

Clearinghouse Rule 07-058

REPORT TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE IDENTIFICATION OF CHILDREN WITH SPECIFIC LEARNING DISABILITIES AND SIGNIFICANT DEVELOPMENTAL DELAYS SECTION PI 11.36, WISCONSIN ADMINISTRATIVE CODE

Statute interpreted: Sections 115.76 (5) (a) 10. and (b), Stats.

Statutory authority: Sections 115.76 (5) (b) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 115.762 (3) (a), Stats., requires the department to ensure that all children with disabilities are identified, located and evaluated.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Court decisions directly relevant : None

Related statute or rule: Subchapter V of Chapter 115, Stats. Chapter PI 11, Wis. Admin. Code.

Plain language analysis:

In 2004, the Individuals with Disabilities Education Act (IDEA) modified the evaluation procedures for the identification of children with specific learning disabilities (SLD) under 20 U.S.C. 1414 (b) (6). As specified in IDEA, the evaluation procedures relating to the identification of specific learning disabilities provide that: 1) States may not require the use of significant discrepancy as part of a determination of SLD, 2) States must permit the use of a process based on a child's responses to scientifically-based intervention as part of its determination of a SLD, and 3) States may permit the use of other alternative research-based procedures to determine whether a child has a SLD. IDEA also added reading fluency skills as an area of identification for SLD. Because the department's current rule under s. PI 11.36 (6), relating to specific learning disabilities is not consistent with the federal requirements, the rule will be modified to align with the U.S. Code. The proposed rules will allow a four-year period during which a school district "is permitted but not required to" continue to use the significant discrepancy formula in identifying children with SLD.

In addition, 20 U.S.C. 1401 (3), permits the identification of children with significant developmental delay (SDD) through the age of nine. The department's current rule under s. PI 11.36 (11), relating to SDD permits identification only through the age of six. The proposed rule will extend the SDD age limit through the age of nine as authorized under federal law.

Summary of, and comparison with, existing or proposed federal regulations:

The proposed rules directly reflect the language under 34 CFR 300.307 to 300.311 as authorized under 20 U.S.C. 1221e-3, 1401 (30), and 1414 (b) (6).

Comparison with rules in adjacent states:

Illinois, Iowa, Michigan, and Minnesota (as well as the remaining states) will be revising their law to comply with the federal language.

Summary of factual data and analytical methodologies:

See the plain language analysis.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A.

Anticipated costs incurred by private sector: N/A.

Effect on small business:

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

Agency contact person (including email and telephone):

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Place where comments are to be submitted and deadline for submission:

The department will publish a hearing notice in the *Administrative Register* which will include this information.

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): N/A.