

Wisconsin Department of Public Instruction
STATEMENT OF SCOPE
FOR ADMINISTRATIVE RULES

GENERAL INFORMATION		
Rule No. PI 11	Relating to Changes to criteria relating to specific learning disabilities	Rule Type Permanent

SIGNATURE		
State Superintendent Review <input type="checkbox"/> Approved. <i>Begin Drafting Rule</i> <input type="checkbox"/> Disapproved. <i>Reason for Disapproval</i>	State Superintendent Signature <div style="text-align: center;">➤</div>	Date Signed Mo./Day/Yr.

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 update ch. PI 11 of the Wisconsin Administrative Code with respect to eligibility criteria for children with specific learning disabilities.

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 rules governing the education of children with disabilities, including rules around the identification of children with specific learning disabilities (SLD). Under current rule, a specific learning disability “means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, motor disabilities, cognitive disabilities, emotional disturbance, cultural factors, environmental, or economic disadvantage.”

The current rules qualifying a child with an SLD are inflexible for schools. The implementation and measures required by the rule, however, do not match the measurement tools available to school districts. The current SLD criteria identifies eight areas for identification and requires scientific, research-based interventions. There are no scientific, research-based interventions in all eight areas in the rule. Current rules further require an individualized education plan to determine if a student is making insufficient progress in one or more areas following intensive interventions. The current eligibility criteria, however, are difficult for schools to implement with fidelity across various educational settings. As such, the department proposes to update criteria identifying pupils that have specific learning disabilities by reducing the rules’ prescriptive nature and creating flexibility across educational settings. The rule change will be designed to recognize current knowledge and best practices and to properly address student needs. Without a rule change, the department will continue to 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. Section 115.76 (5) (a) 10., Stats., includes learning disabilities as a category of disability in which a child may receive special education and related services. 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 ss. 115.76 (5) (a) 10. and 115.762 (3) (a), Stats.

NARRATIVE (cont'd)

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.

“Specific learning disability” is defined under the Individuals with Disabilities Education Act as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disabilities, however, do not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage [34 CFR § 300.8(c)(10)].

Regulations pertaining to the identification of children with specific learning disabilities under IDEA must also include the following: (1) the identifying criteria must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability; (2) the identifying criteria must permit the use of a process based on the child’s response to scientific, research-based intervention; and (3) the identifying criteria may permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability. A public agency must use the State criteria adopted pursuant to 34 CFR § 300.307 (a) in determining whether a child has a specific learning disability. [34 CFR § 300.309].

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