

CR 93-27

CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF PUBLIC INSTRUCTION)

I, State Superintendent of the Department of Public Instruction and custodian of the official records of said Department, do hereby certify that the annexed rule relating to special education was duly approved and adopted by this Department on the first day of the month following publication in the Wisconsin Administrative Register.

I further certify that said copy has been compared by me with the original on file in this Department and the same is a true copy thereof, and of the whole of such original.

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IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the official seal of the Department at General Executive Facility (GEF) 3, 125 South Webster Street, P.O. Box 7841, in the city of Madison, this 28<sup>th</sup> day of May, 1993.

*Lee Sherman Dreyfus* <sup>LSM</sup>  
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Lee Sherman Dreyfus  
Interim State Superintendent  
State Department of Public Instruction

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

The state superintendent of public instruction hereby amends PI 11.02(1) and (45), PI 11.05(2)(a) and (b)4, (3)(a)(intro.) and (4)(a)4, PI 11.06(1)(b)2, PI 11.10(5)(a)5, and PI 11.11(5)(c) and (9); and creates PI 11.02(1m), (1s) and (52m), PI 11.05(2)(b)5m, (3)(am), (4)(a)7, 8 and 9 and (5)(d), relating to special education.

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ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statute interpreted: ss. 115.80, 115.81 and 115.89, Stats.

In 1990 the Education of the Handicapped Act (EHA) was amended by P.L. 101-476. These amendments set direction by changing parts of the Act, changed and amended definitions, and renamed the EHA as Individuals with Disabilities Education Act (IDEA).

In May of 1992, the department was required to submit to the Department of Education, Office of Special Education Programs, a new three-year, state program plan for years 1993-95, which assured that the State of Wisconsin would comply with federal statute and regulation. The department's 1993-95 State Plan assured the Office of Special Education Programs (OSEP) that state special education rules would be updated to comply with federal definitions and requirements. That is the basis for the amendments to ch. PI 11. The department could lose over \$40 million in state grants awarded under the federal Individuals with Disabilities Education Act, Part B funds, if these amendments are not made in a timely manner.

The rules create definitions for the terms "assistive technology device," "assistive technology service," and "transition services." The definitions for these terms are taken directly from the federal definitions. The rules amend the definition of "related services" to include rehabilitation counseling. The "related services" definition does not include speech pathology or therapeutic recreation services that are cited in the federal regulations for the following reasons:

- Under 34 CFR 300.17 (a) (2), speech pathology (speech and language in Wisconsin) can be considered special education rather than a related service as determined by each State. In Wisconsin, s. 115.76 (3), Stats., includes speech and language as one of the handicapping conditions which can result in a need for special education services to supplement or replace regular education for a child rather than be considered a related service.
- The term "recreation" in the definition of "related services" includes therapeutic recreation as well as the other areas of recreation listed in 34 CFR 300.16 (b) (9) (i), (ii), (iii), and (iv). Wisconsin has chosen to group all these areas of recreation rather than spell each out.

The rules state that "assistive technology services or devices" may be included in a child's individualized education program (IEP) as special education or a related service needed by the child. The rules also require

that the use of "assistive technology services or devices" as a supplementary aid or service within regular classes be considered when making a placement offer for a child.

The rules require, for children 16 years of age or older, consideration of transition services when developing an IEP. Certain criteria must be met when developing an IEP if transition services are being considered for a child. If a child has a visual handicap, the IEP shall include a statement indicating whether or not the child needs to be taught braille.

The rules require a board to send a Statement of Parents' Rights with a notice of an IEP meeting to the parent only if a rights statement has not been sent within the previous 30 days. This will alleviate multiple copies of the rights statement parents receive throughout the multidisciplinary team, IEP and placement process.

The rules require the second part of a child's placement offer to be developed by a group of individuals that includes the director or program designee.

The rules allow parents to obtain a free copy of the written transcript of a hearing or any additional testimony taken as a result of an appeal.

The rules change the terms "mental retardation" or "mental disabilities" to "cognitive disability" or "cognitive disabilities."

The rules also include minor technical amendments.

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1 SECTION 1. PI 11.02 (1) and (45) are amended to read:

2 PI 11.02 (1) "Administrator" means school district ~~administator~~  
3 administrator.

4 (45) "Related services" as defined in 34 CFR s. 300.16 (a) means  
5 transportation, and such developmental, corrective, and other supportive  
6 services as are required to assist a handicapped child to benefit from special  
7 education, and includes audiology, psychological services, physical and  
8 occupational therapy, recreation, early identification and assessment of  
9 disabilities in children, counseling services, and medical services for  
10 diagnostic or evaluation purposes. The term also includes school health  
11 services, social work services in schools, ~~and~~ parent counseling and training,  
12 and rehabilitation counseling services.

13 SECTION 2. PI 11.02 (1m), (1s), and (52m) are created to read:

14 PI 11.02 (1m) "Assistive technology device" means any item, piece of  
15 equipment, or product system, whether acquired commercially off the shelf,  
16 modified, or customized, that is used to increase, maintain, or improve the  
17 functional capabilities of children with EEN.

18 (1s) "Assistive technology service" means any service that directly

1 assists a child with EEN in the selection, acquisition, or use of an assistive  
2 technology device. The term includes the following:

3 (a) The evaluation of the needs of a child with EEN, including a  
4 functional evaluation of the child in the child's customary environment;

5 (b) Purchasing, leasing, or otherwise providing for the acquisition of  
6 assistive technology devices by children with EEN;

7 (c) Selecting, designing, fitting, customizing, adapting, applying,  
8 retaining, repairing, or replacing assistive technology devices;

9 (d) Coordinating and using other therapies, interventions, or services  
10 with assistive technology devices, such as those associated with existing  
11 education and rehabilitation plans and programs;

12 (e) Training or technical assistance for a child with EEN or, if  
13 appropriate, that child's family; and

14 (f) Training or technical assistance for professionals, including  
15 individuals providing education or rehabilitation services, employers, or  
16 other individuals who provide services to, employ, or are otherwise  
17 substantially involved in the major life functions of children with EEN.

18 (52m) "Transition services" means a coordinated set of activities for a  
19 child, designed with an outcome-oriented process, that promotes movement from  
20 school to post-school activities, including postsecondary education,  
21 vocational training, integrated employment, including supported employment,  
22 continuing and adult education, adult services, independent living, or  
23 community participation.

24 **SECTION 3.** PI 11.05 (2) (a) and (b) 4, (3) (a) (intro.) and (4) (a) 4  
25 are amended to read:

26 PI 11.05 (2) (a) The board shall set a date for a meeting to discuss  
27 the special education program and related services needs of the child and to  
28 develop ~~and~~ an IEP for the child. The meeting shall be held within 30 days  
29 after an M-team report is approved under s. PI 11.04 (5) (d) indicating that  
30 the child is a child with EEN. The time and location of the meeting shall be  
31 agreed upon by the board and the child's parent. The board shall ensure that

1 the reports required under s. PI 11.04 (5) (c) and (d) are completed and in  
2 writing prior to the IEP meeting. These reports shall be available to the  
3 parent prior to the IEP meeting.

4 (b) 4 The child, ~~if the child's parent feels that the child's presence~~  
5 ~~is~~ if appropriate.

6 (3) (a) (intro.) The board shall send a written notice to the parents  
7 within a reasonable amount of time prior to the IEP meeting. The notice shall  
8 meet the requirements under s. PI 11.09 (1) ~~and~~ unless a notice meeting the  
9 requirements of s. PI 11.09 (1) has been provided within the previous 30 days.  
10 The notice under this subsection shall include the following:

11 (4) (a) 4. A statement of the specific special education and related  
12 services including assistive technology services or devices, if appropriate,  
13 to be provided to the child.

14 **SECTION 4.** PI 11.05 (2) (b) 5m, (3) (am), (4) (a) 7, 8 and 9, and (5)  
15 (d) are created to read:

16 PI 11.05 (2) (b) 5m If a purpose of the IEP meeting is the  
17 consideration of transition services for a child, the board shall invite the  
18 following:

19 a. The child. If the child does not attend, the board shall take other  
20 steps to ensure that the child's preferences and interests are considered.

21 b. A representative of any other agency that is likely to be  
22 responsible for providing or paying for transition services. If a  
23 representative under this subparagraph does not attend, the board shall take  
24 other steps to obtain participation of the other agency in the planning of any  
25 transition services.

26 (3) (am) If a purpose of the meeting is the consideration of transition  
27 services for a child, the notice shall include the following:

28 1. The purpose;

29 2. That the board will invite the child;

30 3. Identification of any other agency that will be invited to send a  
31 representative.

1 (4) (a) 7 Beginning no later than age 16 and at a younger age, if  
2 appropriate, an annual statement of the needed transition services which  
3 includes a coordinated set of activities to be provided to the child,  
4 including, if appropriate, a statement of the board's, each public agency's,  
5 and each participating agency's responsibilities or linkages, or both, before  
6 the child leaves the school setting. The coordinated set of activities under  
7 this subdivision shall meet the following requirements:

8 a. Be based on the individual child's needs, taking into account the  
9 child's preferences and interests;

10 b. Include instruction; community experiences; the development of  
11 employment and other post-school adult living objectives; and

12 c. If appropriate, include acquisition of daily living skills and  
13 functional vocational evaluation.

14 8. If a child does not need transition services in one or more of the  
15 areas under subd. 7 b, a statement to that effect and the basis upon which the  
16 determination was made.

17 9. If a child has a visual handicap, a statement indicating whether the  
18 child needs to be taught braille. If the child does not need to be taught  
19 braille, a statement to that effect and the basis upon which the determination  
20 was made.

21 (5) (d) If a participating agency fails to provide agreed-upon  
22 transition services contained in the IEP of a child with EEN, the board shall,  
23 as soon as possible, initiate a meeting for the purpose of identifying  
24 alternative strategies to meet the transition objectives and, if necessary,  
25 revising the child's IEP.

26 **SECTION 5.** PI 11.06 (1) (b) 2 is amended to read:

27 PI 11.06 (1) (b) 2 Special classes, separate schooling, or any other  
28 program that would remove a child with EEN from the regular educational  
29 environment may only be included when the nature or severity of a child's  
30 handicapping condition is such that education in regular classes with the use  
31 of supplementary aids and services, including assistive technology services or

1 devices, cannot be achieved satisfactorily.

2 SECTION 6. PI 11.06 (1) (c) (intro.) is repealed and recreated to read:

3 PI 11.06 (1) (c) (intro.) The second part of the placement offer shall  
4 be completed by a group appointed by the director or program designee. The  
5 group shall include the director or program designee. The members of the  
6 group shall be knowledgeable about the child and the type of evaluation data  
7 available on the child. The members of the group shall also be familiar with  
8 existing special education placement options. The second part of the  
9 placement offer shall specify the location at which services will be provided  
10 to implement the child's IEP in conformance with the first part of the  
11 placement offer. In completing the second part of the placement offer, the  
12 group shall comply with sub. (2) and shall consider and document that the  
13 group considered all of the following requirements:

14 SECTION 7. PI 11.10 (5) (a) 5 is amended to read:

15 PI 11.10 (5) (a) 5 Obtain a written verbatim record of the hearing at  
16 no charge to a parent. The board may charge a reasonable fee for a copy of  
17 the transcript ~~unless a parent requests a free copy based upon a showing of~~  
18 ~~indigency or financial need to all other parties.~~

19 SECTION 8. PI 11.11 (5) (c) and (9) are amended to read:


20 PI 11.11 (5) (c) If additional testimony is taken, the parties at no  
21 charge to a parent have a right to obtain a copy of the written transcript  
22 from the state superintendent. The state superintendent may charge a  
23 reasonable fee for a copy of the transcript ~~unless a party requests a free~~  
24 ~~copy based upon a showing of indigency or financial need to all other parties.~~

25 (9) DECISION. A reviewing officer's decision shall be based upon a  
26 ~~preponderence~~ preponderance of the evidence. The decision shall be based  
27 solely upon the record and evidence received on appeal. A decision is final  
28 unless a party appeals the decision under sub. (10). A final decision is  
29 enforceable by an order of a circuit court.

1           SECTION 9. Wherever the terms "mental retardation" or "mental  
2 disabilities" occur throughout chapter PI 11, substitute the terms "cognitive  
3 disability" or "cognitive disabilities."

The 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 28<sup>th</sup> day of May, 1993

  
\_\_\_\_\_  
Lee Sherman Dreyfus  
Interim State Superintendent

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