

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AMENDING RULES**

The state superintendent of public instruction hereby repeals Chapters PI 13 and PI 16 and recreates Chapter PI 13, relating to limited-English proficient pupils.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: ss. 115.95 to 115.996, 118.30 (2) (b) 2., and 227.11 (2) (a), Stats.

Statute interpreted: subch. VII of ch. 115 and ss. 118.30 and 121.02 (1) (r), Stats.

On June 12, 2001, the department submitted modifications to Chapter PI 16, Wis. Admin. Code, relating to testing of pupils with limited-English proficiencies and disabilities (CHR 01-069). However, as a result of on-going negotiations with the U. S. Department of Education, the department is now making germane modifications to CHR 01-069. The following paragraphs describe the original rule proposal (CHR 01-069) and the modifications made to CHR 01-069:

Original Rule Proposal (CHR 01-069):

Under s. 118.30, Stats., the state superintendent must adopt or approve examinations designed to measure pupil attainment of knowledge and concepts in the 4th, 8th, and 10th grades. Currently, the rules establish criteria and procedures to determine whether a pupil with limited-English proficiency (LEP) or a pupil having an exceptional educational need or EEN (now referred to as child with a disability) may be exempt from taking a test under s. 118.30, Stats.

The proposed rules:

- Repeal the criteria and procedures relating to testing children with disabilities. In 1998, the legislature made sweeping changes to the statutes regarding special education for children with disabilities. The legislature also repealed most state rules regarding special education contained in Chapter PI 11, Wisconsin Administrative Code. The reduction in state rules was intended to eliminate conflicts between the rules and the new state statute and federal law. In addition, in an effort to reduce regulatory complexity and potential incongruence between state rule and federal law, the department eliminated rules in areas adequately addressed by state statute or federal law. Because the provisions in the current rule under chapter PI 16 conflict with provisions in state statute and federal law, the proposed rule repeals the subchapter relating to testing children with disabilities. New rule language in this area is not necessary because testing and assessment issues relating to children with disabilities are already comprehensively addressed in state and federal special education statutes and regulations.
- Ensure that all LEP pupils participate in the Wisconsin Knowledge and Concept Examinations (WKCE) unless it is determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil's academic knowledge and skills. The statutes require the state superintendent to set criteria by rule, regarding the testing of LEP pupils. The current rules conflict with federal regulations under the Elementary and Secondary Education Act because the rules automatically exempt LEP pupils at lower English proficiency levels from taking any of the Wisconsin Knowledge and Concept Examinations (WKCE).
- Ensure that LEP pupils who do not participate in the WKCE are provided with a department-approved alternate assessment.
- Clarify that exempting a pupil from taking the WKCE may not be used as the sole criterion in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for postsecondary education opportunities. Current rule language could be interpreted to require school districts to promote or graduate an LEP pupil if the pupil is exempt from taking a standardized test.
- Clarify that the criteria under this chapter also apply to the 4th grade test administered under s. 118.30, Stats. At the time the rules were originally developed, only the 8th and 10th grade tests were being administered under s. 118.30,

Stats. Since that time, the 4th grade test was added to the WKCE administered under s. 118.30, Stats., and the rules should be changed accordingly.

- Change the term "limited-English speaking" to "limited-English proficient" to be consistent with statutory terminology under s. 115.955 (7), Stats.

Modifications to CHR 01-069:

In December 2000, the department received correspondence from the U. S. Department of Education relating to certain aspects of Wisconsin's assessment system that "must be addressed in order for Wisconsin to remain eligible to receive Title I funds." Wisconsin receives more than \$130 million annually in Title I funds. The following is a summary of the department's plan, in part, to fully implement the assessment and accountability provisions under Title I through a timeline waiver agreement with the U.S. Department of Education:

- The department will work with school districts to increase the number of LEP pupils participating in the state assessment system (WKCE and WRCT).
- All students will be included in the assessment system, either by participation in the state assessments (with or without accommodations) or by participation in alternate assessments, with results incorporated into school and district accountability determinations.
- Additional accommodations will be provided, and administrative rules will be modified to ensure that all LEP pupils are appropriately assessed.
- Alternate assessments will be provided for LEP pupils who are not able to demonstrate at least some of the knowledge and skills on the WKCE. Guidance as to who should participate in these assessments will be provided to districts.

In an effort to comply with U. S. Department of Education's timeline waiver agreement and to organize school district requirements relating to LEP pupils, the germane modifications to CHR 01-069 include:

- Repealing Chapters PI 13 and 16 and recreating and reorganizing the provisions under these chapters into a new Chapter PI 13. The intent is to have all LEP pupil information under one chapter, rather than two chapters, making it easier for schools to find relevant information. The original modifications to Chapter PI 13 proposed under CHR 01-069 remain intact but are now reorganized. Also, the provisions under Chapter PI 16 for the most part remain intact except for the following:
 - The definitions used in determining the English proficiency level of an LEP pupil have been modified and a new definition, level 6 – formerly LEP now fully English proficient, has been added.
 - School boards are required to use a department-approved assessment in determining the English proficiency level of an LEP pupil.
- Ensuring that all LEP pupils participate in the Wisconsin Reading Comprehension Test (WRCT) required under s. 121.02 (1) (r), Stats., unless it is determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil's academic knowledge and skills. Although the department does not have specific statutory authority to set criteria by rule regarding the testing of LEP pupils for the WRCT as it does with the WKCE, criteria for administering this test to LEP pupils are included for the following reasons:
 - For consistency, criteria should be the same when determining whether or not to administer any statutorily required test to an LEP pupil.
 - Under the federal No Child Left Behind Act (which reauthorized Title I), schools must annually assess math and reading skills in grades 3 through 8, and testing criteria for LEP pupils must be specified. To meet the provisions under the Act, the department will administer the WRCT in the 3rd grade and LEP pupils will continue to be included in that testing as specified in this rule.
- Requiring certain information and assurances that were formerly required under Chapters PI 13 and 16 to now be required in a school board's policy.

SECTION 1. Chapters PI 13 and 16 are repealed and Chapter PI 13 is recreated to read:

CHAPTER PI 13
LIMITED-ENGLISH PROFICIENT PUPILS

Subchapter I - General provisions

PI 13.01 Authority. This chapter is adopted under ss. 115.95 to 115.996, and 118.30 (2) (b) 2., Stats.

PI 13.02 Applicability and purpose. This chapter establishes requirements for school districts whose population includes LEP pupils as follows:

(1) Subchapter II establishes specific requirements for all school districts whose pupil population includes one or more LEP pupils, including procedures for the identification, assessment, and classification of LEP pupils and criteria and procedures to be used by a school district and charter school in determining whether to administer a test under ss. 118.30 or 121.02 (1) (r), Stats., to an LEP pupil.

(2) Subchapter III establishes specific requirements for school districts required to offer bilingual-bicultural education programs under s. 115.97 (2), (3), or (4), Stats.

PI 13.03 Definitions. In this chapter:

(1) "Alternate assessment" means any department-approved, standards-based alternative to a test administered under ss. 118.30 or 121.02 (1) (r), Stats.

(2) "Bilingual-bicultural education program" has the meaning defined under s. 115.955 (2), Stats.

(3) "Bilingual counselor" means a person licensed under s. PI 3.50.

(4) "Bilingual counselor's aide" means a person who is employed to assist a counselor and who meets all of the following:

(a) Understands, speaks, reads, and writes English and the language of the group with whom the bilingual counselor's aide will be working.

(b) Has a high school diploma or its equivalent.

(c) Demonstrates knowledge of and skills in working with the culture of the group with whom the bilingual counselor's aide will be working.

(5) "Bilingual teacher" means a person licensed under ss. PI 3.47 prior to July 1, 2004 or PI 34.33 (3) on or after July 1, 2004.

(6) "Bilingual teacher's aide" means a person who is employed to assist a teacher and who meets all of the following:

(a) Understands, speaks, reads, and writes English and the language of the group with whom the bilingual teacher's aide will be working.

(b) Has a high school diploma or its equivalent.

(c) Knows the culture of the group with whom the bilingual teacher's aide will be working.

(6m) "Charter school" means a charter school established under s. 118.40 (2r), Stats.

(7) "Department" means the Wisconsin department of public instruction.

(8) "Fully English proficient" means a former LEP pupil who can now read, write, speak and comprehend English within the academic classroom setting.

(9) "LEP pupil" means a limited-English proficient pupil defined under s. 115.955 (7), Stats., who has difficulty with reading, writing, speaking or comprehending in English within the academic classroom setting.

(10) "Test" means the examination administered to pupils enrolled in the 3rd, 4th, 8th and 10th grades under ss. 118.30 and 121.02 (1) (r), Stats.

Subchapter II – School Board Requirements Relating to LEP Pupils

PI 13.04. Applicability and purpose. This subchapter establishes identification, assessment, classification, and reporting requirements for all school districts whose pupil population includes one or more LEP pupils. This subchapter also establishes criteria and procedures to be used by a school district and charter school in determining whether to administer a test under ss. 118.30 or 121.02 (1) (r), Stats., to an LEP pupil.

PI 13.05. School board policy. Each school board whose pupil population includes one or more LEP pupils shall adopt a policy regarding the identification, language assessment, classification and reclassification, support services, academic achievement and assessment, parental notification of testing under s. PI 13.09, and the design of the educational program or support for LEP pupils.

PI 13.06 Identification of LEP pupils. Each school board shall identify potential LEP pupils within the school district as part of the enrollment process using a home language survey and department-approved English proficiency assessment under s. PI 13.07. The school board shall identify pupils meeting any of the following criteria:

- (1) Pupils who communicate in a language other than English.
- (2) Pupils whose families use a language other than English.
- (3) Pupils who use a language other than English in daily non-school surroundings.

PI 13.07 English proficiency assessment. Each school board shall determine the English proficiency level of a pupil identified under s. PI 13.06 and shall place the pupil in an appropriate education program. The school board shall use a department-approved assessment instrument, maintain all assessment records, and report information to the department under s. PI 13.09 (4). The assessment procedures used under this section may include supplemental indicators or data that include any of the following:

- (1) Prior academic records from within or outside the United States.
- (2) Course grades which, in relation to the pupil's grade level, indicate that lack of progress is due to limited English language skills.
- (3) Information on everyday classroom performance.

PI 13.08 Classification of LEP pupils. The school board shall classify each pupil assessed under s. PI 13.07 and a charter school shall classify each pupil tested under s. PI 13.09 as one of the following:

- (1) LEVEL 1 – BEGINNING PREPRODUCTION. A pupil shall be classified level 1 if the pupil does not understand or speak English with the exception of a few isolated words or expressions.
- (2) LEVEL 2 - BEGINNING PRODUCTION. A pupil shall be classified level 2 if all of the following criteria are met:
 - (a) The pupil understands and speaks conversational and academic English with hesitancy and difficulty.
 - (b) The pupil understands parts of lessons and simple directions.

(c) The pupil is at a pre-emergent or emergent level of reading and writing in English, significantly below grade level.

(3) LEVEL 3 - INTERMEDIATE. A pupil shall be classified level 3 if all of the following criteria are met:

(a) The pupil understands and speaks conversational and academic English with decreasing hesitancy and difficulty.

(b) The pupil is post-emergent, developing reading comprehension and writing skills in English.

(c) The pupil's English literacy skills allow the pupil to demonstrate academic knowledge in content areas with assistance.

(4) LEVEL 4 - ADVANCED INTERMEDIATE. A pupil shall be classified level 4 if all of the following criteria are met:

(a) The pupil understands and speaks conversational English without apparent difficulty, but understands and speaks academic English with some hesitancy.

(b) The pupil continues to acquire reading and writing skills in content areas needed to achieve grade level expectations with assistance.

(5) LEVEL 5 - ADVANCED. A pupil shall be classified level 5 if all of the following criteria are met:

(a) The pupil understands and speaks conversational and academic English well.

(b) The pupil is near proficient in reading, writing, and content area skills needed to meet grade level expectations.

(c) The pupil requires occasional support.

(6) LEVEL 6 – FORMERLY LEP NOW FULLY ENGLISH PROFICIENT. A pupil shall be classified level 6 if all of the following criteria are met:

(a) The pupil was formerly limited-English proficient and is now fully English proficient.

(b) The pupil reads, writes, speaks and comprehends English within the academic classroom setting.

PI 13.09 Testing of LEP pupils. (1) POLICIES. Each school board policy under s. PI 13.05 shall include procedures regarding the testing of LEP pupils. A charter school whose population includes one or more LEP pupils shall adopt a policy regarding the testing of LEP pupils. The policy under this subsection shall include all of the following assurances:

(a) Test administration to an LEP pupil shall be made on an individual basis and information on both academic and English proficiency data shall be documented.

(b) Test results may not be used as the sole criterion in re-classifying an LEP pupil from a bilingual-bicultural education program or in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for participation in postsecondary education opportunities.

(c) Exemption of an LEP pupil from taking a test may not be used as the sole criterion in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for participation in postsecondary education opportunities.

(2) TEST OR ALTERNATE ASSESSMENT ADMINISTRATION. (a) A school board and charter school shall make case-by-case determinations as to whether an LEP pupil shall take a test or alternate assessment. A school board and charter school may not exempt LEP pupils from academic assessments based on their LEP status.

(b) A school board and charter school shall administer a test to an LEP pupil unless a determination has been made that the results of the test, with allowable accommodations made for the pupil as needed, will not be a valid and reliable indicator of the pupil's academic knowledge and skills.

(c) A school board and charter school that exempts an LEP pupil from taking a test shall provide a department-approved alternate assessment for that pupil.

(d) A school board and charter school shall administer tests, alternate assessments or both to an LEP pupil as follows:

1. Except as specified under subd. 2., pupils at English proficiency levels 1 or 2 under s. PI 13.08 (1) or (2), shall participate in an alternate assessment even if these pupils participate in a test.

2. a. Except as provided in this subd. 2. b., pupils at English proficiency levels 1 or 2 under s. PI 13.08 (1) or (2) who have attended school in the first grade or any higher grade in the United States, not including Puerto Rico, for 3 or more full consecutive school years shall participate in academic assessment of reading or English language arts using tests written in English.

b. A school district or charter school may continue, for no more than 2 additional consecutive school years, to assess a pupil described in this subd. 2. a. with an alternate assessment, rather than the tests under this subd. 2. a., if the school district or charter school determines, on a case-by-case basis, that the pupil has not reached a level of English language proficiency sufficient for the tests written in English to yield valid and reliable information about what the pupil knows and can do.

3. Pupils at English proficiency levels 3 through 5 under s. PI 13.08 (3) through (5), shall participate in a test but may also participate in an alternate assessment.

(e) An alternate assessment provided under this subsection shall be approved by the department and shall be provided in each assessed subject area as the test.

(3) TEST ACCOMMODATIONS. A school board and charter school that includes an LEP pupil in a test shall provide testing accommodations, if the pupil needs such accommodations. Any accommodations made shall maintain the validity of the test and may include, but are not limited to, one or more of the following:

(a) Provide the assistance of a qualified translator to translate instructions or read items from tests that do not assess English language competency.

(b) Provide small group or individual testing opportunities.

(c) Provide more practice tests or examples before the actual test is administered.

(d) Allow LEP pupils to use dictionaries and other educational aids while taking the test unless this use would invalidate the test.

(e) Allow pupils as much time as necessary to complete the test.

(f) Allow any other method approved by the department.

(4) **TEST RESULTS.** A school board and charter school that administers a test, an alternate assessment or both to an LEP pupil shall use or report the results as follows:

(a) The results of both the test and alternate assessment shall be used consistent with the board's policies developed under s. 118.33 (1) (f) and (6), Stats., in making instructional, promotion, and graduation decisions.

(b) The results of the test, not the alternate assessment if both are given, shall be reported to the department.

(c) The results of the alternate assessment, if a test is not given, shall be reported to the department.

Subchapter III – Bilingual-Bicultural Education Programs

PI 13.10 Applicability and purpose. This subchapter establishes specific requirements for school districts required to offer bilingual-bicultural education programs under s. 115.97 (2), (3), or (4), Stats. School districts that establish bilingual-bicultural education programs under s. 115.97 (2), (3), or (4), Stats., are eligible for reimbursement under ss. 115.97 (1) and 115.995, Stats.

PI 13.11 General requirements. A school board that offers a bilingual-bicultural education program under this subchapter shall meet the requirements under this subchapter and subchapter II.

PI 13.12 School board policy. The policy under s. PI 13.05 shall include all of the following assurances:

(1) The school board shall provide each LEP pupil with an effective instructional program and supportive services appropriate to meet the needs of the pupil.

(2) The school board shall provide each LEP pupil with full access to supportive services, such as language development and speech therapy available to other pupils in the school district as such services are appropriate to the individual needs of the pupil.

(3) The district shall provide programs and services that reflect the cultural background of the LEP pupils and may include instruction intended to improve the skills of such pupils in the use of their native language for the purpose of enabling them to become proficient or advanced in all subject areas.

PI 13.13 Program approved by department. (1) Each school district establishing a bilingual-bicultural education program shall provide to the department a written description of the program that addresses the requirements under this subchapter. The description shall include information on all of the following:

(a) The program design, objectives, staffing, and evaluation procedures.

(b) Staff certification, professional development activities, parent involvement activities and instructional materials to be used in the program.

(2) Each school district establishing a bilingual-bicultural education program shall ensure bilingual teachers, bilingual teacher's aides, bilingual counselors, and bilingual counselor's aides meet the definitions under this chapter.

(3) Each school district's proposed program shall be reviewed and approved by the department prior to the implementation of the local program. A proposed program shall be approved if it meets the requirements of this chapter.

PI 13.14 Reimbursement. (1) The school district shall submit, on appropriate financial claim forms, such information and data as required by the department for fiscal review and approval for reimbursement of the program.

Note: Copies of the required claim form may be obtained at no charge from financial aids and audit, department of public instruction, P.O. Box 7841, Madison, WI 53707-7841.

(2) The salaries of teachers and other staff members participating in bilingual-bicultural education programs shall be reimbursed according to the percentage of time such teachers and staff spend in the program and the number of eligible pupils in the program under s. PI 13.06. The reimbursement shall be computed as specified in s. 115.995, Stats.

(3) Supportive services as provided under s. PI 13.12 (2) may not be reimbursed under this section.

PI 13.15 Reporting requirements. Annually on or before August 15, each school district providing a program under this subchapter shall report to the department the following information as provided under ss. 115.993 and 115.996, Stats.:

(1) The number of pupils, including both LEP pupils and other pupils, instructed the previous school year in the bilingual-bicultural education programs. The pupils shall be identified by language group, grade level, age, and English language proficiency level determined under s. PI 13.08.

(2) An itemized statement on oath of all disbursements on account of the bilingual-bicultural education program operated during the previous school year and a copy of the estimated budget for that program for the current school year.

(3) The number of pupils served in the bilingual-bicultural education program for each language group in each school district in which such programs are offered.

(4) The number of pupils in each school district and language group who as a result of participation in a bilingual-bicultural education program improved their English language ability to such an extent that the program is no longer necessary for such pupils.

PI 13.16 Department responsibilities. (1) The department shall, at least annually, review, approve and evaluate the programs conducted under this subchapter by the school districts. This shall include reviewing and evaluating all of the following:

(a) The school board policies and procedures used for identifying, counting, classifying and placing eligible LEP pupils in an appropriate educational program.

(b) The notification sent out to parents, guardians or legal custodians, including the initial written parental consent for their child's participation in the program.

(c) The procedures used for the establishment of the program.

(d) The procedures to be used for parent complaints.

(e) The curriculum, instruction and materials being offered in the program.

(f) The English language proficiency and academic progress of LEP pupils in the program.

(g) The program evaluation design, results, and use of the results.

(h) The extent to which any existing gaps in achievement or English proficiency are reduced and eliminated over time.

(2) Pursuant to s. 115.996, Stats., the department shall submit an annual report to the legislature on December 31 regarding the status of bilingual-bicultural education programs established under this subchapter. The report shall include the school district information reported under s. PI 13.15.

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 _____ day of October, 2002

Elizabeth Burmaster
State Superintendent