Chapter PI 11

CHILDREN WITH DISABILITIES

PI 11.02 Definitions. In this chapter:

(1) "Child" has the meaning defined under s. 115.76 (3), Stats.

(2) "Child with a disability" has the meaning defined under s. 115.76 (5), Stats.

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

(4) "Division" means the division for learning support: equity and advocacy which is established under s. 15.373 (1), Stats., and which has the authority granted under s. 115.77, Stats.

(5) "Hearing officer" has the meaning defined under s. 115.76 (8), Stats.

(5m) "IDEA" means the individuals with disabilities education act under 20 USC 1400 et. seq.

(6) "Individualized education program" or "IEP" has the meaning defined under s. 115.76 (9), Stats.

(7) "Local education agency" or "LEA" has the meaning defined under s. 115.76 (10), Stats.

(8) "Parent" has the meaning defined under s. 115.76 (12), Stats.

History: Cr. Register, December, 1975, No. 240, eff. 1−1−76; am. (1) (b) 5., Register, February, 1983, No. 326, eff. 3−1−83; am. (2) (c), Register, September, 1986, No. 369, eff. 10−1−86; r. and recr. (1) to (6), (8), (9), (11) to (17), (21), (22), (24), (25), (28) to (32), (34), (35), (38), (41), (42), (50) and (51) renum. from PI 11.01 (2) (f) and am., Register, May, 1990, No. 413, eff. 6−1−90; am. (45), cr. (1m), (1s) and (52m), Register, July, 1993, No. 451, eff. 8−1−93; emerg. am. (24), (25), r. (46), eff. 6−25−96, am. (23) (b), (24), (25), cr. (23) (h) to (k), r. (46), Register, January, 1997, No. 493, eff. 2−1−97; r. and recr. Register, September, 1998, No. 513, eff. 10−1−98; cr. (5m), Register, May, 2000, No. 533, eff. 6−1−00.

PI 11.07 Transfer pupils. (1) DEFINITIONS. In this section "transfer pupil with a disability" means a child with a disability under the IDEA whose residence has changed from an LEA in this state to another LEA in this state or from a public agency in another state to an LEA in this state.

(2) TRANSFER PUPILS WITH DISABILITIES IN WISCONSIN. (a) The purpose of this subsection is to ensure that there is no interruption of special education and related services when a child with a disability transfers from one LEA in this state to another LEA in this state.

(b) When an LEA receives a transfer pupil with a disability, the receiving LEA shall implement the IEP from the sending LEA until the receiving LEA adopts the sending LEA's IEP or develops its own IEP. To the extent that the receiving LEA is not able to implement the sending LEA's IEP, the receiving LEA shall provide services that approximate, as closely as possible, the sending LEA's IEP.

(c) The receiving LEA shall adopt the evaluation and the eligibility determination of the sending LEA or conduct an evaluation and eligibility determination of the transfer pupil. The receiving LEA shall adopt the IEP of the sending LEA or develop a new IEP. The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending LEA if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

(d) When an LEA receives a transfer pupil with a disability and the LEA does not receive the pupil's records from the sending LEA, the LEA shall request in writing the pupil's records from the sending LEA. The sending LEA shall transfer the pupil's records to the receiving LEA within 5 working days of receipt of the written notice as required under s. 118.125 (4), Stats.

(3) TRANSFER PUPILS WITH DISABILITIES FROM OUTSIDE WISCONSIN. (a) The purpose of this subsection is to permit an LEA to adopt the most recent evaluation and eligibility determination and IEP of a transfer pupil with a disability from a public agency in another state.

(b) When an LEA receives a transfer pupil with a disability from a public agency in another state, the LEA may provide special education and related services in accordance with the most recent IEP developed by the sending public agency until the LEA develops its own IEP or adopts the sending public agency's IEP.

(c) The LEA shall adopt the evaluation and the eligibility determination of the sending public agency or conduct a new evaluation and eligibility determination of the transfer pupil. If the LEA decides not to adopt the evaluation and eligibility determination of the sending public agency, the LEA shall initiate a special education referral of the child. The LEA shall complete the evaluation and develop an IEP and the placement in accordance with the requirements of subch. V of ch. 115, Stats., within 90 days of the date the child enrolls in the LEA. The LEA shall adopt the IEP of the sending public agency or develop a new IEP.

(d) The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending public agency if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

History: Cr. Register, May, 1990, No. 413, eff. 6−1−90; r. and recr. Register, December, 1995, No. 480, eff. 1−1−96; corrections in (1) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1998, No. 508; r. and recr. Register, May, 2000, No. 533, eff. 6−1−00.

PI 11.12 Hearing officers. (1) IMPARTIALITY. No person may be appointed as a hearing officer to conduct a hearing under s. 115.80, Stats., if that person meets any of the following criteria:

(a) Is an employee of the department or a public agency that is involved in the education or care of the child who is the subject of the hearing. A person who otherwise qualifies to conduct a hearing under this paragraph is not an employee of the department solely because he or she is paid by the department to serve as a hearing officer.

(b) Is an employee of or under contract to a local education agency as defined in s. 115.76 (10), Stats., a cooperative educational service agency created in ch. 116, Stats., or a county children with disabilities education board as defined in s. 115.817, Stats.

(c) Has a personal or professional interest which would conflict with his or her objectivity in the hearing.

(2) HEARING OFFICERS; APPOINTMENT. (a) The division shall maintain a list of persons who are available for appointment as hearing officers. The list shall include a statement of the qualifications of each of those persons. The division may not put a person's name on the list unless he or she meets both of the following:

1. The person is an attorney licensed to practice law in Wisconsin.

2. The person has completed the hearing officer training approved by the division as described in par. (b).

(b) Before a person's name may initially be put on the list in par. (a), he or she shall attend an initial training program approved by the division. Annually thereafter each person shall attend a refresher course approved by the division. The division may charge fees of persons attending the training courses.

History: Cr. Register, May, 1990, No. 413, eff. 6−1−90; emerg. r. and recr., eff. 6−25−96; r. and recr., Register, January, 1997, No. 493, eff. 2−1−97; r. and recr. Register, September, 1998, No. 513, eff. 10−1−98.

PI 11.24 Related service: physical and occupational therapy. (1) LEGISLATIVE INTENT. Subchapter V of ch. 115, Stats., gives an LEA the authority to establish physical therapy and occupational therapy services. The authority contained in s. 115.88, Stats., is limited to approving special physical or occupational therapy services for children with disabilities.

(2) IEP TEAM. If a child is suspected to need occupational therapy or physical therapy or both, the IEP team for that child shall include an appropriate therapist.

(7) PHYSICAL THERAPISTS' LICENSURE AND SERVICE REQUIREMENTS. (a) *Licensure.* A school physical therapist shall be licensed by the department under s. PI 3.37.

(b) *Caseload.* 1. Except as specified under subds. 2. and 3., the caseload for a full−time school physical therapist employed for a full day, 5 days a week, shall be as follows:

a. A minimum of 15 children.

b. A maximum of 30 children.

c. A maximum of 45 children with one or more school physical therapist assistants.

2. The caseload for a part−time school physical therapist may be pro−rated based on the specifications under subd. 1.

3. A caseload may vary from the specifications under subd. 1. or 2., if approved in the LEA's plan under s. 115.77 (4), Stats. The following shall be considered in determining whether the variance may be approved:

a. Frequency and duration of physical therapy as specified in the child's IEP.

b. Travel time.

c. Number of evaluations.

d. Preparation time.

e. Student related activities.

(c) *Medical information.* The school physical therapist shall have medical information from a licensed physician regarding a child before the child receives physical therapy.

(d) *Delegation and supervision of physical therapy.* 1. The school physical therapist may delegate to a school physical therapist assistant only those portions of a child's physical therapy which are consistent with the school physical therapist assistant's education, training and experience.

2. The school physical therapist shall supervise the physical therapy provided by a school physical therapist assistant. The school physical therapist shall develop a written policy and procedure for written and oral communication to the physical therapist assistant. The policy and procedure shall include a specific description of the supervisory activities undertaken for the school physical therapist assistant which shall include either of the following levels of supervision:

a. The school physical therapist shall have daily, direct contact on the premises with the school physical therapist assistant.

b. The school physical therapist shall have direct, face−to−face contact with the school physical therapist assistant at least once every 14 calendar days. Between direct contacts, the physical therapist shall be available by telecommunication. The school physical therapist providing general supervision under this subdivision shall provide an on−site reevaluation of each child's physical therapy a minimum of one time per calendar month or every tenth day of physical therapy, whichever is sooner, and adjust the physical therapy as appropriate.

3. A full−time school physical therapist may supervise no more than 2 full−time equivalent physical therapist assistant positions which may include no more than 3 physical therapist assistants.

4. Notwithstanding the provisions under this paragraph, the act undertaken by a school physical therapist assistant shall be considered the act of the supervising physical therapist who has delegated the act.

(e) *Responsibility of school physical therapist.* A school physical therapist under this subsection shall conduct all physical therapy evaluations and reevaluations of a child, participate in the development of the child's IEP, and develop physical therapy treatment plans for the child. A school physical therapist may not be represented by a school physical therapist assistant on an IEP team.

(8) SCHOOL PHYSICAL THERAPIST ASSISTANTS' QUALIFICATIONS AND SUPERVISION OF PHYSICAL THERAPY. (a) *Licensure.* A school physical therapist assistant shall be licensed by the department under s. PI 3.375.

(b) *Supervision.* The school physical therapist assistant providing physical therapy to a child under this section, shall be supervised by a school physical therapist as specified under sub. (7) (d).

(9) OCCUPATIONAL THERAPISTS' LICENSURE AND SERVICE REQUIREMENTS. (a) *Licensure.* The school occupational therapist shall be licensed by the department under s. PI 3.36.

(b) *Caseload.* 1. Except as specified under subds. 2. and 3., the caseload for a full−time school occupational therapist employed for a full day, 5 days a week, shall be as follows:

a. A minimum of 15 children.

b. A maximum of 30 children.

c. A maximum of 45 children with one or more occupational therapy assistants.

2. The caseload for a part−time school occupational therapist may be pro−rated based on the specifications under subd. 1.

3. A caseload may vary from the specifications under subd. 1. or 2., if approved in the LEA's plan under s. 115.77 (4), Stats. The following shall be considered in determining whether the variance may be approved:

a. Frequency and duration of occupational therapy as specified in the child's IEP.

b. Travel time.

c. Number of evaluations.

d. Preparation time.

e. Student related activities.

(c) *Medical information.* The school occupational therapist shall have medical information regarding a child before the child receives occupational therapy.

(d) *Delegation and supervision of occupational therapy.* 1. The school occupational therapist may delegate to a school occupational therapy assistant only those portions of a child's occupational therapy which are consistent with the school occupational therapy assistant's education, training and experience.

2. The school occupational therapist shall supervise the occupational therapy provided by a school occupational therapy assistant. The school occupational therapist shall develop a written policy and procedure for written and oral communication to the occupational therapist assistant. The policy and procedure shall include a specific description of the supervisory activities undertaken for the school occupational therapist assistant which shall include either of the following levels of supervision:

a. The school occupational therapist shall have daily, direct contact on the premises with the school occupational therapy assistant.

b. The school occupational therapist shall have direct, face−to−face contact with the school occupational therapy assistant at least once every 14 calendar days. Between direct contacts, the occupational therapist shall be available by telecommunication. The school occupational therapist providing general supervision under this subdivision shall provide an on−site reevaluation of each child's occupational therapy a minimum of one time per calendar month or every tenth day of occupational therapy, whichever is sooner, and adjust the occupational therapy as appropriate.

3. A full−time school occupational therapist may supervise no more than 2 full−time equivalent occupational therapy assistant positions which may include no more than 3 occupational therapy assistants.

4. Notwithstanding the provisions under this paragraph, the act undertaken by a school occupational therapy assistant shall be considered the act of the supervising occupational therapist who has delegated the act.

(e) *Responsibility of school occupational therapist.* A school occupational therapist under this subsection shall conduct all occupational therapy evaluations and reevaluations of a child, participate in the development of the child's IEP, and develop occupational therapy treatment plans for the child. A school occupational therapist may not be represented by a school occupational therapy assistant on an IEP team.

(10) SCHOOL OCCUPATIONAL THERAPY ASSISTANTS' QUALIFICATIONS AND SUPERVISION. (a) *Licensure.* A school occupational therapy assistant shall be licensed by the department under s. PI 3.365.

(b) *Supervision.* The school occupational therapy assistant providing occupational therapy to a child under this section shall be supervised by a school occupational therapist as specified under sub. (9) (d).

History: Cr. Register, December, 1975, No. 240, eff. 1−1−76; am. (7) (b) 1 and (8) (b) 1, Register, February, 1976, No. 242, eff. 3−1−76; am. (7) (b) 4 and (8) (b) 2, Register, November, 1976, No. 251, eff. 12−1−76; am. (1) and (8) (b) 4., Register, February, 1983, No. 326, eff. 3−1−83; r. (11) (b) and (c), renum. (11) (a) to be (11), Register, September, 1986, No. 369, eff. 10−1−86; renum. from PI 11.19, Register, May, 1990, No. 413, eff. 6−1−90; am (7) (b) 4., Register, October, 1990, No. 418, eff. 11−1−90; am. (7) (a) and (8) (a), Register, March, 1992, No. 435, eff. 4−1−92; am. (1), (2) (intro.) and (3) (intro.), r. (2) (a) to (d), (3) (a), (b) and (11), r. and recr. (4) to (10), Register, July, 1993, No. 451, eff. 8−1−93; correction in (10) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1998, No. 508; r. (1) to (6), cr. (1) and (2), am. (7) (b) 1. (intro.), 3. (intro.), (e), (9) (b) 1. (intro.), 3. (intro.), (e) and (10) (b), Register, September, 1998, No. 513, eff. 10−1−98; am. (9) (c), Register, May, 2000, No. 533, eff. 6−1−00.

PI 11.35 Determination of eligibility. (1) An evaluation conducted by an IEP team under s. 115.782, Stats., shall focus on the consideration of information and activities that assist the IEP team in determining how to teach the child in the way he or she is most capable of learning. Specifically, the IEP team shall meet the evaluation criteria specified under s. 115.782 (2) (a), Stats., when conducting tests and using other evaluation materials in determining a child's disability.

(2) A child shall be identified as having a disability if the IEP team has determined from an evaluation conducted under s. 115.782, Stats., that the child has an impairment under s. PI 11.36 that adversely affects the child's educational performance, and the child, as a result thereof, needs special education and related services.

(3) As part of an evaluation or reevaluation under s. 115.782, Stats., conducted by the IEP team in determining whether a child is or continues to be a child with a disability, the IEP team shall identify all of the following:

(a) The child's needs that cannot be met through the regular education program as structured at the time the evaluation was conducted.

(b) Modifications, if any, that can be made in the regular education program, such as adaptation of content, methodology or delivery of instruction to meet the child's needs identified under par. (a), that will allow the child to access the general education curriculum and meet the educational standards that apply to all children.

(c) Additions or modifications, if any, that the child needs which are not provided through the general education curriculum, including replacement content, expanded core curriculum or other supports.

History: Cr. Register, May, 1977, No. 257, eff. 6−1−77; am. (2) (intro.), Register, February, 1983, No. 326, eff. 3−1−83; r. (2) (c), renum. (2) (d) to (i) to be (2) (c) to (h), Register, September, 1986, No. 369, eff. 10−1−86; renum. from PI 11.34, Register, May, 1990, No. 413, eff. 6−1−90; r. and recr. (2) (b), cr. (2) (i) to (k), Register, April, 1995, No. 472, eff. 5−1−95; corrections made under s. 13.93 (2m) (b) 1., Stats., Register, March, 1996, No. 483; emerg. cr. (2) (L), eff. 6−25−96; cr. (2) (L), Register, January, 1997, No. 493, eff. 2−1−97; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2000, No. 533; r. (1m), (2) (intro.), (a), (ad), (c) to (h), renum. (2) (b) to be PI 11.36 (2) and (2) (i) to (L) to be PI 11.36 (8) to (11), cr. (2) and (3), Register, December, 2000, No. 540, eff. 7−1−01.

PI 11.36 Areas of impairment. All provisions in these rules shall be construed consistent with 20 USC 1400 et. seq. and the regulations promulgated thereunder.

(1) COGNITIVE DISABILITY. (a) Cognitive disability means significantly subaverage intellectual functioning that exists concurrently with deficits in adaptive behavior and that adversely affects educational performance.

(b) The IEP team may identify a child as having a cognitive disability if the child meets the criteria under subds. 1. a. or b., 2. and 3. a. or b. as follows:

1. a. The child has a standard score of 2 or more standard deviations below the mean on at least one individually administered intelligence test developed to assess intellectual functioning.

b. The child has a standard score between 1 and 2 standard deviations below the mean on at least one individually administered intelligence test, the child has been documented as having a cognitive disability in the past, and the child's condition is expected to last indefinitely.

2. The child has deficits in adaptive behavior as demonstrated by a standard score of 2 or more standard deviations below the mean on standardized or nationally−normed measures, as measured by comprehensive, individual assessments that include interviews of the parents, tests, and observations of the child in adaptive behavior which are relevant to the child's age, such as:

a. Communication.
b. Self−care.
c. Home living skills.
d. Social skills.
e. Appropriate use of resources in the community.
f. Self−direction.
g. Health and safety.
h. Applying academic skills in life.
i. Leisure.
j. Work.

3. a. The child is age 3 through 5 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally−normed measures, as measured by comprehensive, individual assessments, in at least 2 of the following areas: academic readiness, comprehension of language or communication, or motor skills.

b. The child is age 6 through 21 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally−normed measures, as measured by comprehensive, individual assessments, in general information and at least 2 of the following areas: written language, reading, or mathematics.

Note: Cognitive disabilities typically manifest before age 18. An etiology should be determined when possible, so that the IEP team can use this information for program planning.

(2) ORTHOPEDIC IMPAIRMENT. 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.

(3) VISUAL IMPAIRMENT. Visual impairment means even after correction a child's visual functioning significantly adversely affects his or her educational performance. The IEP team may identify a child as having a visual impairment after all of the following events occur:

(a) A certified teacher of the visually impaired conducts a functional vision evaluation which includes a review of medical information, formal and informal tests of visual functioning and the determination of the implications of the visual impairment on the educational and curricular needs of the child.

(b) An ophthalmologist or optometrist finds at least one of the following:

1. Central visual acuity of 20/70 or less in the better eye after conventional correction.

2. Reduced visual field to 50° or less in the better eye.

3. Other ocular pathologies that are permanent and irremediable.

4. Cortical visual impairment.

5. A degenerative condition that is likely to result in a significant loss of vision in the future.

(c) An orientation and mobility specialist, or teacher of the visually impaired in conjunction with an orientation and mobility specialist, evaluates the child to determine if there are related mobility needs in home, school, or community environments.

(4) HEARING IMPAIRMENT. Hearing impairment, including deafness, means a significant impairment in hearing, with or without amplification, whether permanent or chronically fluctuating, that significantly adversely affects a child's educational performance including academic performance, speech perception and production, or language and communication skills. A current evaluation by an audiologist licensed under ch. 459, Stats., shall be one of the components for an initial evaluation of a child with a suspected hearing impairment.

(5) SPEECH OR LANGUAGE IMPAIRMENT. (a) Speech or language impairment means an impairment of speech or sound production, voice, fluency, or language that significantly affects educational performance or social, emotional or vocational development.

(b) The IEP team may identify a child as having a speech or language impairment if the child meets the definition under par. (a) and meets any of the following criteria:

1. The child's conversational intelligibility is significantly affected and the child displays at least one of the following:

a. The child performs on a norm referenced test of articulation or phonology at least 1.75 standard deviations below the mean for his or her chronological age.

b. Demonstrates consistent errors in speech sound production beyond the time when 90% of typically developing children have acquired the sound.

2. One or more of the child's phonological patterns of sound are at least 40% disordered or the child scores in the moderate to profound range of phonological process use in formal testing and the child's conversational intelligibility is significantly affected.

3. The child's voice is impaired in the absence of an acute, respiratory virus or infection and not due to temporary physical factors such as allergies, short term vocal abuse, or puberty. The child exhibits atypical loudness, pitch, quality or resonance for his or her age and gender.

4. The child exhibits behaviors characteristic of a fluency disorder.

5. The child's oral communication or, for a child who cannot communicate orally, his or her primary mode of communication, is inadequate, as documented by all of the following:

a. Performance on norm referenced measures that is at least 1.75 standard deviations below the mean for chronological age.

b. Performance in activities is impaired as documented by informal assessment such as language sampling, observations in structured and unstructured settings, interviews, or checklists.

c. The child's receptive or expressive language interferes with oral communication or his or her primary mode of communication. When technically adequate norm referenced language measures are not appropriate as determined by the IEP team to provide evidence of a deficit of 1.75 standard deviations below the mean in the area of oral communication, then 2 measurement procedures shall be used to document a significant difference from what would be expected given consideration to chronological age, developmental level, and method of communication such as oral, manual, and augmentative. These procedures may include additional language samples, criterion referenced instruments, observations in natural environments and parent reports.

(c) The IEP team may not identify a child who exhibits any of the following as having a speech or language impairment:

1. Mild, transitory or developmentally appropriate speech or language difficulties that children experience at various times and to various degrees.

2. Speech or language performance that is consistent with developmental levels as documented by formal and informal assessment data unless the child requires speech or language services in order to benefit from his or her educational programs in school, home, and community environments.

3. Speech or language difficulties resulting from dialectical differences or from learning English as a second language, unless the child has a language impairment in his or her native language.

4. Difficulties with auditory processing without a concomitant documented oral speech or language impairment.

5. A tongue thrust which exists in the absence of a concomitant impairment in speech sound production.

6. Elective or selective mutism or school phobia without a documented oral speech or language impairment.

(d) The IEP team shall substantiate a speech or language impairment by considering all of the following:

1. Formal measures using normative data or informal measures using criterion referenced data.

2. Some form of speech or language measures such as developmental checklists, intelligibility ratio, language sample analysis, minimal core competency.

3. Information about the child's oral communication in natural environments.

4. Information about the child's augmentative or assistive communication needs.

(e) An IEP team shall include a department−licensed speech or language pathologist and information from the most recent assessment to document a speech or language impairment and the need for speech or language services.

(6) SPECIFIC LEARNING DISABILITY. (a) Specific learning disability, pursuant to s. 115.76 (5) (a) 10., Stats., means a severe learning problem due to a disorder in one or more of the basic psychological processes involved in acquiring, organizing or expressing information that manifests itself in school as an impaired ability to listen, reason, speak, read, write, spell or do mathematical calculations, despite appropriate instruction in the general education curriculum. Specific learning disability may include conditions such as perceptual disability, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.

(b) The IEP team shall base its decision of whether a child has a specific learning disability on formal and informal assessment data on intellectual ability, academic achievement, and learning behavior from sources such as standardized tests, error analysis, criterion referenced measures, curriculum−based assessments,

student work samples, interviews, observations, and an analysis of the child's response to previous interventions, classroom expectations, and curriculum in accordance with s. 115.782, Stats. The IEP team may identify a child as having a specific learning disability if all of the following are true:

1. Classroom achievement. Upon initial identification, the child's ability to meet the instructional demands of the classroom and to achieve commensurate with his or her age and ability levels is severely delayed in any of the following areas:

a. Oral expression.

b. Listening comprehension.

c. Written expression.

d. Basic reading skill.

e. Reading comprehension.

f. Mathematical calculation.

g. Mathematical reasoning.

2. Significant discrepancy. Upon initial identification, a significant discrepancy exists between the child's academic achievement in any of the areas under subd. 1. a. to g. and intellectual ability as documented by the child's composite score on a multiple score instrument or the child's score on a single score instrument. The IEP team may base a determination of significant discrepancy only upon the results of individually administered, standardized achievement and ability tests that are reliable and valid. A significant discrepancy means a difference between standard scores for ability and achievement equal to or greater than 1.75 standard errors of the estimate below expected achievement, using a standard regression procedure that accounts for the correlation between ability and achievement measures. This regression procedure shall be used except under any of the following conditions:

a. The regression procedure under this subdivision may not be used to determine a significant discrepancy if the IEP team determines that the child cannot attain valid and reliable standard scores for intellectual ability or achievement because of the child's test behavior, the child's language, another impairment of the child that interferes with the attainment of valid and reliable scores or the absence of valid and reliable standardized, diagnostic tests appropriate for the child's age.

b. If the IEP team makes such a determination under subd. 2. a., it shall document the reasons why it was not appropriate to use the regression procedure and shall document that a significant discrepancy exists, including documentation of a variable pattern of achievement or ability, in at least one of the areas under subd. 1. a. to g. using other empirical evidence.

c. If the discrepancy between the child's ability and achievement approaches but does not reach the 1.75 standard error of the estimate cut−off under subd. 2. (intro.), the child's performance in any of the areas in subd. 1. a. to g. is variable, and the IEP team determines that the child meets all other criteria under subds. 1. and 3., the IEP team may consider that a significant discrepancy exists.

Note: Appendix A specifies the recommended regression formula for calculating significant discrepancy scores.

3. Information processing deficit. The child has an information processing deficit that is linked to the child's classroom achievement delays under subd. 1. and to the significant discrepancy under subd. 2. An information processing deficit means a pattern of severe problems with storage, organization, acquisition, retrieval, expression, or manipulation of information rather than relative strengths and weaknesses. The IEP team shall document the reasons for and data used to make its determination that the child has an information processing deficit.

(c) 1. The IEP team may not identify a child as having a specific learning disability if it determines that the significant discrepancy between ability and achievement is primarily due to environmental, cultural or economic disadvantage or any of the reasons specified under s. 115.782 (3) (a), Stats., or any of the impairments under s. 115.76 (5), Stats., except s. 115.76 (5) (a) 10.

2. If the IEP team is concerned that a child has a significant discrepancy in oral expression or listening comprehension, the IEP team shall include a person qualified to assess speech and language impairments.

3. A child who is found to have a significant discrepancy between ability and achievement in the single area of oral expression or listening comprehension and who meets criteria for speech and language impairment under sub. (5) shall be considered to have a primary impairment in the area of speech and language.

4. At least one observation in the general classroom setting by a team member other than the classroom teacher shall be conducted.

(d) Upon reevaluation, a child who met initial identification criteria under par. (b) and continues to demonstrate a need for special education under s. PI 11.35 (2), including specially designed instruction, is a child with a disability under this section, unless the provision under par. (c) 1. now applies. If a child with a specific learning disability performs to generally accepted performance expectations in the general education classroom without specially designed instruction, the IEP team shall determine whether the child is no longer a child with a disability.

(7) EMOTIONAL BEHAVIORAL DISABILITY. (a) Emotional behavioral disability, pursuant to s. 115.76 (5) (a) 5., Stats., means social, emotional or behavioral functioning that so departs from generally accepted, age appropriate ethnic or cultural norms that it adversely affects a child's academic progress, social relationships, personal adjustment, classroom adjustment, self−care or vocational skills.

(b) The IEP team may identify a child as having an emotional behavioral disability if the child meets the definition under par. (a), and meets all of the following:

1. The child demonstrates severe, chronic and frequent behavior that is not the result of situational anxiety, stress or conflict.

2. The child's behavior described under par. (a) occurs in school and in at least one other setting.

3. The child displays any of the following:

a. Inability to develop or maintain satisfactory interpersonal relationships.

b. Inappropriate affective or behavior response to a normal situation.

c. Pervasive unhappiness, depression or anxiety.

d. Physical symptoms, pains or fears associated with personal or school problems.

e. Inability to learn that cannot be explained by intellectual, sensory or health factors.

f. Extreme withdrawal from social interactions.

g. Extreme aggressiveness for a long period of time.

h. Other inappropriate behaviors that are so different from children of similar age, ability, educational experiences and opportunities that the child or other children in a regular or special education program are negatively affected.

(c) The IEP team shall rely on a variety of sources of information, including systematic observations of the child in a variety of educational settings and shall have reviewed prior, documented interventions. If the IEP team knows the cause of the disability under this paragraph, the cause may be, but is not required to be, included in the IEP team's written evaluation summary.

(d) The IEP team may not identify or refuse to identify a child as a child with an emotional behavioral disability solely on the basis that the child has another disability, or is socially maladjusted, adjudged delinquent, a dropout, chemically dependent, or a child whose behavior is primarily due to cultural deprivation, familial instability, suspected child abuse or socio−economic cir-

cumstances, or when medical or psychiatric diagnostic statements have been used to describe the child's behavior.

(8) AUTISM. (a) Autism means a developmental disability significantly affecting a child's social interaction and verbal and nonverbal communication, generally evident before age 3, that adversely affects learning and educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in sub. (7).

(b) The results of standardized or norm−referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion−referenced assessments, achievement assessments, observation, and work samples, shall be considered to identify a child under this paragraph. Augmentative communication strategies, such as facilitated communication, picture boards, or signing shall be considered when evaluating a child under this paragraph. To identify a child under this paragraph, the criteria under subds. 1. and 2. and one or more criteria under subds. 3. through 6. shall be met.

1. The child displays difficulties or differences or both in interacting with people and events. The child may be unable to establish and maintain reciprocal relationships with people. The child may seek consistency in environmental events to the point of exhibiting rigidity in routines.

2. The child displays problems which extend beyond speech and language to other aspects of social communication, both receptively and expressively. The child's verbal language may be absent or, if present, lacks the usual communicative form which may involve deviance or delay or both. The child may have a speech or language disorder or both in addition to communication difficulties associated with autism.

3. The child exhibits delays, arrests, or regressions in motor, sensory, social or learning skills. The child may exhibit precocious or advanced skill development, while other skills may develop at normal or extremely depressed rates. The child may not follow normal developmental patterns in the acquisition of skills.

4. The child exhibits abnormalities in the thinking process and in generalizing. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and judgment. Perseverant thinking and impaired ability to process symbolic information may be present.

5. The child exhibits unusual, inconsistent, repetitive or unconventional responses to sounds, sights, smells, tastes, touch or movement. The child may have a visual or hearing impairment or both in addition to sensory processing difficulties associated with autism.

6. The child displays marked distress over changes, insistence on following routines, and a persistent preoccupation with or attachment to objects. The child's capacity to use objects in an age− appropriate or functional manner may be absent, arrested or delayed. The child may have difficulty displaying a range of interests or imaginative activities or both. The child may exhibit stereotyped body movements.

(9) TRAUMATIC BRAIN INJURY. (a) 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.

(b) Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic disorders and the effects of toxic substances or degenerative conditions may meet the criteria of one of the other impairments under this section.

(c) The results of standardized and norm−referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion−referenced assessment, achievement assessment, observation, work samples, and neuropsychological assessment data, shall be considered to identify a child who exhibits total or partial functional disability or psychosocial impairment in one or more of the areas described under par. (a).

(d) Before a child may be identified under this subsection, available medical information from a licensed physician shall be considered.

(10) OTHER HEALTH IMPAIRMENT. Other health impairment means having limited strength, vitality or alertness, due to chronic or acute health problems. The term includes but is not limited to a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, or acquired injuries to the brain caused by internal occurrences or degenerative conditions, which adversely affects a child's educational performance.

(11) SIGNIFICANT DEVELOPMENTAL DELAY. (a) Significant developmental delay means children, ages 3, 4 and 5 years of age or below compulsory school attendance age, who are experiencing significant delays in the areas of physical, cognition, communication, social−emotional or adaptive development.

(b) All other suspected impairments under this section shall be considered before identifying a child's primary impairment as significant developmental delay.

(c) A child may be identified as having significant developmental delay when delays in development significantly challenge the child in two or more of the following five major life activities:

1. Physical activity in gross motor skills, such as the ability to move around and interact with the environment with appropriate coordination, balance and strength; or fine motor skills, such as manually controlling and manipulating objects such as toys, drawing utensils, and other useful objects in the environment.

2. Cognitive activity, such as the ability to acquire, use and retrieve information as demonstrated by the level of imitation, discrimination, representation, classification, sequencing, and problem−solving skills often observed in a child's play.

3. Communication activity in expressive language, such as the production of age−appropriate content, form and use of language; or receptive language, such as listening, receiving and understanding language.

4. Emotional activity such as the ability to feel and express emotions, and develop a positive sense of oneself; or social activity, such as interacting with people, developing friendships with peers, and sustaining bonds with family members and other significant adults.

5. Adaptive activity, such as caring for his or her own needs and acquiring independence in age−appropriate eating, toileting, dressing and hygiene tasks.

(d) Documentation of significant developmental delays under par. (c) and their detrimental effect upon the child's daily life shall be based upon qualitative and quantitative measures including all of the following:

1. A developmental and basic health history, including results from vision and hearing screenings and other pertinent information from parents and, if applicable, other caregivers or service providers.

2. Observation of the child in his or her daily living environment such as the child's home, with a parent or caregiver, or an early education or care setting which includes peers who are typically developing. If observation in these settings is not possible, observation in an alternative setting is permitted.

3. Results from norm−referenced instruments shall be used to document significant delays of at least one and one−half standard deviations below the mean in 2 or more of the developmental areas which correspond to the major life activities. If it is clearly not appropriate to use norm−referenced instruments, other instruments, such as criterion referenced measures, shall be used to document the significant delays.

Note: With respect to the eligibility criteria under s. PI 11.36, in September 1991 the U.S. department of education issued a memorandum clarifying state and local responsibilities for addressing the educational needs of children with attention deficit disorder (ADD). (See 18 IDELR 116) as a condition of receipt of federal funds under the Individuals with Disabilities Education Act (IDEA), the state and local school districts are bound to comply with the federal policy outlined in that memo. (See e.g. *Metropolitan school district of Wayne Township, Marion County, Indiana v. Davila,* 969 F. 2d 485 (7th cir. 1992)).

Pursuant to that federal policy memo, a child with ADD is neither automatically eligible nor ineligible for special education and related services under ch. 115, Stats. In considering eligibility, an IEP team must determine whether the child diagnosed with ADD has one or more impairments under this section and a need for special education. For example, pursuant to the federal policy memo, a child with ADD may be eligible for special education and related services under ch. 115, Stats., if the child meets the eligibility criteria for "other health impaired" or any other impairment enumerated in this section. In addition, 34 CFR 300.7 (c) (9) (i) now specifically lists ADD and attention deficit hyperactivity disorder among the health problems which may result in disability based on other health impairment. A copy of the federal policy may be obtained by writing the Special Education Team, Division for Learning Support: Equity and Advocacy, Department of Public Instruction, P.O. Box 7841, Madison, WI 53707−7841.

History: Renum. (2) from PI 11.35 (2) (b) and (8) to (11) from PI 11.35 (2) (i) to (L) and am. as renum. (8) (a), (b), (9) (b), (c), (d), (11) (b), (c) (intro.) and (d) (intro.) and cr. (intro.) and (1), (3) to (7), Register, December, 2000, No. 540, eff. 7−1−01.

PI 11.37 Study and report to the standing committees of the legislature. (1) The department shall conduct a study of the effect of the modification of special education eligibility criteria made under CHR 98−138 and report to the appropriate standing committees of the legislature under s. 13.172 (3), Stats., on the results of that study.

(2) A preliminary report on items specified under pars. (a) to (f) shall be submitted by June 30, 2003, and a final report on items specified under pars. (a) to (g) shall be submitted by June 20, 2005. The reports under this subsection shall include the following:

(a) A comparison of the incidence rates of children identified as children with a disability before and after implementation of CHR 98−138.

(b) If incidence rates have changed, an analysis of the relationship between referral rates and incidence rates before and after implementation of CHR 98−138.

(c) If incidence rates have increased, an analysis of the factors in CHR 98−138, and any other factors, which may have increased incidence rates.

(d) If incidence rates have increased, an analysis of the relationship between:

1. IEP team determinations that a child is a child with a disability; and

2. IEP team determinations that a child needs special education services and programming.

(e) A comparison of the number of review hearings, appeals, complaints filed with the department, mediation requests and lawsuits filed before and after implementation of CHR 98−138, and, if the numbers have increased, an analysis of the factors in CHR 98−138, and any other factors, which may have increased the numbers.

(f) An analysis regarding whether implementation of CHR 98−138 has increased either paperwork requirements by school district special education staff or special education monitoring activities of department staff, and if so, an analysis of the factors in CHR 98−138, and any other factors, which may have caused such increase.

(g) An analysis of pupil performance, for example on state assessment measures, and of factors relating to pupil performance for all children and for children with a disability, including a comparison of school districts with the highest rates of identifying pupils as children with a disability and those with the lowest rates of identifying pupils as children with a disability.

Note: The reference to CHR 98−138 refers to the rule proposal that was adopted and published in December, 2000, effective July 1, 2001.

History: Cr. Register, December, 2000, No. 540, eff. 7−1−01.