

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

The state superintendent of public instruction hereby proposes to repeal PI 11.36 (6) (b) 3.; to amend PI 11.36 (6) (b), PI 11.36 (6) (c) 1., and PI 11.36 (11) (a) and (b); to repeal and recreate PI 11.36 (6) (b) 2. and PI 11.36 (6) (c) 2. to 4.; and to create PI 11.36 (6) (am) and PI 11.36 (6) (c) 5. to 9., relating to the identification of children with specific learning disabilities and significant developmental delays.

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**ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION**

**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.

**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.

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**SECTION 1.** PI 11.36 (6) (am) is created to read:

PI 11.36 (6) (am) The LEA shall promptly request parental consent to evaluate the child to determine if the child needs special education and related services and shall meet the timeframes under s. 115.78 (3) (a), Stats., unless extended by mutual written agreement of the child's parents and IEP team if either of the following apply:

1. Prior to the referral, a child has not made adequate progress after an appropriate period of time when provided instruction as described in par. (c) 1. b.
2. Whenever a child is referred for an evaluation.

**SECTION 2.** PI 11.36 (6) (b) is amended to read:

PI 11.36 (6) (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 gathered~~ 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~~ The child does not achieve adequately for his or her age and ability levels is

severely delayed in any or to meet state-approved grade-level standards in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

- a. Oral expression.
- b. Listening comprehension.
- c. Written expression.
- d. Basic reading skill.
- e. Reading ~~comprehension~~ fluency skills.
- f. ~~Mathematics calculation~~ Reading comprehension.
- g. ~~Mathematical reasoning~~ Mathematics calculation.
- h. Mathematics problem solving.

**SECTION 3.** PI 11.36 (6) (b) 2. is repealed and recreated to read:

PI 11.36 (6) (b) 2. 'Additional indicators of underachievement.' a. Insufficient rate of progress. The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified under subd. 1. when using a process based on the child's response to scientific, research-based intervention; or

b. Pattern of strengths and weaknesses. The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the IEP team to be relevant to the identification of a specific learning disability, using appropriate assessments consistent with s. 115.782, Stats.

c. Significant discrepancy. The child exhibits upon initial identification, a significant discrepancy between the child's academic achievement in any of the areas under subd. 1. a. to h. 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: 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; if the IEP team makes a determination that a significant discrepancy exists, it shall document the reasons why it was not appropriate to use the regression procedure 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 h. using other empirical evidence; 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 this subdivision, the child's performance in any of the areas in subd. 1. a. to h. is variable, and the IEP team determines that the child meets all

other criteria under subd. 1., the IEP team may consider that a significant discrepancy exists. This subd. 2. c. does not apply after July 30, 2012.

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

**SECTION 4.** PI 11.36 (6) (b) 3. is repealed.

**SECTION 5.** PI 11.36 (6) (c) 1. is amended to read:

PI 11.36 (6) (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~~ any of the following apply:

a. The IEP team's findings under par. (b) are 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., except s. 115.76 (5) (a) 10.

b. The IEP team's findings of inadequate classroom achievement under par. (b) 1. was a result of inappropriate instruction. The IEP team shall document that prior to, or as a part of, the referral process, the child was provided appropriate instruction in general education settings, delivered by qualified personnel; and shall document that repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction was provided to the child's parents.

**SECTION 6.** PI 11.36 (6) (c) 2. to 4. are repealed and recreated to read:

PI 11.36 (6) (c) 2. The IEP team shall include at least one person qualified to assess data on individual rate of progress using a reliable and valid methodology.

3. The IEP team shall include a person qualified to assess speech and language impairments if the IEP team is concerned that a child has an insufficient rate of progress or pattern of strengths and weaknesses under par. (b) 2., in oral expression or listening comprehension.

4. The IEP team shall determine a child's primary impairment to be in the area of speech and language if the child has an insufficient rate of progress or pattern of strengths and weaknesses under par. (b) 2., in the single area of oral expression or listening comprehension and the child meets criteria for speech and language under sub. (5).

**SECTION 7.** PI 11.36 (6) (c) 5. to 9. are created to read:

PI 11.36 (6) (c) 5. The IEP team shall provide data to demonstrate the child's insufficient rate of progress or pattern of strengths and weaknesses under par. (b) 2.

6. The IEP team shall meet all of the following:

a. Have an IEP team member conduct at least one systematic observation of the child in the general classroom setting, either before or after the child has been referred for an evaluation under s. 115.782, Stats., and document the relevant behavior affecting the child's ability to learn, if any, and the relationship of that behavior to the child's academic functioning.

b. Have an IEP team member observe the child in an environment appropriate for the child's age if the child is less than school age or out of school.

7. The IEP team shall review any educationally relevant medical findings.

8. The IEP team shall document all of the following when a child has participated in a process that assesses the child's response to scientific, research-based intervention:

a. The instructional strategies used the pupil-centered data collected.

b. The documentation that the child's parents were notified about the state's policies regarding the amount and nature of pupil performance data that would be collected and the general education services that would be provided, strategies for increasing the child's rate of learning, and the parents' right to request an evaluation.

9. Each IEP team member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

**SECTION 8.** PI 11.36 (11) (a) and (b) are amended to read:

PI 11.36 (11) (a) Significant developmental delay means children, ages 3, ~~4 and 5~~ through 9 years of age ~~or below compulsory school attendance age~~, who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional or adaptive development.

(b) All other suspected impairments under this section, except speech or language impairment, shall be considered before identifying a child's primary impairment as significant developmental delay.

**SECTION 9. INITIAL APPLICABILITY.** The treatment of this rule first applies to determining whether a child has a specific learning disability on or after the effective date of this rule (REVISOR INSERT DATE).

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 \_\_\_\_ day of June, 2007

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Elizabeth Burmaster  
State Superintendent