

ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION ADOPTING EMERGENCY RULES

The scope statement for this rule, SS 032-14, was published in Register No. 700, on April 30, 2014, and approved by State Superintendent Tony Evers, on May 13, 2014. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope or this rule.

The State Superintendent of Public Instruction hereby repeals PI 11.36 (1) (b) 1. b., 2. a. to j., and 3.b. (Note); renumbers PI 11.36 (1) (b) 1. a.; amends PI 11.36 (1) (title), (a), (b) (intro), 1., 2. (intro), and 3. a. and b.; and creates PI 11.36 (1) (b) 2., am. to dm., and 3. c. and 4.; relating to incorporating intellectual disability terminology and concepts.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: Subchapter V of ch. 115, Stats.

Statutory authority: Subchapter V of ch. 115, Stats., and 227.11 (2) (a) (intro), Stats.

Explanation of agency authority:

Under s. 227.11(2)(a)(intro), Stats., "Each 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." As such, PI 11 is required to effectively implement and provide transparency to the programs involving children with disabilities under Subchapter V of ch. 115, Stats.

Related statute or rule: None.

Plain language analysis:

This proposed rule change adjusts the terminology, definition, and eligibility contained in PI 11.36 (1) to align with language used in federal law (Rosa's Law, Pub. L. 111-256) and with the American Association on Intellectual and Developmental Disabilities' classification manual, *Intellectual Disability: Definition, Classification, and Systems of Supports*, 11th edition (2010).

In the proposed rule, cognitive disability is changed to intellectual disability to reflect current terminology.

Intellectual disability is defined as significant limitations in intellectual functioning and significant limitations in adaptive behavior that occur during the developmental period and adversely affect educational performance. Significant limitations in intellectual functioning consists of 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. Significant limitations in adaptive behavior consists of a standard score on adaptive behavior that is 2 standard deviations or more below the mean for conceptual skills, social skills, practical adaptive skills or the overall composite score of these 3 factors. These standardized or nationally-normed measures are comprehensive, individual assessments that include interviews of the parents and observations of the child in adaptive behavior-relevant to the child's age.

Educational performance is adversely affected in ages 3 through 5 if there is a standard score that is 2 standard deviations or more below the mean on a measure of language development and communication, cognition, and general knowledge or a standard score that is 2 standard deviations or more below the mean on a measure of written language, reading, and

mathematics for those ages 6 to 21. However, if educational performance cannot be assessed in this manner due to functioning level or age, a standardized developmental scale or body of evidence may be used.

A child continues to qualify as intellectually disabled if the child met the initial identification criteria and continues to demonstrate a need for specially designed instruction.

Summary of, and comparison with, existing or proposed federal regulations: N/A.

Comparison with rules in adjacent states: N/A.

Summary of factual data and analytical methodologies:

The language in PI 11.36 (1) uses cognitive disability. The term cognitive disability and its definition are not consistent with current means of determining whether someone has an intellectual disability. As a result, cognitive disability is changed to intellectual disability and the definition of and determination of an intellectual disability is changed to align with the American Association on Intellectual and Development Disabilities' classification manual, *Intellectual Disability: Definition, Classification, and Systems of Supports*, 11th edition (2010) and to include current terminology used in the Wisconsin Model Early Learning Standards.

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 economic impact on small businesses, as defined in s. 227.114 (1), 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 Carl.Bryan@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 (1) (title), (a) and (b) (intro) are amended to read:

(1) ~~COGNITIVE~~INTELLECTUAL DISABILITY.

(a) ~~Cognitive disability means significantly subaverage intellectual functioning that exists concurrently with deficits in adaptive behavior and~~ 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 ~~a cognitive~~ an intellectual disability if the child meets the criteria under subs. 1. ~~a. or b.~~, 2., and 3. a. or b. as follows:

SECTION 2. PI 11.36 (1) (b) 1. a. is renumbered 11.36 (1) (b) 1.

SECTION 3. PI 11.36 (1) (b) 1. is amended to read:

1. The child has a standard score of 2 or more standard deviations below the mean on ~~an at least one~~ 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.

SECTION 4. PI 11.36 (1) (b) 1. b. is repealed.

SECTION 5. PI 11.36 (1) (b) 2. (intro) is amended to read:

2. The child has ~~deficits~~ significant limitations in adaptive behavior ~~as 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:

SECTION 6. PI 11.36 (1) (b) 2. a. to j. are repealed.

SECTION 7. PI 11.36 (1) (b) 2. am. to dm. are created to read:

2.

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.

SECTION 8. PI 11.36 (1) (b) 3. a. and b. are amended to read:

3.

a. ~~The~~ 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 at least 2 of the following areas: academic readiness, comprehension of language or communication, or motor skills language development and communication, cognition, and general knowledge.

b. ~~The~~ 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 general information and at least 2 of the following areas: written language, reading, or mathematics.

SECTION 9. PI 11.36 (1)(b) 3. b. (Note) is repealed.

SECTION 10. PI 11.36 (1) (b) 3. c. and 4. are created to read:

3.

c. A standardized development scale or a body of evidence including informal measures shall be used when it is determined that reliable and valid assessment results on the academic areas under subd. 3. a. or b. are not possible due to the student's functioning level or age.

4. Upon re-evaluation, a child who met initial identification criteria and continues to demonstrate a need for special education under s. PI 11.35 (2), including specially designed instruction, is a child with a disability under this section.

SECTION 11. STATEMENT OF EMERGENCY:

FINDING OF EMERGENCY

The Department of Public Instruction finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

An emergency rule is needed so this rule change is in effect prior to the beginning of the 2015-16 school year. This will ensure that the same intellectual disability criteria are applied to children throughout the school year. If this rule is not effective prior to the beginning of the school year, school districts will have to implement one set of procedures for part of the school year and then change procedures when the rule takes effect. This would make implementation of the intellectual disability criteria more difficult and may result in children being treated differently based on when they were evaluated for an intellectual disability.

SECTION 12. EFFECTIVE DATE:

The rules contained in this order shall take effect on July 1st, 2015.

Dated this _____ day of _____, 201_

Tony Evers, PhD
State Superintendent