Statute interpreted: Sections 115.76 (5) (a) 10. and (b) and 115.78 (1m), Stats.

Statutory authority: Sections 115.76 (5) (b) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 115.762 (3) (a), Stats., requires the department to ensure that all children with disabilities are identified, located and evaluated.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Court decisions directly relevant : None

Related statute or rule:

Subchapter V of Chapter 115, Stats. Chapter PI 11, Wis. Admin. Code.

Plain language analysis:

In 2004, the Individuals with Disabilities Education Act (IDEA) modified the evaluation procedures for the identification of children with specific learning disabilities (SLD) under 20 U.S.C. 1414 (b) (6). As specified in IDEA, the evaluation procedures relating to the identification of specific learning disabilities provide that: States may not require the use of significant discrepancy as part of a determination of SLD, and must permit the use of a process based on a child's responses to scientifically-based intervention as part of its determination of SLD. IDEA also added reading fluency skills as an area of identification for SLD. Because the department's current rule under s. PI 11.36 (6), relating to specific learning disabilities is not consistent with the federal requirements, the rule will be recreated to align with the U.S. Code. The proposed rules will allow a five-year period during which a school district "is permitted but not required" to continue to use the significant discrepancy formula in identifying children with SLD. After that five-year period, the significant discrepancy formula may not be used.

The department submitted a rule modifying the SLD criteria and significant developmental delay (SDD) criteria to the Legislative Clearinghouse for review on June 4, 2007 (See CHR 07-058). The SLD criteria has changed significantly from the version in CHR 07-058, and therefore, is being re-submitted for Clearinghouse review and public hearings. The information relating to the SLD criteria will be removed from CHR 07-058 before the rule is submitted to the chief clerk of each house of the legislature in final draft form under s. 227.19 (2), Stats.

Summary of, and comparison with, existing or proposed federal regulations:

The proposed rules directly reflect the SLD language under 34 ss. CFR 300.307 to 300.311 as authorized under 20 U.S.C. s. 1221e-3, 1401 (30), and 1414 (b) (6).

Comparison with rules in adjacent states:

Illinois- Beginning in 2010-2011 Illinois will require school districts to use a process based on a child's response to scientific, research-based interventions as part of SLD evaluation.

Iowa-Beginning August, 2010, Iowa will require the use of a process based on the child's response to scientific, research-based intervention or the use of other alternative research-based approaches and prohibits the use of a severe discrepancy between intellectual ability and achievement.

Michigan-Language going to public hearings in November, 2009 proposes the use of methods for determining SLD eligibility based on the use of scientific, research-based interventions and patterns of strengths and weaknesses. At this point the discrepancy model or a sunset clause is not mentioned.

Minnesota-The SLD criteria states that the child does not achieve adequately, has a disorder in one or more of the basic psychological processes, and the demonstration of a severe discrepancy or the demonstration of inadequate rate of progress.

Summary of factual data and analytical methodologies:

In 2004, the Individuals with Disabilities Education Act (IDEA) modified the evaluation procedures for the identification of children with specific learning disabilities (SLD) under 20 U.S.C. 1414 (b) (6). As specified in IDEA, the evaluation procedures relating to the identification of specific learning disabilities provide that: 1) States may not require the use of significant discrepancy as part of a determination of SLD, 2) States must permit the use of a process based on a child's responses to scientifically-based intervention as part of its determination of a SLD, and 3) States may permit the use of other alternative research-based procedures to determine whether a child has a SLD. IDEA also added reading fluency skills as an area of identification for SLD. Because the department's current rule under s. PI 11.36 (6), relating to specific learning disabilities is not consistent with the federal requirements, the rule will be modified to align with the U.S. Code. The proposed rules will allow a five-year period during which a school district "is permitted but not required to" continue to use the significant discrepancy formula in identifying children with SLD.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A

Anticipated costs incurred by private sector: N/A

Effect on small business:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person (including email and telephone):

Stephanie Petska, Director, Special Education, stephanie.petska@dpi.wi.gov, 608/266-1781.

Place where comments are to be submitted and deadline for submission:

The department will publish a hearing notice in the *Administrative Register* which will include this information.

Agency procedure for promulgation:

Notice to Legislative Council pursuant to s. 227.15, Stats., and proceeding under the ten day notice/hearing process pursuant to ss. 227.16 to 227.18, Stats.

Description of any forms (attach copies if available): None.