

Clearinghouse Rule 20-074

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION AMENDING PERMANENT RULES

The scope statement for this rule, SS 105-20, was published in Register No. 776A2, on August 10, 2020, and approved by State Superintendent Carolyn Stanford Taylor on August 21, 2020.

The State Superintendent of Public Instruction hereby proposes an order to repeal s. 11.36 (5) (d) 1. to 4.; to renumber and amend s. PI 11.36 (5) (b) 3., 4., and (d) (intro.); to repeal and recreate s. PI 11.36 (5) (a), (b) 1., 2., and 5., (c), and (e); and to create s. PI 11.36 (5) (am), (b) 3. a. to e. and 4. a. and b., and (f), relating to speech and language impairment criteria.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

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

Explanation of agency authority:

Under s. 115.762 (3) (a), Stats., the division for learning support within the department is required to ensure that all children with disabilities, including children who are not yet 3 years of age, who reside in this state and who are in need of special education and related services are identified, located and evaluated. Section 115.76 (5) (a) 3., Stats., includes speech or language impairments as a category of disability in which a child may receive special education and related services. Under s. 227.11 (2) (a) (intro.), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” See also, *Wisconsin Ass'n of State Prosecutors v. Wisconsin Employment Relations Comm'n*, 2018 WI 17, ¶ 42 (“statutory mandates are also statutory authorizations, and authorization of an act also authorizes a necessary predicate act.”) (internal quotation marks omitted). As such, a rule is required to establish criteria for the identification and service of children with disabilities under ss. 115.76 (5) (a) 3. and 115.762 (3) (a), Stats.

Related statute or rule:

N/A

Plain language analysis:

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.

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

“Speech or language impairment” is defined under the Individuals with Disabilities Education Act as a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance [34 CFR § 300.8(c)(11)].

Summary of any public comments and feedback on the statement of scope for the proposed rule that the agency received at a preliminary public hearing and comment period held and a description of how and to what extent the agency took those comments into account and drafting the proposed rule:

The department held a preliminary public hearing and comment period on August 20, 2020, and received comments on the statement of scope for the proposed rule. A brief summary of the comment and the department's response to those comments are as follows:

The respondent applauds the department's desire to eliminate exclusionary factors and expand coverage relating to pupils that are speech and language impaired, advocating for functional communication skills as one such criteria. The respondent agrees that it is important to consider diverse cultural backgrounds when considering eligibility for speech and language services but argued that those considerations should not be used as a basis for exclusion from services.

Agency Response: The department agrees with the respondent's comment and is seeking to update exclusionary factors in an effort to conduct more comprehensive evaluations that enhance the importance of functional use of communication in an educational context. The department seeks to revise the rule to better address students with diverse cultural and linguistic backgrounds and recognize that students may still be eligible for services if there is a delay or disorder in the child's home language or dialect.

Comparison with rules in adjacent states:

- Illinois: Illinois rules govern the observation and evaluation of areas of impairment generally, with specific consideration given to specific learning disabilities and intellectual disabilities. Speech or language impairments are addressed as a related service only.
- Iowa: Iowa does not have rules for identifying speech or language impairment as an impairment area.
- Michigan: To identify a child with a speech or language impairment in Minnesota, a spontaneous language sample which demonstrates inadequate language functioning must be obtained on not less than 2 standardized assessment instruments or 2 subtests designed to determine language functioning which indicate inappropriate language functioning for the child's age.
- Minnesota: To identify a child with a speech or language impairment in Minnesota, the pupil scores 2.0 standard deviations below the mean on at least two technically adequate, norm-referenced language tests if available.

Summary of factual data and analytical methodologies:

Chapter PI 11 of the Wisconsin Administrative Code contains the current rules governing the education of children with disabilities, including rules around the identification of children with speech or language impairments. Under current rule, speech or language impairment is defined as "an impairment of speech or sound production, voice, fluency, or language that significantly affects educational performance or social, emotional or vocational development." Under the current rules, a child who meets certain criteria is excluded from qualifying as a child with speech or language impairment. Several of the disqualifying criteria are inconsistent with national guidelines and their application may prevent the provision of services to students who demonstrate language delay. Additionally, current rule emphasizes standardized measures for determining eligibility for services but is not balanced with other information that accounts for functional communication across school environments, especially for students from diverse cultural backgrounds. As such, the department proposes to update criteria relating to identifying pupils that have a speech or language impairment in order to properly address student needs. Without a rule change, the department will continue to implement ch. PI 11 as written.

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)

Carl Bryan
Administrative Rules Coordinator
Wisconsin Department of Public Instruction
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(608) 266-3275

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

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at adminrules@dpi.wi.gov. The department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

RULE TEXT

SECTION 1. PI 11.36 (5) (a) is repealed and recreated to read:

PI 11.36 (5) (a) In this subsection:

1. “Home languages” mean the languages used by the child or the parent of the child in their natural environment, or the modes of communication that are used by the child or the parent of the child in their natural environment, and may include languages other than English, sign language, braille, or augmentative and alternative communication.
2. “Natural environment” means settings that are natural or typical for a same-aged child without a disability and may include school, home, or community.
3. “Significant discrepancy” means performance on a norm-referenced assessment that meets the cutoff score for a speech or language disorder and is significantly below age- or grade-level expectations relative to a normative sample, often reported as a percentile or standard score.
4. “Speech or language impairment” means an impairment of speech or sound production, voice, fluency, or language that adversely affects educational performance or social, emotional or vocational development.

SECTION 2. PI 11.36 (5) (am) is created to read:

(am) Assessments and other evaluation materials used to conduct a comprehensive evaluation of a child’s speech and language development shall be provided and administered in the child’s home languages. Assessments and other evaluation materials shall be in the form most likely to yield accurate information unless it is not feasible to do so, and shall describe the child’s speech and language abilities and how those abilities impact the child’s progress in the general education environment relative to the speech and language demands of the classroom and curriculum. Interpretation of assessments shall be based on the representativeness of the normative sample and the psychometric properties of the assessment.

SECTION 3. PI 11.36 (5) (b) 1. and 2. are repealed and recreated to read:

11.36 (5) (b) 1. Following consideration of the child’s age, culture, language background, and dialect, the child meets all of the following conditions for a speech sound disorder:

- a. The child’s speech sound production is documented to be delayed, as evidenced through at least one observation in a natural environment.
- b. The child’s speech sound production is documented to be delayed, as measured by a criterion-referenced assessment, such as a developmental scale or a phonetic inventory, or significant discrepancy in performance from typical on a norm-referenced assessment.
- c. The child’s intelligibility is below the expected range and not due to influences of home languages or dialect. Intelligibility ratings as documented by school staff or caregivers indicate an impact across environments.
- d. Speech sound production is less than 30% stimulable for incorrect sounds.

2. Following consideration of the child's age, culture, language background, or dialect, the child demonstrates the characteristics of a phonological disorder, which include both of the following:

- a. The child's intelligibility is below the expected range and not due to influences of home languages or dialect. Intelligibility ratings as documented by school staff or caregivers indicate an impact across environments.
- b. The child's phonological process use is documented to be non-developmental or outside of the expected developmental range, as evidenced through at least one observation in a natural environment, and by measurement of either the presence of one or more phonological processes occurring at least 40%, significant discrepancy in performance from typical on a norm-referenced assessment, or both.

SECTION 4. PI 11.36 (5) (b) 3. is renumbered s. PI 11.36 (5) (b) 3. (intro.) and amended to read:

PI 11.36 (5) (b) 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.~~ Following consideration of the child's age, culture, language background, or dialect, the child demonstrates characteristics of a voice impairment, which include any of the following:

SECTION 5. PI 11.36 (5) (b) 3. a. to e. are created to read:

- PI 11.36 (5) (b) 3. a.** The child's vocal volume, including loudness.
- b. The child's vocal pitch, including range, inflection, or appropriateness.
 - c. The child's vocal quality, including breathiness, hoarseness, or harshness.
 - d. The child's vocal resonance, including hypernasality.

SECTION 6. PI 11.36 (5) (b) 4. is renumbered s. PI 11.36 (5) (b) 4. (intro.) and amended to read:

PI 11.36 (5) (b) 4. The child exhibits characteristics of a fluency disorder, following consideration of the child's age, language background, culture, and dialect. The evaluation shall include a variety of measures, including case history, observation in natural environment, norm-referenced assessment or disfluency analysis, and result in evidence of atypical fluency. The presence of one or more of the following characteristics shall indicate a fluency disorder:

SECTION 7. PI 11.36 (5) (b) 4. a. and b. are created to read:

- PI 11.36 (5) (b) 4. a.** Speech disfluencies associated with stuttering or atypical disfluency, which include repetitions of phrases, words, syllables, and sounds or dysrhythmic phonations such as prolongations of sounds or blockages of airflow typically in excess of 2% of total syllables, one second of duration, and two or more iterations in a repetition. Non-verbal physical movements, such as eye blinking or head jerking, may accompany the stuttering. Negative feelings about oral communication may be significant enough to result in avoidance behaviors in an attempt to hide or diminish stuttering.
- b.** A speech rate that is documented to be rapid, irregular, or both and may be accompanied by sound or syllable omissions, sequencing errors, or a high number of non-stuttering speech disfluencies such as interjections, phrase and whole word repetitions, and revisions. The resulting speech fluency pattern is considered to be significantly disruptive to efficient communication. Negative feelings and attitudes about oral communication may or may not be present under this disfluency profile.

SECTION 8. PI 11.36 (5) (b) 5. and (c) are repealed and recreated to read:

PI 11.36 (5) (b) 5. Following consideration of the child's age, culture, language background, or dialect, the child demonstrates a language impairment in the area of language form, content or use, as evidenced through an observation in a natural environment and by measurement of at least two of the following:

- a. Language sample analysis.
 - b. Dynamic assessment.
 - c. Developmental scales or another criterion-referenced assessment.
 - d. Significant discrepancy from typical language skills on a norm-referenced assessment of comprehensive language.
- (c) The IEP team may not identify a child as a child with speech or language impairment when differences in speech or language are based on home languages, culture, or dialect unless the child has a speech or language impairment within the

child's home languages, culture, or dialect. In determining whether the child has a speech or language impairment, the IEP team shall consider all of the following:

1. The child's background knowledge, stage of language acquisition, experience with narratives, and exposure to vocabulary to discern speech or language ability from speech or language difference, such as differences due to lack of exposure, stage of language acquisition, cultural or behavioral expectations.
2. Based on information and data collected, the IEP team must determine whether the child's speech or language skills are a result of a speech or language impairment or a difference due to culture, language background, or dialect.

SECTION 9. PI 11.36 (5) (d) (intro.) is renumbered PI 11.36 (5) (d) and amended to read:

PI 11.36 (5) (d) In addition to the evaluations under pars. (am) to (c), the IEP team shall ~~substantiate a speech or language impairment by considering all of the following:~~ evaluate a child's language by assessing the child's augmentative and alternative communication skills, when appropriate to determine the child's needs.

SECTION 10. PI 11.36 (5) (d) 1. to 4. are repealed.

SECTION 11. PI 11.36 (5) (e) is repealed and recreated to read:

PI 11.36 (5) (e) An IEP team shall include the following:

1. A speech-language pathologist licensed under ch. PI 34 who shall incorporate information from the most recent assessment to assist the IEP team in documenting whether the child meets the criteria for a speech or language impairment as well as identifying the child's speech or language needs.
2. An educator with foundational knowledge in first and second language instruction and second language acquisition if the child is identified as an English Learner under 20 USC 7801 (20).

SECTION 12. PI 11.36 (5) (f) is created to read:

PI 11.36 (5) (f) Upon re-evaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under s. PI 11.35, including specially designed instruction, is a child with a disability under this section.

SECTION 13. EFFECTIVE DATE:

The proposed 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 _____, 2021

Carolyn Stanford Taylor
State Superintendent