



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 20-073

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2020.]

1. Statutory Authority

Under s. 115.78, Stats., a local education agency (LEA) must appoint an individualized education plan (IEP) team for any student for which the LEA receives a special education referral. Under s. 115.78 (1m), Stats., the IEP team must consist of several individuals, including, under s. 115.78 (1m) (f), “[a]t the discretion of the parent or the local educational agency, other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate.”. The agency’s proposed rule, under s. PI 11.36 (7) (f), requires that “[i]n addition to the requirements for IEP team membership under s. 115.78, Stats., the IEP team for a child being evaluated for emotional behavioral disabilities shall include the LEA staff member, identified by the child when possible, as having a positive or the most positive relationship with the child.”. The requirement for a student’s IEP team to include a LEA staff member with which the student has a positive relationship appears to present a conflict with the discretion afforded under s. 115.78 (1m) (f), Stats. While s. 115.78 (1m) (f), Stats., leaves the decision to appoint such a person to the discretion of a parent or the LEA, the proposed rule requires the appointment. The agency should revise the proposed rule to ameliorate this conflict or more specifically explain its statutory authority to promulgate rules regarding the composition of a student’s IEP team, particularly with respect to requiring appointment of an IEP team member when such appointment is left to the discretion of others under the statute.

2. Form, Style and Placement in Administrative Code

A heading could be inserted at the beginning of the text of the rule to better separate that material from the analysis for the proposed rule. Compare, for example, the heading “Rule Text” that is given in CHR 20-067.

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

a. The agency should consider defining the phrase “medical mental health condition”. As it is currently written, it is unclear what makes something a “medical mental health condition” rather than, more simply, a “mental health condition”.

b. The agency should consider defining “community setting” in s. PI 11.36 (7) (a) of the proposed rule.

c. The word “shall” in administrative rules denotes a mandatory or absolute duty or directive. [s. 1.08 (1) (b), Manual]. Because of its use of the word “shall” in s. PI 11.36 (7) (c), the agency should consider the following:

- (1) In the proposed rule, s. PI 11.36 (7) (c) 2., 3., and 4., the agency uses the term “ecological factors” but it is unclear what “ecological factors” means. For clarity, because the agency uses the term “ecological factors” in a list of sources an IEP team is required to consider, the agency should consider defining “ecological factors”.
- (2) In the proposed rule, s. PI 11.36 (7) (c) 6., the agency uses the term “standardized, nationally normed behavior rating scales” but it is unclear what the term means. For clarity, because the agency uses the term in a list of sources an IEP team is required to consider, the agency should consider defining “standardized, nationally normed behavior rating scales”.
- (3) Under the proposed rule, s. PI 11.36 (7) (c) 7., an IEP team is required to consider data from “additional assessments determined by the IEP team to identify the child’s educational needs”. Requiring the IEP team to consider data from any other assessments it sees fit may cause confusion as to what sources an IEP team must consider. For example, an IEP team may not see a need for additional assessments to identify the child’s educational needs, yet the rule would still require the IEP team to consider data from additional assessment. The agency should consider removing s. PI 11.36 (7) (c) 7. from the list of sources an IEP must consider.