

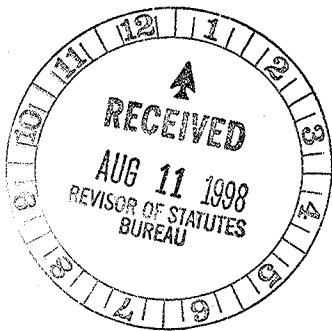
Clearinghouse Rule 98-068

CERTIFICATE

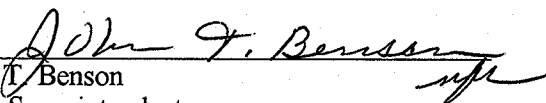
STATE OF WISCONSIN)
) SS
DEPARTMENT OF PUBLIC INSTRUCTION)

I, State Superintendent of the Department of Public Instruction and custodian of the official records of said Department, do hereby certify that the annexed rule relating to children with disabilities was duly approved and adopted by this Department on the first day of the month following publication in the Wisconsin Administrative Register.

I further certify that said copy has been compared by me with the original on file in this Department and the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the official seal of the Department at General Executive Facility (GEF) 3, 125 South Webster Street, P.O. Box 7841, in the city of Madison, this 11th day of August, 1998.



John T. Benson
State Superintendent
State Department of Public Instruction

10-1-98

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

The state superintendent of public instruction hereby repeals PI 11.01, PI 11.03 to PI 11.06, PI 11.08 to 11.10, PI 11.13, PI 11.15 to PI 11.23, PI 11.24(1) to (6), PI 11.25 to PI 11.34, PI 11.36 to PI 11.37, Appendix B, Appendix H, and Appendix I; amends PI 11.24(7)(b)(intro.), 3 (intro.) and (e), PI 11.24(9)(b)1 (intro.), 3 (intro.) and (e), and PI 11.24(10)(b); repeals and recreates PI 11.02 and PI 11.12 and creates PI 11.24(1) and (2), relating to children with disabilities.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: s. 227.11(2)(a), Stats.

Statute interpreted: Subchapter V, Chapter 115, Stats.

These proposed rules will modify Chapter PI 11, Wisconsin Administrative Code, to conform with the Individuals with Disabilities Education Act amendments of 1997 (IDEA 1997) and subchapter V, of Chapter 115, as amended by 1997 Wisconsin Act 164. The state statute represents the most sweeping revision to special education law in this state since 1973.

The new statute increases local flexibility and accountability in the design and delivery of special education to respond to local needs. Pursuant to the statutory revision, many of the programming and reporting requirements in current rule will be eliminated in this proposal as the department moves away from rules that impose a single model on every local education agency.

Further, the new statute significantly revises the procedures relating to the evaluation, development of an individualized education program and placement of children with disabilities. Much of the current rules are in direct conflict with the newly enacted statutory process. This proposal eliminates rules that conflict with state or federal law. It also eliminates rules which address areas adequately addressed in state statute or federal statute or regulations in an effort to reduce regulatory complexity and potential incongruence between state rule and federal law. Finally, this proposal makes technical language changes relating to hearing officers and physical and occupational therapy related services to reflect new statutory provisions.

SECTION 1. PI 11.01 is repealed.

SECTION 2. PI 11.02 is repealed and recreated to read:

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.
- (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.

SECTION 3. PI 11.03 to PI 11.06 are repealed.

SECTION 4. PI 11.08 to PI 11.10 are repealed.

SECTION 5. PI 11.12 is repealed and recreated to read:

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.

SECTION 6. PI 11.13 is repealed.

SECTION 7. PI 11.15 to PI 11.23 are repealed.

SECTION 8. PI 11.24(1) to (6) are repealed.

SECTION 9. PI 11.24(1) and (2) are created to read:

PI 11.24 RELATED SERVICE: PHYSICAL AND OCCUPATIONAL THERAPY. (1) LEGISLATIVE INTENT. Subchapter V, 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.

SECTION 10. PI 11.24(7)(b)1 (intro.), 3 (intro.) and (e) are amended to read:

PI 11.24(7)(b)1 (intro.) 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:

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

(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 ~~at an M-team meeting~~ on an IEP team.

SECTION 11. PI 11.24(9)(b)1 (intro.), 3 (intro.) and (e) are amended to read:

PI 11.24(9)(b)1 (intro.) 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:

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

(e) Responsibility of a 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 ~~at an M-team meeting~~ on an IEP team.

SECTION 12. PI 11.24(10)(b) is amended to read:

PI 11.24(10)(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. ~~(8)~~ (9) (d).

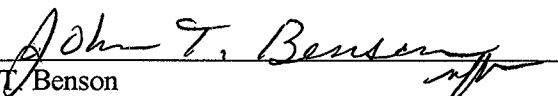
SECTION 13. PI 11.25 to PI 11.34 are repealed.

SECTION 14. PI 11.36 and PI 11.37 are repealed.

SECTION 15. Appendix B, Appendix H and Appendix I are repealed.

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 11th day of August, 1998


John T. Benson
State Superintendent

