

Report From Agency
FINAL REPORT
CLEARINGHOUSE RULE 20-074
CHAPTER PI 11
CHILDREN WITH DISABILITIES

Analysis by the Department of Public Instruction

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

Statute interpreted: s. 115.76 (5) (a) 3. and 115.762 (3) (a), Stats.

The proposed rule seeks to update ch. PI 11 of the Wisconsin Administrative Code with respect to the identification of children with speech or language impairments.

The hearing notice was published in the November 23, 2020 edition of the Wisconsin Administrative Register. A public hearing was held on December 14, 2020.

The following persons testified at the December 14, 2020 hearing:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
John Heilmann	Representing Self	X		

The following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Sara Rausch	Lac du Flambeau Public School			X
Ann Barry	Racine Unified School District	X		
Amy Ellison	Representing Self			X
Lindsay Lauters	Mequon Thiensville School District	X		
Judith Brey	School District of Reedsburg			X
Ashley Marti	Representing Self			X
Christa Savage	Representing Self			X
Paula Milikin	CESA 8	X		
Shari Jordan	School District of Waukesha			X
Julie Vakos	Racine Unified School District			X
Sarah Zapien	Mequon-Thiensville School District			X
Meghan Riehle	Mequon-Thiensville School District			X
Meghan Velasques	Kaukauna Area School District			X
Natalie Sankey	Little Chute Area School District			X
Tracey Jardine	School District of Bayfield		X	
Lori Hansen	Kaukauna Area School District			X

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Judith Wodzak	Trempealeau School District			X
Abigail Meehl	Little Chute Area School District			X
Junko Jacobs	CESA 6			X
Brenda Forslund	Green Bay Area Public Schools	X		
Sarah Hall	Representing Self			X
Mary Jarocki	Burlington Area School District			X

Summary of public comments relative to the rule and the agency’s response to those comments:

- Respondents in support of the proposed rule argued that the changes help improve the accuracy of identifying students with speech or language impairments, especially for children from culturally and linguistically diverse backgrounds. For example, respondents point to the following advantages contained in the proposed rule: 1) the proposed rule’s requirement that assessments be completed in all languages spoken by student will prevent the over- and under-identification of pupils from diverse cultural backgrounds; 2) the elimination of cognitive referencing requirement from the old rule is important, due to its practice having been rejected by the field; and 3) the proposed rule gives more flexibility in allowing educators to identify the types of assessments that are most appropriate for their students and will require them to do assessments related to academic functioning. As such, the respondents argue the revisions are important in that they incorporate evidence-based practices in the areas of speech sound production development and clarifies the criteria in the areas of fluency and voice.

Agency Response: The comments were forwarded to program staff for their consideration in developing the final proposed rule. No changes are needed.

- Some respondents in support of the proposed rule requested consideration for guidance and support to be provided for educators to become comfortable and proficient with this new criteria. For example, respondents pointed to language sample analysis tools as important tools as well as training to accompany those tools. Further, respondents argued that training on dynamic assessment is needed to determine the sensitivity and specificity of the tests that the educator’s school district already owns. Respondents also recommended some sort of guidance to be developed that includes the sensitivity, specificity and cutoff scores for different ages for the most commonly used speech and language tests so that already overwhelmed educators aren’t expected to determine this information for themselves.

Agency Response: The department continues to provide ongoing technical support to implement the rule. The department will update its guidance assisting educators in identifying students with a speech or language impairment. No changes are needed.

- Several respondents requested clarifications around the rule with respect to the following (agency response follows):
 - What “adversely” means when qualifying the effect of speech or language impairments on a student’s educational performance or their social, emotional or vocational development under the proposed s. PI 11.36 (5) (a), and, in the absence of a definition, whether the term “significantly” could be retained as it appears easier for the reader to understand.

Agency Response: The change in terminology from “significantly” to “adversely” was done in order to be consistent with the Individuals with Disabilities Education Act. The department’s rule is intended to permit IEP teams to determine the impact of speech and language impairments on a child’s educational

performance on a case-by-case basis, depending on the unique circumstances of a particular child. As such, no changes are need.

- What “functionally” means when describing how a student’s language abilities impact the student’s progress in their educational development under the proposed s. PI 11.36 (5) (am).

Agency Response: The term will be removed from the proposed rule.

- With regard to voice under the proposed s. PI 11.36 (5) (b), what criteria and testing modes are acceptable for use to determine identification for speech or language impairment.

Agency Response: Voice impairment is a condition that can be documented by a medical practitioner or informal assessments in determining a speech or language impairment. The department will continue to provide technical support and update its guidance with respect to identifying children with a speech or language impairment. No changes are needed.

- Why the 1.75 standard deviations criteria was eliminated under the original s. PI 11.36 (5) (b) 1. a., and what is meant by the term “cutoff score” throughout the rule. Some respondents further requested consideration for maintaining a set criteria for assessing articulation and phonology, varying between 1.5 and 2 standard deviations.

Agency Response: The criteria relating to standard deviations in the proposed rule was eliminated in order to be consistent with assessment best practices. The references to cutoff score will be clarified in the addition of a definition of significant discrepancy to the proposed rule.

- What “significantly below the expected range” means under the proposed s. PI 11.36 (5) (b) 1. a.

Agency Response: The term “significantly below the expected range” will be removed in the final rule.

- What will be used to determine and what are the norms for intelligibility at each age level under the proposed ss. PI 11.36 (5) (b) 1. a. and 2. a., and whether a rating scale could be used under the proposed rule.

Agency Response: The department will continue to provide technical support and update its guidance with respect to norms and rating scales for intelligibility under the rule. No changes are needed.

- What “natural environment” means under the proposed ss. PI 11.36 (5) (b) 1. a., 2. b. and 4., and 5. (intro.), and whether this refers specifically to home, school, play time during school, day care, etc.

Agency Response: The department will create a definition with respect to natural environment in the final rule.

- What is considered a rapid speech rate under the proposed s. PI 11.36 (5) (b) 4. c., and if there is a rate that is considered too slow.

Agency Response: The department will continue to provide technical support and update its guidance with respect to rapid speech rate under the rule. No changes are needed.

- Under the proposed s. PI 11.36 (5) (b) 1. c., how often or how many sounds, in what level, or in imitation or with physical stimulability, will be assessed in identifying stimulability for speech sound production.

One respondent further requested revising the provision to state “speech sound production is less than 30% stimulable for error sounds using a specific stimulability probe.”

Agency Response: The department will continue to provide technical support and update its guidance with respect to identifying stimulability for speech sound production under the rule. No changes are needed.

- Further, changing phonological criteria from 40% to 30% under the proposed s. PI 11.36 (5) (b) 1. c. will qualify more students for an impairment, especially at the preschool level, resulting in students to become overqualified and taken unnecessarily out of their least restrictive environment while many of them will gain sounds developmentally on their own.

Agency Response: The rule referenced in the comment relates to speech sound production, but the comment references phonological criteria. However, phonological criteria will be changed to include measurement of the presence phonological processes occurring at least 40% in the final rule.

- What 2% of total syllables, used to identify speech disfluencies, is based on under the proposed s. PI 11.36 (5) (b) 4. a.

Agency Response: The phrase “prolongations of sounds or blockages of airflow in excess of 2% of total syllables” is used to describe some characteristics of speech disfluencies associated with stuttering. The final rule will be modified to state “typically in excess of 2% of total syllables” to imply these characteristics are permissible when identifying speech disfluency.

- What examples of "dynamic assessments" under the proposed s. PI 11.36 (5) (b) 5. a. would be preferred, if not defined.

Agency Response: The department will continue to provide technical support and update its guidance with respect to dynamic assessments under the rule. No changes are needed.

- In the proposed repeal of ss. PI 11.36 (5) (c) 3. to 6., are the questions about academic, social and vocational impact still present.

Agency Response: The impact of speech and language impairments on academic, social, and vocational skills has been restated in s. PI 11.36 (5) (a) and (am) of the proposed rule. No changes are needed.

- Under the proposed s. PI 11.36 (5) (e), whether “as well as child’s speech and language needs” implies more consultation by speech-language pathologist, if a child doesn't meet eligibility criteria but still needs support, and whether this is already defined under related services where a child can still receive services if it will continue to support their academic progress.

Agency Response: The phrase in question was reworded from the original rule and is in line with best practice and is unrelated to related services under the Individuals with Disabilities Education Act. For all special education evaluations, IEP teams are required to document the needs of the child as part of the evaluation report. The rule is specific to children being identified with a speech or language impairment and a speech-language pathologist licensed under ch. PI 34 is necessary to help document speech or language needs. The phrasing was revised to clarify that in addition to helping determine if the student has a speech or language impairment, a speech-language pathologist also assists in identifying the speech or language needs of the student. The provision does not create additional consultation requirements beyond those already required in the current rule. No changes are needed.

- Under the proposed s. PI 11.36 (5) (f), how to note a student might not have re-met initial criteria but are still considered in need of specially-designed instruction during a reevaluation. Further, respondents request clarification as to how “demonstrate a need” under this provision is measured.

Agency Response: The Individuals with Disabilities Education Act provides that it is up to an IEP team to determine whether a child is in need of specially-designed instruction to enable a child to make progress in the general curriculum, participate in extracurricular and other nonacademic activities, and be educated and participate with nondisabled peers. No changes are needed.

- Several respondents, including the respondent against the proposed rule, raised concerns around the removal of certain exclusionary factors prior to identification of pupils with a speech or language impairment, citing the potential impact the rule may have on caseload sizes. For example, the removal of criteria that measures developmental levels with commensurate skills, as well as selective mutism or school phobia, auditory processing, and tongue thrust could force educators to service students outside their scope of practice and could result in discrepancies in identifying speech or language impairments across the state. In the absence of these exclusionary criteria, some respondents requested guidance around when a speech or language impairment is considered a secondary impairment and when it is directly related to the primary impairment.

Agency Response: The removal of exclusionary factors was supported by stakeholders as the rule was drafted. The American Speech Language Hearing Association has a position statement that states cognitive referencing should not be a determination when making eligibility decisions for speech or language impairment. For other exclusionary criteria, students must still meet the criteria outlined in the rule and a determination of whether a student is eligible for special education is not determined by a medical condition or diagnosis such as selective mutism, school phobia, or tongue thrust. Wisconsin does not have primary and secondary disability determination and thus students can qualify under any other area of impairment and still receive speech and language as a related service if the IEP team feels the student needs speech and language as a related service to benefit from special education. All special education decisions require that a student must need special education services to access and make progress in age or grade level curriculum.

Changes made as a result of oral or written testimony:

- Removed the term “functionally” from s. PI 11.36 (5) (am) of the proposed rule.
- Addressed the references to cutoff score to describe significant discrepancy in s. PI 11.36 (5) (a) of the proposed rule.
- Removed the phrase “significantly below the expected range” from s. PI 11.36 (5) (b) 1. a. of the proposed rule.
- Created a definition for “natural environment” in s. PI 11.36 (5) (a) of the proposed rule.
- Revised phonological criteria under s. PI 11.36 (5) (b) 1. c. to include measurement of the presence phonological processes occurring at least 40%.
- Revised speech fluencies under s. PI 11.36 (5) (b) 4. a. to state “typically in excess of 2% of total syllables.”

Changes to the analysis or the fiscal estimate:

No changes were made.

Responses to Clearinghouse Report:

2. Form, Style and Placement in Administrative Code:

The changes are accepted.

5. Clarity, Grammar, Punctuation and Plainness:

- a. The changes are accepted.
- b. The changes are accepted.
- c. The changes are accepted.
- d. The phrase has been replaced with “home language or other mode of communication and in the form most likely to yield accurate information unless it is not feasible to do so,” in order to align with federal law.
- e. The changes are accepted.
- f. The changes are accepted.
- g. The sentence beginning with “Risk factors...” has been removed and will be incorporated in guidance on the rule.
- h. The changes are accepted.
- i. The changes are accepted.
- j. The term “home language” has been defined under the final rule.
- k. The changes are accepted.
- l. The changes are accepted.
- m. The changes are accepted.