

Wisconsin Department of Public Instruction
STATEMENT OF SCOPE
FOR ADMINISTRATIVE RULES

GENERAL INFORMATION

Rule No.: PI 11

Relating to: Sensory impairment terminology and deaf-blindness

Rule Type: Permanent

NARRATIVE

1. Finding/nature of the emergency (Emergency Rule only).

N/A

2. A description of the objective of the proposed rule.

The proposed rule seeks to amend ch. PI 11 with respect to the following:

- 1) Revising s. PI 11.36 (3) to update terminology and eligibility criteria for pupils that are blind and visually impaired.
- 2) Revising s. PI 11.36 (4) to update terminology and eligibility criteria for pupils that are deaf and hard of hearing.
- 3) Creating a section recognizing deaf-blindness as an additional area of impairment under s. PI 11.36.

3. A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.

Chapter PI 11 of the Wisconsin Administrative Code contains the current administrative rules governing the education of children with disabilities, including rules around the identification of specific areas of impairment which may receive special education and related services. Section PI 11.36 (3) relates to identification of pupils that are visually impaired and s. PI 11.36 (4) relates to identification of pupils that are hearing impaired. The labels “visual impairment” and “hearing impairment” are restrictive and do not recognize the difference between blindness and visual impairments or deafness and hard of hearing, respectively. As such, the department proposes to update terminology and eligibility criteria relating to these areas of impairment in identifying pupils that are blind and visually impaired and pupils that are deaf and hard of hearing. Without a rule change, the department will continue to implement ch. PI 11 as written.

Federal special education law also recognizes deaf-blindness as concomitant hearing and visual impairments. The combination of hearing and visual impairments causes severe communication and other developmental and educational needs, thus making it challenging for special education programs to accommodate those needs under the current rule, which solely recognizes children with deafness or children with blindness. While there are currently 153 pupils in Wisconsin that are on the Wisconsin Deafblind Registry, Wisconsin is the only state that does not recognize deaf-blindness as a separate disability category. A rule change will ensure a more appropriate identification of pupils who are deaf-blind. Without a rule, the department will implement ch. PI 11 as written.

4. The statutory authority for the proposed rule.

Under s. 115.762 (3) (a), Stats., the division for learning support within the department is required to ensure that all children with disabilities, including children who are not yet 3 years of age, who reside in this state and who are in need of special education and related services are identified, located and evaluated. Under s. 227.11 (2) (a) (intro.), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” See also, *Wisconsin Ass'n of State Prosecutors v. Wisconsin Employment Relations Comm'n*, 2018 WI 17, ¶ 42 (“statutory mandates are also statutory authorizations, and authorization of an act also authorizes a necessary predicate act.”) (internal quotation marks omitted). As such, a rule is required to establish criteria for the identification and service of children with disabilities under s. 115.762 (3) (a), Stats.

5. An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminate.

6. A description of all of the entities that will be affected by the proposed rule.
Local education agencies will be impacted by this rule change.

7. A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

Deaf-blindness is defined under the Individuals with Disabilities Education Act (IDEA) as concomitant hearing and visual impairments, the combination of hearing and visual impairments causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs solely for children with deafness or children with blindness. [34 CFR § 300.8(c)(2)].

Regulations pertaining to annual reporting requirements under IDEA also include the following with respect to the identification of children with deaf-blindness: (1) If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category “deaf-blindness.” (2) A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category “multiple disabilities” [34 CFR § 300.641(d)].

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