

# Clearinghouse Rule 96-121

## CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF PUBLIC INSTRUCTION)

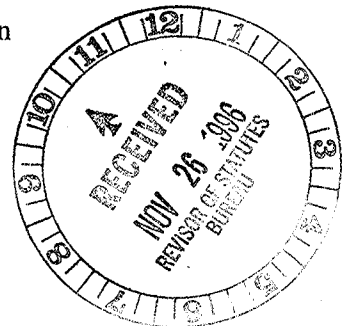
I, State Superintendent of the Department of Public Instruction and custodian of the official records of said Department, do hereby certify that the annexed rule relating to the method of resolving disputes concerning children with exceptional educational needs between school boards and the parents of those children was duly approved and adopted by this Department on the first day of the month following publication in the Wisconsin Administrative Register.

I further certify that said copy has been compared by me with the original on file in this Department and the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the official seal of the Department at General Executive Facility (GEF) 3, 125 South Webster Street, P.O. Box 7841, in the city of Madison, this 26<sup>th</sup> day of November, 1996.

*John T. Benson* / 115

John T. Benson  
State Superintendent  
State Department of Public Instruction



2-1-96

**ORDER OF THE  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
AMENDING RULES**

The state superintendent of public instruction hereby repeals PI 11.02(46), PI 11.09(1)(d)4m and n, PI 11.11, amends PI 11.02(24) and (25), PI 11.08(6), PI 11.09(1)(d)4p and q, PI 11.10(3)(title)(a) and (c), (4) and (10), PI 11.13(1) to (3), PI 11.14(1)(c)2, and PI 11.26(1)(a), repeals and recreates PI 11.10(2) and PI 11.12, and creates PI 11.02(23)(i) to (k), and PI 11.10(11) and (12), relating to the method of resolving disputes concerning children with exceptional educational needs between school boards and the parents of those children.

---

**ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION**

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

Statute interpreted: s. 115.81, Stats.

The proposed rules modify ch. PI 11 due to provisions included in 1996 Wisconsin Act.

1996 Wisconsin Act 431 eliminates the two-tier system for resolving disputes concerning a child with exceptional educational needs who is enrolled in the school district and the parents of the child. The Act eliminates the initial hearing conducted by a hearing officer appointed by a school board. Instead, the Act provides that the school board or the parent of the child may initiate the process by filing a written request for a hearing with the department. The department must appoint a hearing officer who is not employed by or under contract with a school board (or otherwise employed by the department) to conduct the hearing. The school board must pay the cost of the hearing. Either party may appeal the decision of the hearing officer to circuit court or federal district court.

The proposed rules have been modified to conform to statutory language amended as a result of the Act. These rules were promulgated as emergency rules effective June 25, 1996.

---

**SECTION 1.** PI 11.02(24) and (25) are amended to read:

PI 11.02(24) "Hearing" means an official private or public proceeding conducted by ~~a board. It shall be conducted~~ the department according to the procedures contained in s. PI 11.10.

(25) "Hearing officer" means a person who is ~~selected~~ appointed under s. PI 11.10(3)(a) to conduct a hearing under s. PI 11.10.

**SECTION 2.** PI 11.02(46) is repealed.

**SECTION 3.** PI 11.08(6) is amended to read:

PI 11.08(6)(title) ~~HEARING AND REVIEWING OFFICERS~~ OFFICER MAY ORDER AN INDEPENDENT EDUCATIONAL EVALUATION. A hearing officer may order that an independent educational evaluation of a child be conducted as provided under s. PI 11.10(7). ~~A reviewing officer may order that an independent educational evaluation be conducted as provided under s. PI 11.11(7).~~

**SECTION 4.** PI 11.09(1)(d)4m and n are repealed.

**SECTION 5.** PI 11.09(1)(d)4p and q are amended to read:

PI 11.09(1)(d)p. The right to impartial hearing ~~and reviewing~~ officers under s. PI 11.12(1).

q. The right to bring a civil action under s. ~~PI 11.11(10)~~ 11.10(11).

**SECTION 6.** PI 11.10(2) is repealed and recreated to read:

PI 11.10(2) INITIATING A HEARING. A parent or board may initiate a hearing by sending a letter to the department. The letter shall state the specific reasons for requesting a hearing.

**SECTION 7.** PI 11.10(3)(title)(a) and (c), (4) and (10) are amended to read:

PI 11.10(3)(title) DEPARTMENT AND BOARD RESPONSIBILITY. (a) After ~~a board has sent receipt of a letter~~ initiating a hearing ~~or received a request for a hearing~~ under sub. (2), the ~~board~~ department shall ~~select~~ appoint a hearing officer in accordance with s. PI 11.12(2)(e). After the ~~board~~ department has ~~selected~~ appointed a hearing officer, the ~~board~~ department shall send to the ~~division~~ board and the parent a copy of the letter that initiated the hearing and the name and address of the hearing officer who was ~~selected~~ appointed. The ~~board~~ department shall also inform the ~~other party~~ parent in writing ~~of the name and address of the hearing officer selected~~ and of any free or low-cost legal and other relevant services available in the area if the parent or board requests a hearing under sub. (2) or if the parent requests the information.

(c) When a request for a hearing is settled or withdrawn before a decision is issued by the hearing officer, the board shall in writing inform the ~~division~~ hearing officer of the settlement or withdrawal, and it shall indicate how the issues were resolved. The hearing officer shall enter a final order dismissing the hearing and the case upon settlement or withdrawal of the hearing request.

(4) HEARING OFFICER RESPONSIBILITY. (a) The hearing officer who is ~~selected~~ appointed under sub. (3) shall set a time and place for a hearing which is agreeable to both parties and which is reasonably convenient for the parents and child. The hearing officer shall, within a reasonable period of time prior to the date set for the hearing, send the parties a written notice stating the time and place of the hearing and explaining the parties' rights at the hearing. The hearing officer shall make arrangements ~~for a stenographer~~ to record the hearing and to make a written transcript of the hearing as soon as possible after the completion of the hearing.

(b) The hearing officer shall conduct the hearing, issue a decision in the hearing, and mail a copy of the decision and a notice explaining the appeal rights under s. ~~PI 11.11~~ 11.10(11) to the parties within 45 days after the ~~board either sent the letter initiating the hearing or received the request for~~ department received the letter initiating the hearing under sub. (2). The hearing officer may grant specific extensions of time beyond the 45-day time period at the request of either party.

(c) As soon as practical after a decision has been issued under par. (b), the hearing officer shall deliver to the ~~division~~ department a copy of the hearing officer's decision.

(d) The hearing officer shall ~~give to the board~~ deliver to the department the official record of the hearing, as specified in sub. (9), as soon as he or she has completed his or her responsibilities and the record is complete.

(10) DECISION. A hearing officer's decision shall consist of findings of fact and conclusions of law and shall be based upon a preponderance of the evidence. The findings of fact shall be based solely upon the evidence received at the hearing. A decision is final unless a party to the hearing appeals the decision under s. ~~PI 11.11(1)~~ 11.10(11). A final decision is enforceable by an order of a circuit court.

**SECTION 8.** PI 11.10(11) and (12) are created to read:

PI 11.10(11) APPEAL TO COURT. A party aggrieved by the decision under sub. (10) may appeal that decision to the circuit court for the county in which the child resides within 45 days after the date the decision was mailed under sub. (4)(b) pursuant to s. 115.81(7), Stats., or to federal district court pursuant to 20 USC 1415 and 34 CFR 300.511.

(12) NOTICE OF THE APPEAL TO COURT. The state superintendent shall notify the parent or school board who is not a party to the appeal to the court of that appeal and any reasons for the appeal that have been specified.

**SECTION 9.** PI 11.11 is repealed.

**SECTION 10.** PI 11.12 is repealed and recreated to read:

PI 11.12 HEARING OFFICERS. (1) IMPARTIALITY. No person may be appointed as a hearing officer if that person meets any of the following criteria:

(a) Is an employe 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 or appeal. A person who otherwise qualifies to conduct a hearing under this paragraph is not an employe of the department solely because he or she is paid by the department to serve as a hearing officer.

(b) Is an employe of or under contract to a board, CESA or CHCEB.

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

(2) HEARING OFFICERS; APPOINTMENT. (a) The department 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 department 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 department 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 department. Annually thereafter each person shall attend a refresher course approved by the department. The department may charge fees of persons attending the training courses.

**SECTION 11.** PI 11.13(1) and (2) are amended to read:

PI 11.13 EDUCATIONAL PLACEMENT OF A CHILD DURING HEARINGS AND COURT PROCEEDINGS.

(1) During the pendency of a hearing under s. PI 11.10, ~~an appeal under s. PI 11.11,~~ or a court proceeding arising from ~~s. PI 11.11,~~ such a hearing unless the board and the parent agree otherwise, the child who is the subject of the hearing, ~~appeal or court~~ proceeding shall remain in his or her current educational placement.

(2) If a hearing, ~~appeal~~, or court proceeding specified in sub. (1) involves an application for initial admission to a public school district in which the child does not have a current educational placement, the child, with the consent of the parent, shall be placed in a public school program until the completion of the hearing, ~~appeal~~, or court proceeding.

**SECTION 12.** PI 11.13(3) is repealed.

**SECTION 13.** PI 11.13(4) and (5) are renumbered PI 11.13(3) and (4), respectively and PI 11.13(4) as renumbered is amended to read:

PI 11.13(4) Notwithstanding subs. (1); and (2) and (3), if a hearing, ~~appeal~~ or proceedings court proceeding specified in sub. (1) involves a child placed pursuant to sub. ~~(4)~~ (3) in an interim alternative educational setting, then the child shall remain in the interim alternative educational setting during the pendency of any such hearing, ~~appeal~~ or court proceeding, unless the parents and the board agree otherwise.


**SECTION 14.** PI 11.14(1)(c)2 is amended to read:

PI 11.14(1)(c)2. A surrogate parent may request a hearing under s. PI 11.10 to challenge the termination of his or her appointment. If a surrogate parent sends a request for a hearing before the effective date of the termination, a board shall continue the surrogate parent's appointment during the pendency of a hearing under s. PI 11.10, ~~an appeal under s. PI 11.11~~ or a court proceeding arising from ~~s. PI 11.11~~ such a hearing, unless the board and the surrogate parent agree otherwise.

**SECTION 15. INITIAL APPLICABILITY.** This rule first applies to a request for a hearing filed on or after June 25, 1996.

The rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 26<sup>th</sup> day of November, 1996

  
\_\_\_\_\_  
John T. Benson  
State Superintendent

