Wisconsin Department of Public Instruction
STATEMENT OF SCOPE
FOR ADMINISTRATIVE RULES

LEGISLATIVE POLICY & OUTREACH TEAM
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GENERAL INFORMATION

Rule No.	Relating to	Rule Type
PI 11	Reevaluation criteria for orthopedic impairment, traumatic brain injury, and significant developmental delay disability categories	Permanent

SIGNATURE

State Superintendent Review	State Superintendent Signature	Date Signed Mo./Day/Yr.
☐ Approved. *Begin Drafting Rule* ☐ Disapproved. *Reason for Disapproval*	➢	

NARRATIVE

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

N/A

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

The objective of the proposed rule is to conform sections of ch. PI 11 of the Wisconsin Administrative Code, relating to orthopedic impairment, traumatic brain injury, and significant developmental delay disability categories, to other disability categories under ch. PI 11 that address the reevaluation criteria for special education. The reevaluation criteria are needed to address continuing eligibility for special education services and to ensure that students who may be making progress and may no longer meet initial criteria are still eligible to receive services if they need specially designed instruction and other special education supports to address the child's disability related needs, including those needs that are originally identified and new needs that have developed since the initial evaluation.

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 orthopedic impairments, traumatic brain injuries, and significant developmental delay. Under current rule, orthopedic impairment, traumatic brain injury, and significant developmental delay are defined as the following:

-Orthopedic impairment (s. PI 11.36 (2)): Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes, but is not limited to, impairments caused by congenital anomaly, such as a clubfoot or absence of some member; impairments caused by disease, such as poliomyelitis or bone tuberculosis; and impairments from other causes, such as cerebral palsy, amputations, and fractures or burns that cause contractures.

-Traumatic brain injury (s. PI 11.36 (9)): Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; speech and language; memory; attention; reasoning; abstract thinking; communication; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and executive functions, such as organizing, evaluating and carrying out goal-directed activities. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

-Significant developmental delay (s. PI 11.36 (11)): Significant developmental delay means children, ages 3 through 9 years of age, who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional, or adaptive development.

The current rules qualifying children for special education services under any of these categories do not address revaluation criteria for special education. As such, the department proposes to amend ch. PI 11 to create reevaluation criteria for the purpose of addressing continuing eligibility for special education services and ensuring that students who may be making progress and may no longer meet initial criteria are still eligible to receive services if they need specially designed instruction and other special education supports to address the child's disability related needs, including those needs that are originally identified and new needs that have developed since the initial evaluation. The proposed rule is intended to conform the reevaluation criteria for services under these categories with that of criteria that exist for other disability categories, including blind and visually impaired, deaf and hard of hearing, and deafblind (which became effective August 1, 2021, under Clearinghouse Rule 20-072); and speech and language impairment criteria (which became effective on August 1, 2021, under Clearinghouse Rule 20-074).

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), Stats., includes orthopedic impairments and traumatic brain injuries as categories of disability in which a child may receive special education and related services. Section 115.76 (5) (b) allows a local educational agency, consistent with department rules, to include developmental delay as a category of disability for which a child may receive special education and related services as a child with a disability. Further, 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). A rule is therefore required to establish criteria for the identification and service of children with disabilities under ss. 115.76 (5) and 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.

20 U.S.C. 1401(3)(A) defines a child with a disability as a child with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services.

Further, 20 U.S.C. 1401(3)(B) provides that a child with a disability, for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the state and the local educational agency, include a child experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and who, by reason thereof, needs special education and related services.