpose used. Guidelines for reliability and validating are provided

by the American Psychological Association and are included as part of preservice certification courses for all school psychologists and special education teachers.

- o. The provisions under s. PI 11.36 (6) (b) 2. a. and b. are clearer as separate provisions.
- p. Recommendation accepted, changes made.
- q. The formula is mathematically correct as written. The use of "x" to mean "multiply" in this algebraic formula would refer to a variable and would require a value to be substituted. This might be confusing. Also, the square root sign has been extended over " $1-r^2$ ."

#### **FINAL REGULATORY FLEXIBILITY ANALYSES**

##### Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114(1)(a), Stats.

##### Summary of Comments:

No comments were reported.

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-138**

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

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

09-14-98

RECEIVED BY LEGISLATIVE COUNCIL.

10-12-98

REPORT SENT TO AGENCY.

RNS:JRH:kjf;jal

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO

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## CLEARINGHOUSE RULE 98-138

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

### 2. Form, Style and Placement in Administrative Code

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

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

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

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

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

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

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

.....

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- c. In s. PI 11.36 (6) (b) 2. b., the reference to "subpar. a." should be to "subd. 2. a."
- d. In s. PI 11.36 (6) (b) 2. c., as proposed in SECTION 14 of CHR 98-138, "subds. 1. and 3." should be substituted for "subd. 1. and 3."
- e. In s. PI 11.36 (6) (d), the reference to "criteria under subd. 1. and 2." is incorrect. There are no subdivisions in par. (d).
- f. In s. PI 11.36 (7) (b) 2., the reference to "subpar. a." is incorrect. There are no subdivision paragraphs in subd. 2.

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

- a. The terms used for various disabilities in the Administrative Code should be consistent with the terms used in the statutes. Specifically, the definition of "child with a disability" in s. 115.76 (5) (a), Stats., uses the terms "speech or language impairments," "emotional disturbance" and "learning disabilities." However, CHR 98-138 uses the terms "speech and language impairments," "emotional behavior disabilities" and "specific learning disability." These and any other similar inconsistencies should be eliminated.
- b. Throughout CHR 98-108, references are made to "IEP team." However, that term is not defined for the purposes of the rule. Also, throughout the rule, reference is made to "IQ standard score" which also is not defined. Is use of this term even necessary?
- c. In s. PI 11.35 (3) (a), as created by SECTION 2 of CHR 98-138, "as currently structured" should be replaced by "as structured at the time the evaluation is conducted." [See s. 1.01 (9) (b), Manual.]
- d. The entire rule should be reviewed to ensure that it clearly states the persons to whom its various provisions refer or apply. Examples of changes that should be made include the following:
  - (1) In s. PI 11.35 (3) (b), as proposed in SECTION 2 of CHR 98-138, "in order to" should be replaced by "that will allow the child to."
  - (2) In s. PI 11.35 (3) (c), Stats., "to the child" should be inserted after "effects."
  - (3) In the first sentence of s. PI 11.35 (3) (d), "provided to the child" should be inserted after "related services."
  - (4) In s. PI 11.36 (5) (b) 2., "his or her" should be inserted immediately preceding "educational performance."
  - (5) In s. PI 11.36 (7) (b)<sup>2</sup>h., as created by SECTION 16 of CHR 98-138, "other children" should be substituted for "others."

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

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

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

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

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

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

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

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

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

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

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

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

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

$$(SDa/SDi) \times (r) \times (IQ-100) + 100 = \underline{\hspace{2cm}}$$

Also, in the line defining SD Discrepancy, the square root sign should extend over "1-r<sup>2</sup>".