

# **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. PI 11.36 (5) (c) 3. to 6. and (d) 1. to 4; to renumber and amend s. PI 11.36 (5) (b) 2. to 4. and (5) (d) (intro.); to amend s. PI 11.36 (5) (a), (b) 1. (intro.), 5. (intro.), (c) (intro.), and (e); to repeal and recreate s. PI 11.36 (5) (b) 1. a. and b., 5. a. to c., and (c) 1. and 2.; and to create s. PI 11.36 (5) (b) 1. c., 2. a. and b., 3. a. to e., 4. a. to c., 5. d., 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 eliminate and 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.

### **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." The current rules qualifying a child with a speech or language impairment include several items required as exclusionary criteria prior to identification that are inconsistent with national guidelines and 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)**

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**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](mailto: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.

**SECTION 1. PI 11.36 (5) (a) and (5) (b) 1. (intro.) are amended to read:**

**PI 11.36 (5) (a)** Speech or language impairment means an impairment of speech or sound production, voice, fluency, or language that ~~significantly~~adversely affects educational performance or social, emotional or vocational development. Assessments and other evaluation materials used to conduct a comprehensive evaluation of a child's speech and language development must be provided and administered in the languages natural to the child, which may include languages other than English or other modes of communication unless it is not feasible to do so, so that the evaluation most accurately describes the child's speech and language abilities and how those abilities functionally impact the child's progress in the general education environment relative to the speech and language demands of the classroom and curriculum.

~~(b) 1. The child's conversational intelligibility is significantly affected and the child displays at least one of the following.~~Following consideration of the child's age, culture, language background, and dialect, the child meets all of the following conditions for speech sound production:

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 a. and b. are repealed and recreated to read:**

**PI 11.36 (5) (b) 1. a.** The child's speech sound production is documented to be significantly below the expected range, as evidenced through at least one observation in a natural environment, and measured by the percent consonants correct, criterion-referenced assessments such as developmental scale or phonetic inventory, performance below the identified cutoff score for distinguishing normal and impaired speech sound production based on individualized standardized or norm-referenced assessment, or any combination of the three.

**b.** The child's percent intelligibility of single word and connected speech samples in the languages the child speaks are below the expected range. Intelligibility ratings as documented by school staff or caregivers indicate impact across environments.

**SECTION 3. PI 11.36 (5) (b) 1. c. is created to read:**

**c.** Speech sound production is less than 30% stimulable for incorrect production of sounds.

**SECTION 4. PI 11.36 (5) (b) 2. is renumbered s. PI 11.36 (5) (b) 2. (intro.) and amended to read:**

~~PI 11.36 (5) (b) 2. One or more of the child's phonological patterns of sound are at least 40% disordered or the child scores in the moderate to profound range of phonological process use in formal testing and the child's conversational intelligibility is significantly affected.~~Following consideration of the child's age, culture, language background, or dialect used, the child demonstrates the characteristics of a phonological disorder, which include the following:

**SECTION 5. PI 11.36 (5) (b) 2. a. and b. are created to read:**

**PI 11.36 (5) (b) 2. a.** The child's percent intelligibility of single word and connected speech samples in the languages the child speaks is below the expected range. Intelligibility ratings as documented by school staff or caregivers indicate 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 percent occurrence of phonological error patterns, the performance below the identified cutoff score for distinguishing normal and impaired phonological skills based on individualized standardized or norm-referenced assessment, or both.

**SECTION 6. 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 other factors which include the following:

**SECTION 7. PI 11.36 (5) (b) 3. a. to e. are created to read:**

**PI 11.36 (5) (b) 3. a.** The child's age, culture, language background, or dialect used.

**b.** The child's vocal volume, including loudness.

**c.** The child's vocal pitch, including range, inflection, or appropriateness.

**d.** The child's vocal quality, including breathiness, hoarseness, or harshness.

**e.** The child's vocal resonance, including hypernasality.

**SECTION 8. 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 following consideration of the child's age, culture, language background, or dialect used, the child exhibits behaviors characteristic of a fluency disorder. The evaluation must include a variety of measures, including case history, norm-referenced assessments, or disfluency analysis, and result in evidence of atypical fluency. For a preschool child, research-based risk factors should be considered for persistent developmental stuttering in addition to observations of disfluency in typical speaking environments, especially for children presenting with varying disfluency. These risk factors may include positive family history of stuttering, onset after 3 years and 6 months of age, stuttering continuing for longer than 6 to 12 months, other speech or language delays, and significant parent concern. Not all risk factors need to be present to determine eligibility for a fluency disorder. One or more of the following behaviors is also observed in at least one natural environment:

**SECTION 9. PI 11.36 (5) (b) 4. a. to c. are created to read:**

**PI 11.36 (5) (b) 4. a.** Speech disfluencies associated with stuttering, which include repetitions of phrases, words, syllables, and sounds or dysrhythmic phonations such as prolongations of sounds or blockages of airflow in excess of 2% of total syllables. Non-verbal physical movements, such as eye blinking or head jerking, may accompany the stuttering.

**b.** Negative feelings about oral communication that are significant enough to result in avoidance behaviors in an attempt to hide or diminish stuttering and that impact full participation in academic or social communication situations.

**c.** 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 like 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.

**SECTION 10. PI 11.36 (5) (b) 5. (intro.) is amended to read:**

**PI 11.36 (5) (b) 5.** The child's oral communication or, for a child who cannot communicate orally, his or her primary mode of communication, is inadequate, as documented by all following consideration of the child's age, culture, language background, or dialect used, the child is performing significantly below expected levels 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:

**SECTION 11. PI 11.36 (5) (b) 5. a. to c. are repealed and recreated to read:**

- PI 11.36 (5) (b) a.** Language sample analysis in the languages the child speaks.
- b.** Dynamic assessment.
- c.** Criterion-referenced assessments such as developmental scales.

**SECTION 12. PI 11.36 (5) (b) 5. d. is created to read:**

**PI 11.36 (5) (b) 5. d.** Performance below the identified cutoff score for distinguishing normal and impaired language-based on individualized standardized or a norm-referenced assessment.

**SECTION 13. PI 11.36 (5) (c) (intro.) is amended to read:**

**PI 11.36 (5) (c)** The IEP team may not identify a student as a student with speech or language impairment when differences in speech or language are based on home language, culture, or dialect used unless the student has a speech or language impairment within their home language, culture, or dialect used. Before the IEP team determines whether the child has a speech or language impairment, the IEP team may not identify a child who exhibits any of the following as having a speech or language impairment shall consider the following:

**SECTION 14. PI 11.36 (5) (c) 1. and 2. are repealed and recreated to read:**

- PI 11.36 (5) (c) 1.** The child's background knowledge, 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, cultural or behavioral expectations.
- 2.** Based on information and data collected, whether the student's speech or language are a result of a speech or language impairment or a difference in culture, language background, or dialect used.

**SECTION 15. PI 11.36 (5) (c) 3. to 6. are repealed.**

**SECTION 16. PI 11.36 (5) (d) (intro.) is renumbered PI 11.36 (5) (d) and amended to read:**

**PI 11.36 (5) (d)** The IEP team shall substantiate a speech or language impairment by considering all of the following: further evaluate a child's language by assessing the child's augmentative and alternative communication skills, when appropriate to determine the child's needs.

**SECTION 17. PI 11.36 (5) (d) 1. to 4. are repealed.**

**SECTION 18. PI 11.36 (5) (e) is amended to read:**

**PI 11.36 (5) (e)** An IEP team shall include a department-licensed speech or language pathologist licensed under ch. PI 34 and information from the most recent assessment to assist the IEP team in document documenting whether the child meets eligibility for a speech or language impairment and the need for speech or language services, as well as the child's speech and language needs.

**SECTION 19. 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 20. 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.