

Wisconsin Department of Public Instruction
STATEMENT OF SCOPE
FOR ADMINISTRATIVE RULES

GENERAL INFORMATION

Rule No.: PI 11

Relating to: Emotional behavior disability criteria

Rule Type: Permanent

NARRATIVE

1. Finding/nature of the emergency (Emergency Rule only).

N/A

2. A description of the objective of the proposed rule.

The proposed rule seeks to update ch. PI 11 of the Wisconsin Administrative Code with respect to the identification of children with emotional behavior disability.

3. A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.

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 emotional behavior disability. Under current rule, emotional behavior disability is defined as “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.” The current rules qualifying a child with an emotional behavior disability do not require any research-based interventions in addressing behaviors prior to identification, such as Response to Intervention (RtI), Positive Behavior Intervention and Support (PBIS), or Functional Behavior Assessment. Additionally, the current rules do not reference best practices and research in the areas of trauma, mental health, Social Emotional Learning, or RtI/PBIS. As such, the department proposes to update criteria relating to identifying pupils that have emotional behavior disability in order to recognize current knowledge and best practices and to properly address student needs. Without a rule change, the department will continue to implement ch. PI 11 as written.

4. The statutory authority for the proposed rule.

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) 5., Stats., includes emotional behavior disability 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) 5. and 115.762 (3) (a), Stats.

5. An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.
The amount of time needed for rule development by department staff and the amount of other resources necessary are indeterminate.

6. A description of all of the entities that will be affected by the proposed rule.
Local education agencies will be impacted by this rule change.

7. A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.
“Emotional disturbance” is defined under the Individuals with Disabilities Education Act as a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance: 1) an inability to learn that cannot be explained by intellectual, sensory, or health factors; 2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; 3) Inappropriate types of behavior or feelings under normal circumstances; 4) A general pervasive mood of unhappiness or depression; and 5) A tendency to develop physical symptoms or fears associated with personal or school problems. “Emotional disturbance” also includes schizophrenia but does not apply to children who are socially maladjusted unless it is determined that the child has one of the characteristics stated above [34 CFR § 300.8(c)(4)].

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