

## Chapter PI 11

### CHILDREN WITH DISABILITIES

PI 11.02	Definitions.
PI 11.07	Transfer pupils.
PI 11.12	Hearing officers.

PI 11.24	Related service: physical and occupational therapy.
PI 11.35	Determination of eligibility.
PI 11.36	Areas of impairment.

#### PI 11.02 Definitions. In this chapter:

(1) “Adequate fidelity” means the intervention has been applied in a manner highly consistent with its design, and was provided to the pupil at least 80 percent of the recommended number of weeks, sessions, and minutes per session.

(1m) “Child” has the meaning defined under s. 115.76 (3), Stats.

(2) “Child with a disability” has the meaning defined under s. 115.76 (5), Stats.

(3) “Department” means the Wisconsin department of public instruction.

(4) “Division” means the division for learning support, which is established under s. 15.373 (1), Stats., and which has the authority granted under s. 115.77, Stats.

(4e) “Evidence-based interventions” means scientific, research-based interventions with substantial evidence of their effectiveness through multiple outcome evaluations.

(5) “Hearing officer” has the meaning defined under s. 115.76 (8), Stats.

(5m) “IDEA” means the individuals with disabilities education act under 20 USC 1400 et. seq.

(6) “Individualized education program” or “IEP” has the meaning defined under s. 115.76 (9), Stats.

(6m) “Intensive interventions” means interventions used with individual or small groups of pupils, focusing on single or small numbers of discrete skills, with substantial numbers of instructional minutes in addition to those provided to all pupils.

(6t) “Intervention” means the systematic use of a technique, program or practice designed to improve learning or performance in specific areas of pupil need.

(7) “Local education agency” or “LEA” has the meaning defined under s. 115.76 (10), Stats.

(8) “Parent” has the meaning defined under s. 115.76 (12), Stats.

(9) “Probes” mean brief, direct measures of specific academic skills, with multiple equal or nearly equal forms, that are sensitive to small changes in pupil performance, and that provide reliable and valid measures of pupil performance during interventions.

(10) “Progress monitoring” means a scientifically-based practice to assess pupil response to interventions.

(11) “Rate of progress” during an intervention means the slope of the trend line using least squares regression on the baseline and all subsequent data points during each intervention.

(12) “Scientific, research-based” has the meaning under section 20 U.S.C. 7801 (37).

**History:** Cr. Register, December, 1975, No. 240, eff. 1-1-76; am. (1) (b) 5., Register, February, 1983, No. 326, eff. 3-1-83; am. (2) (c), Register, September, 1986, No. 369, eff. 10-1-86; r. and recr. (1) to (6), (8), (9), (11) to (17), (21), (22), (24), (25), (28) to (32), (34), (35), (38), (41), (42), (50) and (51) renum. from PI 11.01 (2) (f) and am., Register, May, 1990, No. 413, eff. 6-1-90; am. (45), cr. (1m), (1s) and (52m), Register, July, 1993, No. 451, eff. 8-1-93; emerg. am. (24), (25), r. (46), eff. 6-25-96, am. (23) (b), (24), (25), cr. (23) (h) to (k), r. (46), Register, January, 1997, No. 493, eff. 2-1-97; r. and recr. Register, September, 1998, No. 513, eff. 10-1-98; cr. (5m), Register, May, 2000, No. 533, eff. 6-1-00; CR 10-002: renum. (1) to be (1m), cr. (1), (4e), (6m), (6t), (9), (10), (11), and (12) Register November 2010 No. 659, eff. 12-1-10; CR 19-069: am. (4) Register February 2020 No. 770, eff. 3-1-20.

**PI 11.07 Transfer pupils. (1) DEFINITIONS.** In this section “transfer pupil with a disability” means a child with a disability under the IDEA whose residence has changed from an LEA in this state to another LEA in this state or from a public agency in another state to an LEA in this state.

(2) TRANSFER PUPILS WITH DISABILITIES IN WISCONSIN. (a) The purpose of this subsection is to ensure that there is no interruption of special education and related services when a child with a disability transfers from one LEA in this state to another LEA in this state.

(c) The receiving LEA shall adopt the IEP of the sending LEA or develop a new IEP. The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending LEA if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

(d) When an LEA receives a transfer pupil with a disability and the LEA does not receive the pupil’s records from the sending LEA, the LEA shall request in writing the pupil’s records from the sending LEA. The sending LEA shall transfer the pupil’s records to the receiving LEA within the next working day of receipt of the written notice as required under s. 118.125 (4), Stats.

(3) TRANSFER PUPILS WITH DISABILITIES FROM OUTSIDE WISCONSIN. (a) The purpose of this subsection is to permit an LEA to adopt the most recent evaluation and eligibility determination and IEP of a transfer pupil with a disability from a public agency in another state.

(c) The LEA shall adopt the evaluation and the eligibility determination of the sending public agency or conduct a new evaluation and eligibility determination of the transfer pupil. If the LEA decides not to adopt the evaluation and eligibility determination of the sending public agency, the LEA shall initiate a special education referral of the child. The LEA shall complete the evaluation and develop an IEP and the placement in accordance with the requirements of subch. V of ch. 115, Stats., within 60 days of the date the child enrolls in the LEA. The LEA shall adopt the IEP of the sending public agency or develop a new IEP.

(d) The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending public agency if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

**History:** Cr. Register, May, 1990, No. 413, eff. 6-1-90; r. and recr. Register, December, 1995, No. 480, eff. 1-1-96; corrections in (1) made under s. 13.93 (2m) (b) 6., Stats., Register, April, 1998, No. 508; r. and recr. Register, May, 2000, No. 533, eff. 6-1-00; CR 19-069: r. (2) (b), am. (2) (c), (d), r. (3) (b), am. (3) (c) Register February 2020 No. 770, eff. 3-1-20.

**PI 11.12 Hearing officers. (1) IMPARTIALITY.** No person may be appointed as a hearing officer to conduct a hearing under s. 115.80, Stats., if that person meets any of the following criteria:

(a) Is an employee of the department or a public agency that is involved in the education or care of the child who is the subject of the hearing. A person who otherwise qualifies to conduct a hearing under this paragraph is not an employee of the department solely because he or she is paid by the department to serve as a hearing officer.

(b) Is an employee of or under contract to a local education agency as defined in s. 115.76 (10), Stats., a cooperative educational service agency created in ch. 116, Stats., or a county children with disabilities education board as defined in s. 115.817, Stats.

(c) Has a personal or professional interest which would conflict with his or her objectivity in the hearing.

**(2) HEARING OFFICERS; APPOINTMENT.** (a) The division shall maintain a list of persons who are available for appointment as hearing officers. The list shall include a statement of the qualifications of each of those persons. The division may not put a person's name on the list unless he or she meets both of the following:

1. The person is an attorney licensed to practice law in Wisconsin.

2. The person has completed the hearing officer training approved by the division as described in par. (b).

(b) Before a person's name may initially be put on the list in par. (a), he or she shall attend an initial training program approved by the division. Annually thereafter each person shall attend a refresher course approved by the division. The division may charge fees of persons attending the training courses.

**History:** Cr. Register, May, 1990, No. 413, eff. 6-1-90; emerg. r. and recr., eff. 6-25-96; r. and recr., Register, January, 1997, No. 493, eff. 2-1-97; r. and recr. Register, September, 1998, No. 513, eff. 10-1-98.

**PI 11.24 Related service: physical and occupational therapy.** **(1) LEGISLATIVE INTENT.** Subchapter V of ch. 115, Stats., gives an LEA the authority to establish physical therapy and occupational therapy services.

**(2) IEP TEAM.** If a child is suspected to need occupational therapy or physical therapy or both, the IEP team for that child shall include an appropriate therapist.

**(7) PHYSICAL THERAPISTS' LICENSURE AND SERVICE REQUIREMENTS.** (a) *Licensure.* A school physical therapist shall be licensed by the department under s. PI 34.093.

(b) *Caseload.* 1. Except as specified under subs. 2. and 3., the caseload for a full-time school physical therapist employed for a full day, 5 days a week, shall be as follows:

- a. A minimum of 15 children.
- b. A maximum of 30 children.
- c. A maximum of 45 children with one or more school physical therapist assistants.

2. The caseload for a part-time school physical therapist may be pro-rated based on the specifications under subd. 1.

3. A caseload may vary from the specifications under subd. 1. or 2., if approved in the LEA's plan under s. 115.77 (4), Stats. The following shall be considered in determining whether the variance may be approved:

- a. Frequency and duration of physical therapy as specified in the child's IEP.
- b. Travel time.
- c. Number of evaluations.
- d. Preparation time.
- e. Student related activities.

(c) *Medical information.* The school physical therapist shall have medical information from a licensed physician regarding a child before the child receives physical therapy.

(d) *Delegation and supervision of physical therapy.* 1. The school physical therapist may delegate to a school physical therapist assistant only those portions of a child's physical therapy which are consistent with the school physical therapist assistant's education, training and experience.

2. The school physical therapist shall supervise the physical therapy provided by a school physical therapist assistant. The school physical therapist shall develop a written policy and procedure for written and oral communication to the physical therapist assistant. The policy and procedure shall include a specific

description of the supervisory activities undertaken for the school physical therapist assistant which shall include either of the following levels of supervision:

a. The school physical therapist shall have daily, direct contact on the premises with the school physical therapist assistant.

b. The school physical therapist shall have direct, face-to-face contact with the school physical therapist assistant at least once every 14 calendar days. Between direct contacts, the physical therapist shall be available by telecommunication. The school physical therapist providing general supervision under this subdivision shall provide an on-site reevaluation of each child's physical therapy a minimum of one time per calendar month or every tenth day of physical therapy, whichever is sooner, and adjust the physical therapy as appropriate.

3. A full-time school physical therapist may supervise no more than 2 full-time equivalent physical therapist assistant positions which may include no more than 3 physical therapist assistants.

4. Notwithstanding the provisions under this paragraph, the act undertaken by a school physical therapist assistant shall be considered the act of the supervising physical therapist who has delegated the act.

(e) *Responsibility of school physical therapist.* A school physical therapist under this subsection shall conduct all physical therapy evaluations and reevaluations of a child, participate in the development of the child's IEP, and develop physical therapy treatment plans for the child. A school physical therapist may not be represented by a school physical therapist assistant on an IEP team.

**(8) SCHOOL PHYSICAL THERAPIST ASSISTANTS' QUALIFICATIONS AND SUPERVISION OF PHYSICAL THERAPY.** (a) *Licensure.* A school physical therapist assistant shall be licensed by the department under s. PI 34.094.

(b) *Supervision.* The school physical therapist assistant providing physical therapy to a child under this section, shall be supervised by a school physical therapist as specified under sub. (7) (d).

**(9) OCCUPATIONAL THERAPISTS' LICENSURE AND SERVICE REQUIREMENTS.** (a) *Licensure.* The school occupational therapist shall be licensed by the department under s. PI 34.091.

(b) *Caseload.* 1. Except as specified under subs. 2. and 3., the caseload for a full-time school occupational therapist employed for a full day, 5 days a week, shall be as follows:

- a. A minimum of 15 children.
- b. A maximum of 30 children.
- c. A maximum of 45 children with one or more occupational therapy assistants.

2. The caseload for a part-time school occupational therapist may be pro-rated based on the specifications under subd. 1.

3. A caseload may vary from the specifications under subd. 1. or 2., if approved in the LEA's plan under s. 115.77 (4), Stats. The following shall be considered in determining whether the variance may be approved:

- a. Frequency and duration of occupational therapy as specified in the child's IEP.
- b. Travel time.
- c. Number of evaluations.
- d. Preparation time.
- e. Student related activities.

(c) *Medical information.* The school occupational therapist shall have medical information regarding a child before the child receives occupational therapy.

(d) *Delegation and supervision of occupational therapy.* 1. The school occupational therapist may delegate to a school occupational therapy assistant only those portions of a child's occupa-

tional therapy which are consistent with the school occupational therapy assistant's education, training and experience.

2. The school occupational therapist shall supervise the occupational therapy provided by a school occupational therapy assistant. The school occupational therapist shall develop a written policy and procedure for written and oral communication to the occupational therapist assistant. The policy and procedure shall include a specific description of the supervisory activities undertaken for the school occupational therapist assistant which shall include either of the following levels of supervision:

a. The school occupational therapist shall have daily, direct contact on the premises with the school occupational therapy assistant.

b. The school occupational therapist shall have direct, face-to-face contact with the school occupational therapy assistant at least once every 14 calendar days. Between direct contacts, the occupational therapist shall be available by telecommunication. The school occupational therapist providing general supervision under this subdivision shall provide an on-site reevaluation of each child's occupational therapy a minimum of one time per calendar month or every tenth day of occupational therapy, whichever is sooner, and adjust the occupational therapy as appropriate.

3. A full-time school occupational therapist may supervise no more than 2 full-time equivalent occupational therapy assistant positions which may include no more than 3 occupational therapy assistants.

4. Notwithstanding the provisions under this paragraph, the act undertaken by a school occupational therapy assistant shall be considered the act of the supervising occupational therapist who has delegated the act.

(e) *Responsibility of school occupational therapist.* A school occupational therapist under this subsection shall conduct all occupational therapy evaluations and reevaluations of a child, participate in the development of the child's IEP, and develop occupational therapy treatment plans for the child. A school occupational therapist may not be represented by a school occupational therapy assistant on an IEP team.

**(10) SCHOOL OCCUPATIONAL THERAPY ASSISTANTS' QUALIFICATIONS AND SUPERVISION.** (a) *Licensure.* A school occupational therapy assistant shall be licensed by the department under s. PI 34.092.

(b) *Supervision.* The school occupational therapy assistant providing occupational therapy to a child under this section shall be supervised by a school occupational therapist as specified under sub. (9) (d).

**History:** Cr. Register, December, 1975, No. 240, eff. 1-1-76; am. (7) (b) 1 and (8) (b) 1, Register, February, 1976, No. 242, eff. 3-1-76; am. (7) (b) 4 and (8) (b) 2, Register, November, 1976, No. 251, eff. 12-1-76; am. (1) and (8) (b) 4, Register, February, 1983, No. 326, eff. 3-1-83; r. (11) (b) and (c), renum. (11) (a) to be (11), Register, September, 1986, No. 369, eff. 10-1-86; renum. from PI 11.19, Register, May, 1990, No. 413, eff. 6-1-90; am. (7) (b) 4, Register, October, 1990, No. 418, eff. 11-1-90; am. (7) (a) and (8) (a), Register, March, 1992, No. 435, eff. 4-1-92; am. (1), (2) (intro.) and (3) (intro.), r. (2) (a) to (d), (3) (a), (b) and (11), r. and recr. (4) to (10), Register, July, 1993, No. 451, eff. 8-1-93; correction in (10) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1998, No. 508; r. (1) to (6), cr. (1) and (2), am. (7) (b) 1. (intro.), 3. (intro.), (e), (9) (b) 1. (intro.), 3. (intro.), (e) and (10) (b), Register, September, 1998, No. 513, eff. 10-1-98; am. (9) (c), Register, May, 2000, No. 533, eff. 6-1-00; corrections in (7) (a), (8) (a), (9) (a), and (10) (a) made under s. 13.92 (4) (b) 7., Stats., Register November 2010 No. 659; CR 16-027; am. (1) Register July 2016 No. 727, eff. 8-1-16; correction in (7) (a), (8) (a), (9) (a), (10) (a), made under s. 13.92 (4) (b) 7., Stats., Register June 2019 No. 762.

**PI 11.35 Determination of eligibility.** As part of an evaluation or reevaluation under s. 115.782, Stats., conducted by the IEP team in determining whether a child is or continues to be a child with a disability, the IEP team shall identify modifications, if any, that can be made in the regular education program, such as adaptation of content, methodology or delivery of instruction to meet the child's needs identified under s. 115.782 (2) (b) 2., Stats.,

that will allow the child to access the general education curriculum and meet the educational standards that apply to all children.

**History:** Cr. Register, May, 1977, No. 257, eff. 6-1-77; am. (2) (intro.), Register, February, 1983, No. 326, eff. 3-1-83; r. (2) (c), renum. (2) (d) to (i) to be (2) (c) to (h), Register, September, 1986, No. 369, eff. 10-1-86; renum. from PI 11.34, Register, May, 1990, No. 413, eff. 6-1-90; r. and recr. (2) (b), cr. (2) (i) to (k), Register, April, 1995, No. 472, eff. 5-1-95; corrections made under s. 13.93 (2m) (b) 1., Stats., Register, March, 1996, No. 483; emerg. cr. (2) (L), eff. 6-25-96; cr. (2) (L), Register, January, 1997, No. 493, eff. 2-1-97; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2000, No. 533; r. (1m), (2) (intro.), (a), (ad), (c) to (h), renum. (2) (b) to be PI 11.36 (2) and (2) (i) to (L) to be PI 11.36 (8) to (11), cr. (2) and (3), Register, December, 2000, No. 540, eff. 7-1-01; **CR 19-069: r. and recr. Register February 2020 No. 770, eff. 3-1-20.**

**PI 11.36 Areas of impairment.** All provisions in these rules shall be construed consistent with 20 USC 1400 et. seq. and the regulations promulgated thereunder.

**(1) INTELLECTUAL DISABILITY.** (a) In this subsection, intellectual disability means significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills and manifested during the developmental period that adversely affects the child's educational performance.

(b) The IEP team may identify a child as having an intellectual disability if the child meets the criteria under subs. 1., 2., and 3. a. or b. as follows:

1. The child has a standard score of 2 or more standard deviations below the mean on an individually administered intelligence test which takes into account the child's mode of communication and is developed to assess intellectual functioning using this mode. More than one intelligence test may be used to produce a comprehensive result.

2. The child has significant limitations in adaptive behavior that are demonstrated by a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments that include interviews of the parents, tests, and observations of the child in adaptive behavior which are relevant to the child's age, including at least one of the following:

am. Conceptual skills.

bm. Social adaptive skills.

cm. Practical adaptive skills.

dm. An overall composite score on a standardized measure of conceptual, social, and practical skills.

3. a. Except as provided in subd. 3. c., the child is age 3 through 5 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in the following areas: language development and communication, cognition and general knowledge.

b. Except as provided in subd. 3. c., the child is age 6 through 21 and has a standard score of 2 or more standard deviations below the mean on standardized or nationally-normed measures, as measured by comprehensive, individual assessments, in the following areas: written language, reading, and mathematics.

c. When it is determined that reliable and valid assessment results under subd. 3. a. or b. are not possible due to the child's functioning level or age, a standardized developmental scale or a body of evidence including informal measures shall be used to assess the child.

4. Upon re-evaluation, a child who met identification criteria for cognitive disability prior to September 1, 2015, 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.

**(2) ORTHOPEDIC IMPAIRMENT.** Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes, but is not limited to,

impairments caused by congenital anomaly, such as a clubfoot or absence of some member; impairments caused by disease, such as poliomyelitis or bone tuberculosis; and impairments from other causes, such as cerebral palsy, amputations, and fractures or burns that cause contractures.

**(3) VISUAL IMPAIRMENT.** Visual impairment means even after correction a child's visual functioning significantly adversely affects his or her educational performance. The IEP team may identify a child as having a visual impairment after all of the following events occur:

(a) A certified teacher of the visually impaired conducts a functional vision evaluation which includes a review of medical information, formal and informal tests of visual functioning and the determination of the implications of the visual impairment on the educational and curricular needs of the child.

(b) An ophthalmologist or optometrist finds at least one of the following:

1. Central visual acuity of 20/70 or less in the better eye after conventional correction.
2. Reduced visual field to 50° or less in the better eye.
3. Other ocular pathologies that are permanent and irremediable.
4. Cortical visual impairment.
5. A degenerative condition that is likely to result in a significant loss of vision in the future.

(c) An orientation and mobility specialist, or teacher of the visually impaired in conjunction with an orientation and mobility specialist, evaluates the child to determine if there are related mobility needs in home, school, or community environments.

**(4) HEARING IMPAIRMENT.** Hearing impairment, including deafness, means a significant impairment in hearing, with or without amplification, whether permanent or chronically fluctuating, that significantly adversely affects a child's educational performance including academic performance, speech perception and production, or language and communication skills. A current evaluation by an audiologist licensed under ch. 459, Stats., shall be one of the components for an initial evaluation of a child with a suspected hearing impairment.

**(5) SPEECH OR LANGUAGE IMPAIRMENT.** (a) Speech or language impairment means an impairment of speech or sound production, voice, fluency, or language that significantly affects educational performance or social, emotional or vocational development.

(b) The IEP team may identify a child as having a speech or language impairment if the child meets the definition under par. (a) and meets any of the following criteria:

1. The child's conversational intelligibility is significantly affected and the child displays at least one of the following:

a. The child performs on a norm referenced test of articulation or phonology at least 1.75 standard deviations below the mean for his or her chronological age.

b. Demonstrates consistent errors in speech sound production beyond the time when 90% of typically developing children have acquired the sound.

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.

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.

4. The child exhibits behaviors characteristic of a fluency disorder.

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 of the following:

a. Performance on norm referenced measures that is at least 1.75 standard deviations below the mean for chronological age.

b. Performance in activities is impaired as documented by informal assessment such as language sampling, observations in structured and unstructured settings, interviews, or checklists.

c. The child's receptive or expressive language interferes with oral communication or his or her primary mode of communication. When technically adequate norm referenced language measures are not appropriate as determined by the IEP team to provide evidence of a deficit of 1.75 standard deviations below the mean in the area of oral communication, then 2 measurement procedures shall be used to document a significant difference from what would be expected given consideration to chronological age, developmental level, and method of communication such as oral, manual, and augmentative. These procedures may include additional language samples, criterion referenced instruments, observations in natural environments and parent reports.

(c) The IEP team may not identify a child who exhibits any of the following as having a speech or language impairment:

1. Mild, transitory or developmentally appropriate speech or language difficulties that children experience at various times and to various degrees.

2. Speech or language performance that is consistent with developmental levels as documented by formal and informal assessment data unless the child requires speech or language services in order to benefit from his or her educational programs in school, home, and community environments.

3. Speech or language difficulties resulting from dialectical differences or from learning English as a second language, unless the child has a language impairment in his or her native language.

4. Difficulties with auditory processing without a concomitant documented oral speech or language impairment.

5. A tongue thrust which exists in the absence of a concomitant impairment in speech sound production.

6. Elective or selective mutism or school phobia without a documented oral speech or language impairment.

(d) The IEP team shall substantiate a speech or language impairment by considering all of the following:

1. Formal measures using normative data or informal measures using criterion referenced data.

2. Some form of speech or language measures such as developmental checklists, intelligibility ratio, language sample analysis, minimal core competency.

3. Information about the child's oral communication in natural environments.

4. Information about the child's augmentative or assistive communication needs.

(e) An IEP team shall include a department-licensed speech or language pathologist and information from the most recent assessment to document a speech or language impairment and the need for speech or language services.

**(6) SPECIFIC LEARNING DISABILITY.** (a) Specific learning disability, pursuant to s. 115.76 (5) (a) 10., Stats., means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or perform mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, motor disabilities, cognitive disabilities, emotional disturbance, cultural factors, environmental, or economic disadvantage.

(b) The LEA shall promptly request parental consent to evaluate a child to determine if the child needs special education and related services if, prior to referral, the child has not made adequate progress after an appropriate period of time when provided

appropriate instruction in general education settings, delivered by qualified personnel, or whenever the child is referred for an evaluation. The LEA shall meet the timeframes under s. 115.78 (3) (a), Stats., unless extended by mutual written agreement of the child's parents and IEP team.

(c) The IEP team may identify a child as having a specific learning disability if both of the following apply:

1. 'Inadequate classroom achievement.' Upon initial identification the child does not achieve adequately for his or her age, or meet state-approved grade-level standards in one or more of the following eight areas of potential specific learning disabilities when provided with learning experiences and instruction appropriate for the child's age: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving. A child's achievement is inadequate when the child's score, after intensive intervention, on one or more assessments of achievement is equal to or more than 1.25 standard deviations below the mean in one or more of the eight areas of potential specific learning disabilities. Assessments used under this subdivision shall be individually administered, norm-referenced, valid, reliable, and diagnostic of impairment in the area of potential specific learning disabilities. The 1.25 standard deviation requirement under this subdivision may not be used if the IEP team determines that the child cannot attain valid and reliable standard scores for academic achievement because of the child's test behavior, the child's language proficiency, an impairment of the child that interferes with the attainment of valid and reliable scores, or the absence of individually administered, norm-referenced, standardized, valid and reliable diagnostic assessments of achievement appropriate for the child's age. If the IEP team makes such a determination, it shall document the reasons why it was not appropriate to consider standardized achievement testing, and shall document that inadequate classroom achievement exists in at least one of the eight areas of potential specific learning disabilities using other empirical evidence. The IEP team may consider scores within 1 standard error of the measurement of the 1.25 standard deviation criterion above to meet the inadequate classroom achievement criteria under this subdivision if the IEP team determines the child meets all other criteria.

2. 'Insufficient progress.' Upon evaluation, the child has made insufficient progress in one of the following areas:

a. Insufficient response to intensive, scientific, research-based or evidence-based intervention. The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the eight areas of potential specific learning disabilities under subd. 1. when using a process based on the child's response to intensive scientific, research-based or evidence-based interventions. Intensive interventions may be implemented prior to referral, or as part of an evaluation, for specific learning disability. The IEP team shall consider progress monitoring data from at least two intensive, scientific, research-based or evidence-based interventions, implemented with adequate fidelity and closely aligned to individual student learning needs. The median score of three probes is required to establish a stable baseline data point for progress monitoring. IEP teams shall use weekly or more frequent progress monitoring to evaluate rate of progress during intensive, scientific, research-based or evidence-based interventions. Rate of progress during intensive intervention is insufficient when any of the following are true: the rate of progress of the referred child is the same or less than that of his or her same-age peers; the referred child's rate of progress is greater than that of his or her same-age peers but will not result in the referred child reaching the average range of his or her same-age peer's achievement for that area of potential disability in a reasonable period of time; or the referred child's rate of progress is greater than that of his or her same-age peers, but the intensity of the resources necessary to obtain this rate of progress cannot be

maintained in general education. If an LEA uses insufficient response to intensive, scientific, research-based or evidence-based intervention under this subdivision paragraph for any child being evaluated for specific learning disabilities enrolled in a school, the LEA shall use insufficient response to intensive, scientific, research-based or evidence-based intervention for all such evaluations of children enrolled in that school. At least ten days in advance of beginning to use insufficient response to intensive, scientific, research-based or evidence-based intervention in a school, the LEA shall notify parents of all children enrolled in that school of the intent to use insufficient response to intensive, scientific, research-based or evidence-based intervention.

b. Significant discrepancy or insufficient progress in achievement as compared to measured ability. This subdivision paragraph does not apply three years after December 1, 2010. Upon initial evaluation the child exhibits a significant discrepancy between the child's academic achievement in any of the eight areas of potential specific learning disabilities under subd. 1. and intellectual ability as documented by the child's composite score on a multiple score instrument or the child's score on a single score instrument. The IEP team may base a determination of significant discrepancy only upon the results of individually administered, norm-referenced, valid and reliable diagnostic assessment of achievement. A significant discrepancy means a difference between standard scores for ability and achievement equal to or greater than 1.75 standard errors of the estimate below expected achievement, using a standard regression procedure that accounts for the correlation between ability and achievement measures. This regression procedure shall be used except when the IEP team determines that the child cannot attain valid and reliable standard scores for intellectual ability or achievement because of the child's test behavior, the child's language, another impairment of the child that interferes with the attainment of valid and reliable scores or the absence of valid and reliable standardized, diagnostic tests appropriate for the child's age. If the IEP team makes such a determination, it shall document the reasons why it was not appropriate to use the regression procedure and shall document that a significant discrepancy exists, including documentation of a variable pattern of achievement or ability, in at least one of the eight areas of potential specific learning disabilities under subd. 1. using other empirical evidence. If the discrepancy between the child's ability and achievement approaches but does not reach the 1.75 standard error of the estimate cut-off for this subdivision paragraph, the child's performance in any of the eight areas of potential specific learning disabilities under subd. 1. is variable, and the IEP team determines that the child meets all other criteria under subd. 1., the IEP team may consider that a significant discrepancy exists.

**Note:** Appendix A specifies the recommended regression formula for calculating significant discrepancy scores. This appendix does not apply three years after December 1, 2010.

(d) 1. The IEP team may not identify a child as having a specific learning disability if it determines that any of the following apply:

a. The IEP team's findings under par. (c) are primarily due to environmental or economic disadvantage; cultural factors; or any of the reasons specified under s. 115.782 (3) (a), Stats., or any of the impairments under s. 115.76 (5), Stats., except s. 115.76 (5) (a) 10., Stats.

b. The IEP team's findings under par. (c) were due to a lack of appropriate instruction in the area of potential specific learning disability in par. (c) 1.

2. The IEP team shall consider data demonstrating that prior to, or as a part of, an evaluation, the child was provided appropriate instruction in general education settings, delivered by qualified personnel. Appropriate instruction in reading shall include the essential components of reading instruction as defined in 20 USC 6368 (3).

3. In addition to the requirements for IEP team membership under s. 115.78, Stats., the IEP team for children being evaluated for specific learning disabilities shall include all of the following members:

a. At least one licensed person who is qualified to assess data on individual rate of progress using a psychometrically valid and reliable methodology. A psychometrically valid and reliable methodology relies on all data sources specified in par. (g)., analyzing progress monitoring data that exhibit adequate statistical accuracy for the purpose of identification of insufficient progress as compared to a national sample of same-age peers.

b. At least one licensed person who has implemented scientific, research-based or evidence-based, intensive interventions with the referred pupil.

c. At least one licensed person who is qualified to conduct individual diagnostic evaluations of children.

d. The child's licensed general education teacher; or if the child does not have a licensed general education classroom teacher, a general education classroom teacher licensed to teach a child of the same age; or for a child of less than school age, an individual licensed to teach a child of the same age.

(e) 1. The LEA shall ensure that the child is systematically observed in the child's learning environment, including the general classroom setting when possible, to document the child's academic performance and behavior in any of the eight areas of potential specific learning disabilities under par. (c) 1.

2. a. The IEP team, in determining whether a child has a specific learning disability, shall use information from a systematic observation conducted by a member of the IEP team.

b. The systematic observation of routine classroom instruction and monitoring of the child's performance in at least one of the eight areas of potential specific learning disabilities under par. (c) 1., may be conducted before the child was referred for evaluation, or the systematic observation of the child's academic performance in at least one of the eight areas of potential specific learning disabilities under par. (c) 1., shall be conducted after the child has been referred for an evaluation and parental consent is obtained.

c. If the child is less than school age or out of school, at least one member of the IEP team shall conduct a systematic observation of the child in an environment appropriate for a child of that age.

d. If the child has participated in a process that assesses the child's response to intensive scientific, research-based or evidence-based interventions, the IEP team shall use information from a systematic observation of pupil behavior and performance in the area or areas of potential specific learning disability during intensive intervention for that area, conducted by an individual who is not responsible for implementing the interventions with the referred pupil.

3. Each IEP team member shall certify in writing whether the evaluation report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member shall submit a separate statement presenting the member's conclusion.

4. A child determined to be eligible for special education and related services under this chapter remains eligible for special education and related services upon transfer to another school or LEA. The child continues to be eligible for special education and related services unless, upon re-evaluation, the child is no longer found eligible.

(f) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility shall contain a statement including all of the following:

1. Whether the child has a specific learning disability.

2. The basis for making the determination, including an assurance that the determination has been made in accordance with s. 115.782, Stats.

3. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning in the area of potential learning disability in par. (c) 1.

4. Documentation that the intensive intervention was applied in a manner highly consistent with its design, was closely aligned to pupil need, and was culturally appropriate.

5. The educationally relevant medical findings, if any.

6. Whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with par. (c) 1.; and the child does not make sufficient progress to meet age or state-approved grade-level standards consistent with par. (c) 2. a.; or until three years after December 1, 2010, the child exhibits a significant discrepancy between the child's academic achievement in any of the eight areas of potential specific learning disabilities under par. (c) 1. and intellectual ability consistent with par. (c) 2. b.

7. The determination of the IEP team concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level.

8. If the child has participated in a process that assesses the child's response to scientific, research-based or evidence-based intervention, documentation that the child's parents were notified about all of the following:

a. The progress monitoring data collected.

b. Strategies for increasing the child's rate of learning including the intensive interventions used.

c. The parents' right to request an evaluation.

(g) In addition to all other determinations, the IEP team shall base its decision of whether a child has a specific learning disability on a comprehensive evaluation using formal and informal assessment data regarding academic achievement and learning behavior from sources such as standardized tests, error analysis, criterion referenced measures, curriculum-based assessments, pupil work samples, interviews, systematic observations, analysis of the child's response to previous interventions, and analysis of classroom expectations, and curriculum in accordance with s. 115.782, Stats.

(h) 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, unless the provisions under par. (d) 1. now apply. If a child with a specific learning disability performs to generally accepted expectations in the general education classroom without specially designed instruction, the IEP team shall determine whether the child is no longer a child with a disability.

**(7) EMOTIONAL BEHAVIORAL DISABILITY.** (a) Emotional behavioral disability, pursuant to s. 115.76 (5) (a) 5., Stats., means 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.

(b) The IEP team may identify a child as having an emotional behavioral disability if the child meets the definition under par. (a), and meets all of the following:

1. The child demonstrates severe, chronic and frequent behavior that is not the result of situational anxiety, stress or conflict.

2. The child's behavior described under par. (a) occurs in school and in at least one other setting.

3. The child displays any of the following:

a. Inability to develop or maintain satisfactory interpersonal relationships.

b. Inappropriate affective or behavior response to a normal situation.

c. Pervasive unhappiness, depression or anxiety.

d. Physical symptoms, pains or fears associated with personal or school problems.

e. Inability to learn that cannot be explained by intellectual, sensory or health factors.

f. Extreme withdrawal from social interactions.

g. Extreme aggressiveness for a long period of time.

h. Other inappropriate behaviors that are so different from children of similar age, ability, educational experiences and opportunities that the child or other children in a regular or special education program are negatively affected.

(c) The IEP team shall rely on a variety of sources of information, including systematic observations of the child in a variety of educational settings and shall have reviewed prior, documented interventions. If the IEP team knows the cause of the disability under this paragraph, the cause may be, but is not required to be, included in the IEP team's written evaluation summary.

(d) The IEP team may not identify or refuse to identify a child as a child with an emotional behavioral disability solely on the basis that the child has another disability, or is socially maladjusted, adjudged delinquent, a dropout, chemically dependent, or a child whose behavior is primarily due to cultural deprivation, familial instability, suspected child abuse or socio-economic circumstances, or when medical or psychiatric diagnostic statements have been used to describe the child's behavior.

**(8) AUTISM.** (a) Autism means a developmental disability significantly affecting a child's social interaction and verbal and non-verbal communication, generally evident before age 3, that adversely affects learning and educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in sub. (7).

(b) The results of standardized or norm-referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessments, achievement assessments, observation, and work samples, shall be considered to identify a child under this paragraph. Augmentative communication strategies, such as facilitated communication, picture boards, or signing shall be considered when evaluating a child under this paragraph. To identify a child under this paragraph, the criteria under subs. 1. and 2. and one or more criteria under subs. 3. through 6. shall be met.

1. The child displays difficulties or differences or both in interacting with people and events. The child may be unable to establish and maintain reciprocal relationships with people. The child may seek consistency in environmental events to the point of exhibiting rigidity in routines.

2. The child displays problems which extend beyond speech and language to other aspects of social communication, both receptively and expressively. The child's verbal language may be absent or, if present, lacks the usual communicative form which may involve deviance or delay or both. The child may have a speech or language disorder or both in addition to communication difficulties associated with autism.

3. The child exhibits delays, arrests, or regressions in motor, sensory, social or learning skills. The child may exhibit precocious or advanced skill development, while other skills may develop at normal or extremely depressed rates. The child may not follow normal developmental patterns in the acquisition of skills.

4. The child exhibits abnormalities in the thinking process and in generalizing. The child exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and judgment. Perseverant thinking and impaired ability to process symbolic information may be present.

5. The child exhibits unusual, inconsistent, repetitive or unconventional responses to sounds, sights, smells, tastes, touch or movement. The child may have a visual or hearing impairment or both in addition to sensory processing difficulties associated with autism.

6. The child displays marked distress over changes, insistence on following routines, and a persistent preoccupation with or attachment to objects. The child's capacity to use objects in an age-appropriate or functional manner may be absent, arrested or delayed. The child may have difficulty displaying a range of interests or imaginative activities or both. The child may exhibit stereotyped body movements.

**(9) TRAUMATIC BRAIN INJURY.** (a) Traumatic brain injury means an acquired injury to the brain caused by an external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; speech and language; memory; attention; reasoning; abstract thinking; communication; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and executive functions, such as organizing, evaluating and carrying out goal-directed activities. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(b) Children whose educational performance is adversely affected as a result of acquired injuries to the brain caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic disorders and the effects of toxic substances or degenerative conditions may meet the criteria of one of the other impairments under this section.

(c) The results of standardized and norm-referenced instruments used to evaluate and identify a child under this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-referenced assessment, achievement assessment, observation, work samples, and neuropsychological assessment data, shall be considered to identify a child who exhibits total or partial functional disability or psychosocial impairment in one or more of the areas described under par. (a).

(d) Before a child may be identified under this subsection, available medical information from a licensed physician shall be considered.

**(10) OTHER HEALTH IMPAIRMENT.** Other health impairment means having limited strength, vitality or alertness, due to chronic or acute health problems. The term includes but is not limited to a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, or acquired injuries to the brain caused by internal occurrences or degenerative conditions, which adversely affects a child's educational performance.

**(11) SIGNIFICANT DEVELOPMENTAL DELAY.** (a) Significant developmental delay means children, ages 3 through 9 years of age, who are experiencing significant delays in the areas of physical, cognition, communication, social-emotional, or adaptive development.

(b) All other suspected impairments under this section shall be considered before identifying a child's primary impairment as significant developmental delay.

(c) A child may be identified as having significant developmental delay when delays in development significantly challenge the child in two or more of the following five major life activities:

1. Physical activity in gross motor skills, such as the ability to move around and interact with the environment with appropriate coordination, balance and strength; or fine motor skills, such as manually controlling and manipulating objects such as toys, drawing utensils, and other useful objects in the environment.

2. Cognitive activity, such as the ability to acquire, use and retrieve information as demonstrated by the level of imitation, discrimination, representation, classification, sequencing, and problem-solving skills often observed in a child's play.

3. Communication activity in expressive language, such as the production of age-appropriate content, form and use of language; or receptive language, such as listening, receiving and understanding language.

4. Emotional activity such as the ability to feel and express emotions, and develop a positive sense of oneself; or social activity, such as interacting with people, developing friendships with peers, and sustaining bonds with family members and other significant adults.

5. Adaptive activity, such as caring for his or her own needs and acquiring independence in age-appropriate eating, toileting, dressing and hygiene tasks.

(d) Documentation of significant developmental delays under par. (c) and their detrimental effect upon the child's daily life shall be based upon qualitative and quantitative measures including all of the following:

1. A developmental and basic health history, including results from vision and hearing screenings and other pertinent information from parents and, if applicable, other caregivers or service providers.

2. Observation of the child in his or her daily living environment such as the child's home, with a parent or caregiver, or an early education or care setting which includes peers who are typically developing. If observation in these settings is not possible, observation in an alternative setting is permitted.

3. Results from norm-referenced instruments shall be used to document significant delays of at least one and one-half standard deviations below the mean in 2 or more of the developmental areas which correspond to the major life activities. If it is clearly not appropriate to use norm-referenced instruments, other instruments, such as criterion referenced measures, shall be used to document the significant delays.

**Note:** With respect to the eligibility criteria under s. PI 11.36, in September 1991 the U.S. department of education issued a memorandum clarifying state and local responsibilities for addressing the educational needs of children with attention deficit disorder (ADD). (See 18 IDELR 116) as a condition of receipt of federal funds under the Individuals with Disabilities Education Act (IDEA), the state and local school districts are bound to comply with the federal policy outlined in that memo. (See e.g. *Metropolitan school district of Wayne Township, Marion County, Indiana v. Davila*, 969 F. 2d 485 (7<sup>th</sup> cir. 1992)).

Pursuant to that federal policy memo, a child with ADD is neither automatically eligible nor ineligible for special education and related services under ch. 115, Stats. In considering eligibility, an IEP team must determine whether the child diagnosed with ADD has one or more impairments under this section and a need for special education. For example, pursuant to the federal policy memo, a child with ADD may be eligible for special education and related services under ch. 115, Stats., if the child meets the eligibility criteria for "other health impaired" or any other impairment enumerated in this section. In addition, 34 CFR 300.7 (c) (9) (i) now specifically lists ADD and attention deficit hyperactivity disorder among the health problems which may result in disability based on other health impairment. A copy of the federal policy may be obtained by writing the Special Education Team, Division for Learning Support: Equity and Advocacy, Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

**History:** Renum. (2) from PI 11.35 (2) (b) and (8) to (11) from PI 11.35 (2) (i) to (L) and am. as renum. (8) (a), (b), (9) (b), (c), (d), (11) (b), (c) (intro.) and (d) (intro.) and cr. (intro.) and (1), (3) to (7), Register, December, 2000, No. 540, eff. 7-1-01; CR 10-002: r. and recr. (6) Register November 2010 No. 659, eff. 12-1-10; EmR1507: emerg. am. (1) (title), (a), (b) (intro.), renum. (1) (b) 1. a. to be 1. and am., r. (1) (b) 1. b., am. (1) (b) 2. (intro.), r. (1) (b) 2. a. to j., cr. (1) (b) 2. am. to dm., am. (1) (b) 3. a., b., cr. (1) (b) 3. c. and 4., eff. 7-1-15; EmR1506: emerg. am. (11) (a), eff. 7-1-15; CR 15-018: am. (1) (title), (a), (b) (intro.), renum. (1) (b) 1. a. to be 1. and am., r. (1) (b) 1. b., am. (1) (b) 2. (intro.), r. (1) (b) 2. a. to j., cr. (1) (b) 2. am. to dm., am. (1) (b) 3. a., b., cr. (1) (b) 3. c. and 4. Register August 2015 No. 716, eff. 9-1-15; CR 15-019: am. (11) (a) Register August 2015 No. 716, eff. 9-1-15; reprinted to correct transcription error in (1) (b) (intro.) Register January 2020 No. 769; **correction in (1) (b) 4., (6) (h) made under s. 13.92 (4) (b) 7., Stats., Register February 2020 No. 770.**