



GENERAL INFORMATION

Rule No. PI 11	Relating to Specific learning disability evaluations in and homeschool and private school settings	Rule Type Permanent and Emergency
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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 	Date Signed Mo./Day/Yr.
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NARRATIVE

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

Local education agencies across the state are experiencing difficulties with implementing current rule criteria with respect to identifying children with a specific learning disability (SLD). Local education agencies cannot assure or require private schools to implement certain practices within their educational program, including scientific, research-based interventions or instruction and curriculum that meets “state-approved grade-level standards.” Further, local education agencies report difficulties in determining and documenting several requirements in the rule related to the child’s instruction and academic functioning. These difficulties have strained school district resources in implementing the current rule and have disrupted the educational experience of private school and homeschool children in the state. An emergency rule is needed to update criteria for identifying children with an SLD to remove these barriers in conducting SLD evaluations of private school and home school students. The promulgation of emergency rules will ensure that private school evaluations remain consistent through the permanent rule making process.

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 evaluations of children in homeschool and parentally placed private school settings for specific learning disabilities. The proposed rule will provide that when evaluating a child in a parentally placed private school or home-based private education program, IEP teams may use a pattern of strengths and weaknesses or significant discrepancy as an alternate procedure for identifying a child with a specific learning disability.

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. 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 department’s experience with implementing the current rule has shown that the current criteria qualifying a child with an SLD is difficult, if not impossible, to implement with evaluations of private school and home school students. For example, local education agencies cannot assure or require a private school to provide instruction that meets the standards of “appropriate instruction” or “qualified personnel” within the current rule. Local educational agencies have found it difficult to determine and document many requirements in the rule, including: whether the child’s private school provided “appropriate instruction delivered by qualified personnel, including appropriate instruction in reading,” as defined in the current rule; the relevant behavior of the child, and the relationship of that behavior to the child’s academic functioning in the area of potential learning disability; and whether the intensive intervention was applied in a manner highly consistent with its design, was closely aligned to pupil need, and was culturally appropriate. Further, since the licensing requirements for private schools are different than that of public schools,

NARRATIVE (cont'd)

private schools and homeschools may not have the appropriately licensed staff members to deliver scientific, research-based interventions to children suspected of having an SLD or may choose not to provide them. Finally, private schools and homeschools are not required to have multi-tiered systems of support for providing high quality interventions, like that of public schools. Therefore, these interventions may not exist in private schools and homeschools when conducting an SLD evaluation and conducting these interventions in the public school require the student to potentially miss a significant part of instruction in the private school. Additionally, the United States Department of Education, Office of Special Education Programs has stated that an LEA cannot require a private school to implement a response to intervention process before evaluating parentally placed private school children. The need to conduct evaluations of parentally placed private school children with fidelity is not only to meet federal Child Find requirements but has increased importance to support school districts and private schools in implementing the Special Needs Scholarship Program.

As such, the department proposes to update criteria for identifying children with an SLD by allowing IEPs to use a pattern of strengths and weaknesses (PSW) or significant discrepancy for the evaluation of private school and home-based private education students. The use of PSW or significant discrepancy in rule aligns ch. PI 11 with federal law, which permits the use of the significant discrepancy model for identifying a child with an SLD, or alternate, research-based procedures for identifying a child with an SLD including PSW. The PSW model provides IEP teams with an option to identify the following: 1) academic needs in one or more areas of SLD; 2) cognitive weaknesses that have an evidence-based link to those needs; and 3) areas of cognitive strength that constitute a pattern that either rules out or confirms the presence of an SLD. Adding this proposed language gives IEP teams an option to conduct a comprehensive special education evaluation when it is not possible to apply these criteria. Without a rule change, the department will continue to implement ch. PI 11 as written, and school districts and private schools would be required to conduct SLD evaluations using the criteria in current rule.

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.

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

NARRATIVE (cont'd)

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].
