

Report From Agency

**FINAL REPORT
CLEARINGHOUSE RULE 15-019
CHAPTER PI 11
IDENTIFICATION OF CHILDREN WITH SIGNIFICANT DEVELOPMENTAL DELAY (SDD)**

Analysis by the Department of Public Instruction

Statutory authority: Subchapter V of ch. 115, Stats., and 227.11 (2) (a) (intro), Stats.

Statute interpreted: Subchapter V of ch. 115, Stats.

20 U.S.C. 1401(3)(B) permits the identification of children with significant developmental delay (SDD) through the age of nine rather than six. The proposed rule change will consider children ages 3 through 9 who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional, or adaptive development to have a significant developmental delay.

A list of the persons who appeared or registered for or against the proposed rule at a public hearing:

The hearing notice was published in the March 9, 2015 edition of the Wisconsin Administrative Register. A public hearing was held on April 3, 2015.

The following persons testified at the April 3, 2015 hearing (some also provided written testimony as well):

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Amanda Myers	Wisconsin School Psychologists Association, Inc.	x		

The following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Lanora Heim	Whitewater Unified School District	X		
Dennis Gunnink	Whitewater Unified School District	X		
Tiffannie Sorenson	Luxemburg-Casco School District	X		
Ellen J. Higley	Eau Claire Area School District	X		
Laura Miller	Eau Claire Area School District	X		
Dan Duss	Pewaukee School District	X		
Lisa Hesch	School District of Holmen			X
Angela Fontanini-Axelrod	Eau Claire Area School District	X		
Jess Modjeski	Eau Claire Area School District	X		
Heather Grant	Eau Claire Area School District	X		
Amy Quaschnick	Eau Claire Area School District	X		

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Dawn Parent	Gibraltar Area Schools	X		
Erin Bunten	Eau Claire Area School District	X		
Katie Engel	Eau Claire Area School District	X		
Delesa Boley	Eau Claire Area School District	X		
Amber Farley	Eau Claire Area School District	X		
Jacqueline Tollefson	Eau Claire Area School District	X		
Dylan Leonard	Eau Claire Area School District	X		
Melissa Greer	Eau Claire Area School District	X		
Jen Kalis	Wisconsin Division for Early Childhood	X		
Sally Flaschberger	Disability Rights Wisconsin	X		

Summary of public comments relative to the rule, the agency’s response to those comments, and changes made as a result of those comments:

Summary of public comments

Comments on the Rule

1. Generally support changes to the SDD rule and its alignment with federal law, specifically that this change “...will provide a longer window of time to assess whether the child has a specific disability, thus addressing the difficulties with accurate assessment and labeling certain children beyond age 6 who are still in need of educational interventions.”
2. Children sometimes arrive in the education system close to or at age 6 and it can take some time for teachers and evaluators to determine academic functioning level and service needs. This change provides educators and teams some flexibility for a period to figure out educational needs while also accessing supportive special education services.
3. Extending the age range to identify children with SDD can minimize miscategorization that can result from inaccurate or inappropriate assessment, given that many of the standardized and norm-referenced assessment tools for young children have limited reliability. For example, it is hard to label a young child as cognitively disabled when the evidence is not yet completely conclusive, but providing the additional time for categorization allows professionals to be more confident in the data that may eventually point students into a category such as CD, EBD, etc., or dismiss children from special education entirely after receiving the proper speech and language services.

Suggestions on the Rule

1. If a grandfather clause is not possible, perhaps an effective date earlier than July 1 would be helpful for current children who are not up for formal evaluation and will be turning age 6 before the proposed July 1 implementation date. For the effected students who may need additional supports, services could lapse due to adherence to the current rule until July 1.
2. Desire for additional wording to include comprehensive evaluation measures for students age 7 and older.
3. Desire for guidance around how students would be involved in a MTSS/RTI system in terms of progress monitoring, intervention and an overall system supports prior to aging out of SDD.

4. Teams may begin to understand a student's needs within the first year of their entry into the school system and would see an extension to age 7 more appropriate. However, if the recommended changes to this category are implemented, the new rules should be accompanied with specific instructions to school teams on the need to follow up with comprehensive re-evaluation and the timing of such evaluation.

Agency response

Comments on the Rule

The proposed rule change will consider children ages 3 through 9 who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional, or adaptive development to have a significant developmental delay. Allowing a child with SDD to be identified through the age of nine will provide a longer window of time to assess whether the child has a specific disability, thus addressing difficulties with accurate assessment and labeling certain children beyond age 6 who are still in need of educational interventions.

Suggestions on the Rule

1. **Regarding an effective date earlier than July 1.** The emergency rule goes into effect July 1. The July 1 effective date allows the Department enough time to implement the rule before the start of the school year while the permanent rule goes through the complete legislative review process. Allowing enough time to implement any rule changes in its emergency rule phase is important in this case, should any unforeseen problems with the permanent rule arise as it goes through legislative review. An earlier effective date for the emergency rule could cause the emergency rule to expire prematurely, causing a potential gap between the expiration of the emergency rule and the effective date of the permanent rule.
2. **Regarding additional wording to include comprehensive evaluation measures for students age 7 and older.** DPI will review all information gathered from public comment, including comprehensive evaluation measures for students ages six through nine. These considerations will be addressed in guidance following implementation of the new rule.
3. **Regarding guidance around how students would be involved in a MTSS/RTI system in terms of progress monitoring, intervention and an overall system supports prior to aging out of SDD.** DPI will work with Response to Intervention and Specific Learning Disability staff to develop guidance regarding students who may need specific interventions, including progress monitoring as part of a multi-tiered system of support, if the team suspects the student may have a learning disability.
4. **Regarding instructions to school teams on the need to follow up with comprehensive re-evaluation and the timing of such evaluation.** DPI has already begun to develop the intent and interpretation of the new rule around the reevaluation for a student with a disability category of SDD. Guidance will include when to consider reevaluation for a student who falls between ages six through nine, the age of the student, the student's developmental trajectory, level of maturity, developmental and academic progress, previous educational environments and settings, delivery of instruction, and access to the general curriculum. The age extension through nine is not automatic for all students with a significant developmental delay. It is only an age limit so that IEP teams begin to plan and prepare the reevaluation for the determination of a new category. The IEP teams will be expected to consider a new category for the student at any time the team has enough information to begin a reevaluation for continued eligibility under a new category.

Changes made as a result of oral or written testimony:

No changes were made.

Changes to the analysis or the fiscal estimate:

No changes were made.

Responses to Clearinghouse Report:

Because no comments were given in the Clearinghouse Report, no changes were made.