



WISCONSIN STATE SENATOR
RICHARD GROBSCHMIDT

7TH SENATE DISTRICT

August 27, 2002

TO: Senate Education Committee Members

FROM: Senator Grobschmidt

RE: Clearinghouse Rule 02-107 – relating to the children at risk program
Clearinghouse Rule 01-069 – relating to testing of pupils with limited-
English proficiencies and disabilities.

The following rules have been referred to the Senate Education Committee. Please contact Lisa in my office (6-7505) by Friday, September 6, 2002, if you would like a public hearing on the rule.

Clearinghouse Rule 01-107 – relating to the children at risk program

Clearinghouse Rule 01-069 – relating to testing of pupils with limited-English proficiencies and disabilities.



State of Wisconsin
Department of Public Instruction

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Elizabeth Burmaster
State Superintendent

August 16, 2002

The Honorable Fred Risser
President, Wisconsin Senate
Room 220 South State Capitol
Madison, WI 53702

The Honorable Scott Jensen
Speaker, Wisconsin Assembly
Room 211 West State Capitol
Madison, WI 53702

Dear Gentlemen:

The following rule is in final draft form and is submitted to you for referral to the appropriate standing committees:

CHR 02-107

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Burmaster".

Elizabeth Burmaster
State Superintendent

NOTICE OF RULES IN FINAL DRAFT FORM

NOTICE IS HEREBY GIVEN To the presiding officers of each house of the legislature that the proposed rules are in final draft form according to the procedure set forth in s. 227.19, Stats.

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION AMENDING RULES

The state superintendent of public instruction hereby proposes to amend PI 25.06 (2) and PI 25.07 (1) (a), relating to the children at risk program.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: ss. 118.153 (7) and 227.11 (2) (a), Stats.

Statute interpreted: s. 118.153, Stats.

The department recently promulgated Clearinghouse Rule 01-119, relating to children at risk under ch. PI 25. Although the following changes were listed in the analysis of the rule, the corresponding modifications to ch. PI 25 were inadvertently left out:

- Eliminating the requirement that school districts meeting certain criteria (50 or more dropouts and a dropout rate exceeding 5%) must apply for children at risk aid.
- Allowing school districts with 30 or more dropouts or a dropout rate exceeding 5% of their total enrollment to apply for children at risk aid.

The proposed rule states: "If, in the previous school year, a school district has 30 or more dropouts or a dropout rate exceeding 5% of its total high school enrollment, the board may apply to the state superintendent for aid under this section."

The rule currently states, in part: ". . . 50 or more dropouts AND a dropout rate exceeding 5% of its total high school enrollment, the board SHALL apply to the state superintendent for aid under this section." (Emphasis added).

This modification will bring the rule into compliance with statutory language under s. 118.153 (2) (b), Stats.

- Modifying the allowable size of the Milwaukee programs to require at least 30 pupils (rather than 40) and no more than 250 pupils (rather than 200).

The proposed rule states: "That there are at least 30 pupils and not more than 250 pupils in each program and that a separate administrator or teacher is in charge of each program."

The rule currently states, in part: ". . . 40 pupils and not more than 200 pupils . . ."

This modification will bring the rule into compliance with statutory language under s. 118.153 (3) (b), Stats.

The proposed rules are modified to conform to current statutory language. Therefore, pursuant to s. 227.16 (2) (b), Stats., the department will not hold public hearings regarding these rules.

SECTION 1. PI 25.06 (2) is amended to read:

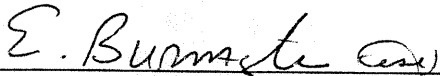
PI 25.06 (2) That there are at least ~~40~~ 30 pupils and no more than ~~200~~ 250 pupils in each program and that a separate administrator or teacher is in charge of each program.

SECTION 2. PI 25.07 (1) (a) is amended to read:

PI 25.07 (1) (a) If, in the previous school year, a school district had ~~50~~ 30 or more dropouts ~~and~~ or a dropout rate exceeding 5% of its total high school enrollment, the board ~~shall~~ may apply to the state superintendent for aid under this section.

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 16th day of August, 2002



Elizabeth Burmaster
State Superintendent

FISCAL ESTIMATE : ORIGINAL UPDATED) LRB or Bill No./Adm. Rule No.
Chapter PI 25

DOA-2048 (R10/92) CORRECTED SUPPLEMENTAL Amendment No. If Applicable

Subject: The Children at Risk Program

Fiscal Effect
State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation
 Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation
 Increase Costs-May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs (See attached)
 1. Increase Costs Permissive Mandatory
 2. Decrease Costs Permissive Mandatory
 3. Increase Revenues Permissive Mandatory
 4. Decrease Revenues Permissive Mandatory
 5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts VTAE Districts

Fund Sources Affected GPR FED PRO PRS SEG SEG-S **Affected Ch. 20 Appropriations**

Assumptions Used in Arriving at Fiscal Estimate
 The proposed changes to Chapter PI 25, rules relating to children at risk, are made as a result of statutory changes under 1999 Wisconsin Act 123. Therefore, the rules will not have a fiscal effect separate from the statutory changes made under the Act.
 The funding for the children at risk program remains at \$3.5 million annually. Under previous law, any school that had 50 or more dropouts and a dropout rate exceeding 5% of its total enrollment was required to apply for children at risk aid. The Act made participation by a school district *permissive* for any school district that had 30 or more dropouts or a dropout rate that exceeds 5% of its total enrollment in the previous year. By expanding the eligibility criteria, more school districts are eligible to receive children at risk aid, potentially dropping the proration rate further. The payment issued in May 2001 was prorated at 65% of the claims made by districts.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.) Department of Public Instruction
 Lori Slauson (608) 267-9127
 Authorized Signature Telephone No. *Michael Bormett*
 Michael Bormett (608) 266-2804
 Date 7/18/02

**FINAL REPORT
CLEARINGHOUSE RULE 01-119
CHAPTER PI 25
CHILDREN AT RISK PROGRAM**

Analysis by the Department of Public Instruction

Statutory authority: ss. 118.153 (7) and 227.11 (2) (a), Stats.
Statute interpreted: s. 118.153, Stats.

The department recently promulgated Clearinghouse Rule 01-119, relating to children at risk under ch. PI 25. Although the following changes were listed in the analysis of the rule, the corresponding modifications to ch. PI 25 were inadvertently left out:

- Eliminating the requirement that school districts meeting certain criteria (50 or more dropouts and a dropout rate exceeding 5%) must apply for children at risk aid.
- Allowing school districts with 30 or more dropouts or a dropout rate exceeding 5% of their total enrollment to apply for children at risk aid.

The proposed rule states: "If, in the previous school year, a school district has 30 or more dropouts or a dropout rate exceeding 5% of its total high school enrollment, the board may apply to the state superintendent for aid under this section."

The rule currently states, in part: "... 50 or more dropouts AND a dropout rate exceeding 5% of its total high school enrollment, the board SHALL apply to the state superintendent for aid under this section." (Emphasis added).

This modification will bring the rule into compliance with statutory language under s. 118.153 (2) (b), Stats.

- Modifying the allowable size of the Milwaukee programs to require at least 30 pupils (rather than 40) and no more than 250 pupils (rather than 200).

The proposed rule states: "That there are at least 30 pupils and not more than 250 pupils in each program and that a separate administrator or teacher is in charge of each program."

The rule currently states, in part: "... 40 pupils and not more than 200 pupils ..."

This modification will bring the rule into compliance with statutory language under s. 118.153 (3) (b), Stats.

The proposed rules are modified to conform to current statutory language. Therefore, pursuant to s. 227.16 (2) (b), Stats., the department did not hold public hearings regarding these rules.

RESPONSES TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

The rules were reviewed by the Rules Clearinghouse. No comments were reported to the department.

FINAL REGULATORY FLEXIBILITY ANALYSES

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114(1)(a), Stats.

Summary of Comments:

No comments were reported.



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-107

AN ORDER to amend PI 25.06 (2) and 25.07 (1) (a), relating to the children at risk program.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

07-19-2002 RECEIVED BY LEGISLATIVE COUNCIL.

08-06-2002 REPORT SENT TO AGENCY.

RS:JLK

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



State of Wisconsin Department of Public Instruction

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Elizabeth Burmaster
State Superintendent

August 16, 2002

The Honorable Fred Risser
President, Wisconsin Senate
Room 220 South State Capitol
Madison, WI 53702

The Honorable Scott Jensen
Speaker, Wisconsin Assembly
Room 211 West State Capitol
Madison, WI 53702

Dear Gentlemen:

The following rule is in final draft form and is submitted to you for referral to the appropriate standing committees:

CHR 01-069

Sincerely,

A handwritten signature in cursive script that reads "E. Burmaster" followed by a flourish.

Elizabeth Burmaster
State Superintendent

NOTICE OF RULES IN FINAL DRAFT FORM

NOTICE IS HEREBY GIVEN To the presiding officers of each house of the legislature that the proposed rules are in final draft form according to the procedure set forth in s. 227.19, Stats.

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION AMENDING RULES

The state superintendent of public instruction hereby proposes to repeal Chapters PI 13 and PI 16 and recreate Chapter PI 13, relating to limited-English proficient pupils.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: ss. 115.996, 118.30 (2) (b) 2., and 227.11 (2) (a), Stats.

Statute interpreted: subch. VII of ch. 115 and ss. 118.30 and 121.02 (1) (r), Stats.

On June 12, 2001, the department submitted modifications to Chapter PI 16, Wis. Admin. Code, relating to testing of pupils with limited-English proficiencies and disabilities (CHR 01-069). However, as a result of on-going negotiations with the U. S. Department of Education, the department is now making germane modifications to CHR 01-069. The following paragraphs describe the original rule proposal (CHR 01-069) and the modifications made to CHR 01-069:

Original Rule Proposal (CHR 01-069):

Under s. 118.30, Stats., the state superintendent must adopt or approve examinations designed to measure pupil attainment of knowledge and concepts in the 4th, 8th, and 10th grades. Currently, the rules establish criteria and procedures to determine whether a pupil with limited-English proficiency (LEP) or a pupil having an exceptional educational need or EEN (now referred to as child with a disability) may be exempt from taking a test under s. 118.30, Stats.

The proposed rules:

- Repeal the criteria and procedures relating to testing children with disabilities. In 1998, the legislature made sweeping changes to the statutes regarding special education for children with disabilities. The legislature also repealed most state rules regarding special education contained in Chapter PI 11, Wisconsin Administrative Code. The reduction in state rules was intended to eliminate conflicts between the rules and the new state statute and federal law. In addition, in an effort to reduce regulatory complexity and potential incongruence between state rule and federal law, the department eliminated rules in areas adequately addressed by state statute or federal law. Because the provisions in the current rule under chapter PI 16 conflict with provisions in state statute and federal law, the proposed rule repeals the subchapter relating to testing children with disabilities. New rule language in this area is not necessary because testing and assessment issues relating to children with disabilities are already comprehensively addressed in state and federal special education statutes and regulations.
- Ensure that all LEP pupils participate in the Wisconsin Knowledge and Concept Examinations (WKCE) unless it is determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil's academic knowledge and skills. The statutes require the state superintendent to set criteria by rule, regarding the testing of LEP pupils. The current rules conflict with federal regulations under the Elementary and Secondary Education Act because the rules automatically exempt LEP pupils at lower English proficiency levels from taking any of the Wisconsin Knowledge and Concept Examinations (WKCE).
- Ensure that LEP pupils who do not participate in the WKCE are provided with a department-approved alternate assessment.
- Clarify that exempting a pupil from taking the WKCE may not be used as the sole criterion in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for postsecondary education

opportunities. Current rule language could be interpreted to require school districts to promote or graduate an LEP pupil if the pupil is exempt from taking a standardized test.

- Clarify that the criteria under this chapter also apply to the 4th grade test administered under s. 118.30, Stats. At the time the rules were originally developed, only the 8th and 10th grade tests were being administered under s. 118.30, Stats. Since that time, the 4th grade test was added to the WKCE administered under s. 118.30, Stats., and the rules should be changed accordingly.
- Change the term "limited-English speaking" to "limited-English proficient" to be consistent with statutory terminology under s. 115.955 (7), Stats.

Modifications to CHR 01-069:

In December 2000, the department received correspondence from the U. S. Department of Education relating to certain aspects of Wisconsin's assessment system that "must be addressed in order for Wisconsin to remain eligible to receive Title I funds." Wisconsin receives more than \$130 million annually in Title I funds. The following is a summary of the department's plan, in part, to fully implement the assessment and accountability provisions under Title I through a timeline waiver agreement with the U.S. Department of Education:

- The department will work with school districts to increase the number of LEP pupils participating in the state assessment system (WKCE and WRCT).
- All students will be included in the assessment system, either by participation in the state assessments (with or without accommodations) or by participation in alternate assessments, with results incorporated into school and district accountability determinations.
- Additional accommodations will be provided, and administrative rules will be modified to ensure that all LEP pupils are appropriately assessed.
- Alternate assessments will be provided for LEP pupils who are not able to demonstrate at least some of the knowledge and skills on the WKCE. Guidance as to who should participate in these assessments will be provided to districts.

In an effort to comply with U. S. Department of Education's timeline waiver agreement and to organize school district requirements relating to LEP pupils, the germane modifications to CHR 01-069 include:

- Repealing Chapters PI 13 and 16 and recreating and reorganizing the provisions under these chapters into a new Chapter PI 13. The intent is to have all LEP pupil information under one chapter, rather than two chapters, making it easier for schools to find relevant information. The original modifications to Chapter PI 13 proposed under CHR 01-069 remain intact but are now reorganized. Also, the provisions under Chapter PI 16 for the most part remain intact except for the following:
 - The definitions used in determining the English proficiency level of an LEP pupil have been modified and a new definition, level 6 – formerly LEP now fully English proficient, has been added.
 - School boards are required to use a department-approved assessment in determining the English proficiency level of an LEP pupil.
- Ensuring that all LEP pupils participate in the Wisconsin Reading Comprehension Test (WRCT) required under s. 121.02 (1) (r), Stats., unless it is determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil's academic knowledge and skills. Although the department does not have specific statutory authority to set criteria by rule regarding the testing of LEP pupils for the WRCT as it does with the WKCE, criteria for administering this test to LEP pupils are included for the following reasons:
 - For consistency, criteria should be the same when determining whether or not to administer any statutorily required test to an LEP pupil.
 - Under the federal No Child Left Behind Act (which reauthorized Title I), schools must annually assess math and reading skills in grades 3 through 8, and testing criteria for LEP pupils must be specified. To meet the provisions under the Act, the department will administer the WRCT in the 3rd grade and LEP pupils will continue to be included in that testing as specified in this rule.

- Requiring certain information and assurances that were formerly required under Chapters PI 13 and 16 to now be required in a school board's policy.

SECTION 1. Chapters PI 13 and 16 are repealed and Chapter PI 13 is recreated to read:

CHAPTER PI 13

LIMITED-ENGLISH PROFICIENT PUPILS

Subchapter I - General provisions

PI 13.01 Authority. This chapter is adopted under ss. 115.996, 118.30 (2) (b) 2., and 227.11 (2) (a), Stats.

PI 13.02 Applicability and purpose. This chapter establishes requirements for school districts whose population includes LEP pupils as follows:

(1) Subchapter II establishes specific requirements for all school districts whose pupil population includes one or more LEP pupils, including procedures for the identification, assessment, and classification of LEP pupils and criteria and procedures to be used by a school district in determining whether to administer a test under ss. 118.30 or 121.02 (1) (r), Stats., to an LEP pupil.

(2) Subchapter III establishes specific requirements for school districts required to offer bilingual-bicultural education programs under s. 115.97 (2), (3), or (4), Stats., or receiving federal funds under 20 U.S.C. ss. 6301 et. seq.

NOTE: 20 U.S.C. ss. 6301 et. seq. is also known as the Title I Basic Grant Program under the Elementary and Secondary Education Act/No Child Left Behind Act.

PI 13.03 Definitions. In this chapter:

(1) "Alternate assessment" means any department-approved, standards-based alternative to a test administered under ss. 118.30 or 121.02 (1) (r), Stats.

(2) "Bilingual-bicultural education program" has the meaning defined under s. 115.955 (2), Stats.

(3) "Bilingual counselor" means a person licensed under s. PI 3.50.

(4) "Bilingual counselor's aide" means a person who is employed to assist a counselor and who meets all of the following:

(a) Understands, speaks, reads, and writes English and the language of the group with whom the bilingual counselor's aide will be working.

(b) Has a high school diploma or its equivalent.

(c) Demonstrates knowledge of and skills in working with the culture of the group with whom the bilingual counselor's aide will be working.

(5) "Bilingual teacher" means a person licensed under ss. PI 3.47 or PI 34.33 (3).

(6) "Bilingual teacher's aide" means a person who is employed to assist a teacher and who meets all of the following:

(a) Understands, speaks, reads, and writes English and the language of the group with whom the bilingual teacher's aide will be working.

(b) Has a high school diploma or its equivalent.

(c) Knows the culture of the group with whom the bilingual teacher's aide will be working.

(7) "Department" means the Wisconsin department of public instruction.

(8) "Fully English proficient" means a former LEP pupil who can now read, write, speak and comprehend English within the academic classroom setting.

(9) "LEP pupil" means a limited-English proficient pupil defined under s. 115.955 (7), Stats., who has difficulty with reading, writing, speaking or comprehending in English within the academic classroom setting.

(10) "Test" means the examination administered to pupils enrolled in the 3rd, 4th, 8th and 10th grades under ss. 118.30 and 121.02 (1) (r), Stats.

Subchapter II – School Board Requirements Relating to LEP Pupils

PI 13.04. Applicability and purpose. This subchapter establishes identification, assessment, classification, and reporting requirements for all school districts whose pupil population includes one or more LEP pupils. This subchapter also establishes criteria and procedures to be used by a school district in determining whether to administer a test under ss. 118.30 or 121.02 (1) (r), Stats., to an LEP pupil.

PI 13.05. School board policy. Each school board whose pupil population includes one or more LEP pupils shall adopt a policy regarding the identification, language assessment, classification and reclassification, support services, academic achievement and assessment, and the design of the educational program or support for LEP pupils.

PI 13.06 Identification of LEP pupils. Each school board shall identify potential LEP pupils within the school district as part of the enrollment process using a home language survey and department-approved English proficiency assessment under s. PI 13.07. The school board shall identify pupils meeting any of the following criteria:

- (1) Pupils who communicate in a language other than English.
- (2) Pupils whose families use a language other than English.
- (3) Pupils who use a language other than English in daily non-school surroundings.

PI 13.07 English proficiency assessment. Each school board shall determine the English proficiency level of a pupil identified under s. PI 13.06 and shall place the pupil in an appropriate education program. The school board shall use a department-approved assessment instrument, maintain all assessment records, and report information to the department under s. PI 13.15. The assessment procedures used under this subdivision may include supplemental indicators or data that include any of the following:

- (1) Prior academic records from within or outside the United States.
- (2) Course grades which, in relation to the pupil's grade level, indicate that lack of progress is due to limited English language skills.
- (3) Information on everyday classroom performance.

PI 13.08 Classification of LEP pupils. The school board shall classify each pupil assessed under s. PI 13.07 as one of the following:

- (1) **LEVEL 1 – BEGINNING PREPRODUCTION.** The pupil does not understand or speak English with the exception of a few isolated words or expressions.

(2) LEVEL 2 - BEGINNING PRODUCTION. (a) The pupil understands and speaks conversational and academic English with hesitancy and difficulty.

(b) The pupil understands parts of lessons and simple directions.

(c) The pupil is at a pre-emergent or emergent level of reading and writing in English, significantly below grade level.

(3) LEVEL 3 - INTERMEDIATE. (a) The pupil understands and speaks conversational and academic English with decreasing hesitancy and difficulty.

(b) The pupil is post-emergent, developing reading comprehension and writing skills in English.

(c) The pupil's English literacy skills allow the pupil to demonstrate academic knowledge in content areas with assistance.

(4) LEVEL 4 - ADVANCED INTERMEDIATE. (a) The pupil understands and speaks conversational English without apparent difficulty, but understands and speaks academic English with some hesitancy.

(b) The pupil continues to acquire reading and writing skills in content areas needed to achieve grade level expectations with assistance.

(5) LEVEL 5 - ADVANCED. (a) The pupil understands and speaks conversational and academic English well.

(b) The pupil is near proficient in reading, writing, and content area skills needed to meet grade level expectations.

(c) The pupil requires occasional support.

(6) LEVEL 6 - FORMERLY LEP NOW FULLY ENGLISH PROFICIENT. (a) The pupil was formerly limited-English proficient and is now fully English proficient.

(b) The pupil reads, writes, speaks and comprehends English within the academic classroom setting.

PI 13.09 Testing of LEP pupils. (1) POLICIES. Each school board policy under s. PI 13.05 shall include procedures regarding the testing of LEP pupils. The policy shall include all of the following assurances:

(a) Test administration to an LEP pupil shall be made on an individual basis and information on both academic and English proficiency data shall be documented.

(b) Test results may not be used as a sole criterion in re-classifying an LEP pupil from a bilingual-bicultural education program or in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for participation in postsecondary education opportunities.

(c) Exemption of an LEP pupil from taking a test may not be used as the sole criterion in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for postsecondary education opportunities.

(2) TEST OR ALTERNATE ASSESSMENT ADMINISTRATION. (a) A school board shall make case-by-case determinations as to whether an LEP pupil shall take a test or alternate assessment. A school board may not exempt LEP pupils from academic assessments based on their LEP status.

(b) A school board shall administer a test to an LEP pupil unless a determination has been made that the results of the test, with allowable accommodations made for the pupil as needed, will not be a valid and reliable indicator of the pupil's academic knowledge and skills.

(c) A school board that exempts an LEP pupil from taking a test shall provide a department-approved alternate assessment for that pupil.

(d) A school board shall administer tests, alternate assessments or both to an LEP pupil as follows:

1. Pupils at English proficiency levels 1 or 2 under s. PI 13.08 (1) or (2), shall participate in an alternate assessment even if these pupils participate in a test.

2. Pupils at English proficiency levels 3 through 5 under s. PI 13.08 (3) through (5), shall participate in a test but may also participate in an alternate assessment.

3. The academic assessment of reading or English language arts of an LEP pupil who has attended school in the United States, not including Puerto Rico, for 3 or more full consecutive school years, beginning with enrollment in first grade, shall be conducted using tests written in English. For up to 2 additional years, local education agencies may determine, on a case-by-case basis, that alternate assessments may be used because more valid and reliable information may be obtained.

(e) An alternate assessment provided under this subsection shall be approved by the department and shall be provided in each assessed subject area as the test.

(3) TEST ACCOMMODATIONS. A school board that includes an LEP pupil in a test shall provide testing accommodations, if the pupil needs such accommodations. Any accommodations made shall maintain the validity of the test and may include, but are not limited to, one or more of the following:

(a) Provide the assistance of a qualified translator to translate instructions or read items from tests that do not assess English language competency.

(b) Provide small group or individual testing opportunities.

(c) Provide more practice tests or examples before the actual test is administered.

(d) Allow LEP pupils to use dictionaries and other educational aids while taking the test unless this use would invalidate the test.

(e) Allow pupils as much time as necessary to complete the test.

(f) Allow any other method approved by the department.

(4) TEST NOTIFICATION. (a) A school board shall notify the parent of the LEP pupil at least 30 days prior to the administration of the test regarding the pupil's inclusion in the test, the alternate assessment, or both. The notice shall be provided in English, the parent's native language or by any other necessary means to ensure that the parent understands the provisions of the notice. The notice shall include all of the following information:

1. The criteria used in determining the pupil's inclusion in the test, in the alternate assessment, or both.

2. An explanation of how the results of the test, the alternate assessment, or both will be used.

3. A description of any accommodations that will be provided to the pupil taking the test, if applicable.

(b) A school board shall notify the parent of the LEP pupil of the results of the test, the alternate assessment, or both. The notice shall be provided in English, the parent's native language or by any other necessary means to ensure that the parent understands the provisions of the notice.

(5) **TEST RESULTS.** A school board that administers a test, an alternate assessment or both to an LEP pupil shall use or report the results as follows:

(a) The results of both the test and alternate assessment shall be used consistent with the board's policies developed under s. 118.33 (1) (f) and (6), Stats., in making instructional, promotion, and graduation decisions.

(b) The results of the test, not the alternate assessment if both are given, shall be reported to the department.

(c) The results of the alternate assessment, if a test is not given, shall be reported to the department.

Subchapter III – Bilingual-Bicultural Education Programs

PI 13.10 Applicability and purpose. This subchapter establishes specific requirements for school districts required to offer bilingual-bicultural education programs under s. 115.97 (2), (3), or (4), Stats., or receiving federal funds under 20 U.S.C. ss. 6301 et. seq. School districts that establish bilingual-bicultural education programs under s. 115.97 (2), (3), or (4), Stats., are eligible for reimbursement under ss. 115.97 (1) and 115.995, Stats.

PI 13.11 General requirements. A school board that offers a bilingual-bicultural education program under this subchapter or receives federal funds under 20 U.S.C. ss. 6301 et. seq. shall meet the requirements under this subchapter and subchapter II.

PI 13.12 School board policy. The policy under s. PI 13.05 shall include all of the following assurances:

(a) The school board shall provide each LEP pupil with an effective instructional program and supportive services appropriate to meet the needs of the pupil.

(b) The school board shall provide each LEP pupil with full access to supportive services, such as language development and speech therapy available to other pupils in the school district as such services are appropriate to the individual needs of the pupil.

(c) The district shall provide programs and services that reflect the cultural background of the LEP pupils and may include instruction intended to improve the skills of such pupils in the use of their native language for the purpose of enabling them to become proficient or advanced in all subject areas.

PI 13.13 Program approved by department. (1) Each school district establishing a bilingual-bicultural education program shall provide a written description of the program that addresses the requirements under subch. II. The description shall include information on all of the following:

(a) The program design, objectives, staffing, and evaluation procedures.

(b) Staff certification, professional development activities, parent involvement activities and instructional materials to be used in the program.

(2) Each school district establishing a bilingual-bicultural education program shall ensure bilingual teachers, bilingual teacher's aides, bilingual counselors, and bilingual counselor's aides meet the definitions under this chapter.

(3) Each school district's proposed program shall be reviewed and approved by the department prior to the implementation of the local program. A proposed program shall be approved if it adequately meets the requirements of this chapter

PI 13.14 Reimbursement. (1) The school district shall submit, on appropriate financial claim forms, such information and data as required by the department for fiscal review and approval for reimbursement of the program.

Note: Copies of the required claim form may be obtained at no charge from financial aids and audit, department of public instruction, P.O. Box 7841, Madison, WI 53707-7841.

(2) The salaries of teachers and other staff members participating in bilingual-bicultural education programs shall be reimbursed according to the percentage of time such teachers and staff spend in the program and the number of eligible pupils in the program under s. PI 13.06. The reimbursement shall be computed as specified in s. 115.995, Stats.

(3) Supportive services as provided under s. PI 13.12 (b) may not be reimbursed under this section.

PI 13.15 Reporting requirements. Annually on or before August 15, each school district providing a program under this subchapter shall report to the department the following information as provided under ss. 115.993 and 115.996, Stats.:

(1) The number of pupils, including both LEP pupils and other pupils, instructed the previous school year in the bilingual-bicultural education programs. The pupils shall be identified by language group, grade level, age, and English language proficiency level determined under s. PI 13.08.

(2) An itemized statement on oath of all disbursements on account of the bilingual-bicultural education program operated during the previous school year and a copy of the estimated budget for that program for the current school year.

(3) The number of pupils served in the bilingual-bicultural education program for each language group in each school district in which such programs are offered.

(4) The number of pupils in each school district and language group who as a result of participation in a bilingual-bicultural education program improved their English language ability to such an extent that the program is no longer necessary for such pupils.

PI 13.16 Department responsibilities. (1) The department shall, at least annually, review, approve and evaluate the programs conducted under this subchapter by the school districts. This shall include reviewing and evaluating all of the following:

(a) The school board policies and procedures used for identifying, counting, classifying and placing eligible LEP pupils in an appropriate educational program.

(b) The notification sent out to parents, guardians or legal custodians, including the initial written parental consent for their child's participation in the program.

(c) The procedures used for the establishment of the program.

(d) The procedures to be used for parent complaints.

(e) The curriculum, instruction and materials being offered in the program.

(f) The English language proficiency and academic progress of LEP pupils in the program.

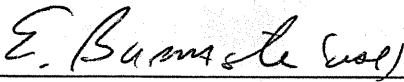
(g) The program evaluation design, results, and use of the results.

(h) The extent to which any existing gaps in achievement or English proficiency are reduced and eliminated over time.

(2) Pursuant to s. 115.996, Stats., the department shall submit an annual report to the legislature on December 31 regarding the status of bilingual-bicultural education programs established under this subchapter. The report shall include the school district information reported under s. PI 13.15.

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.

Dated this 16th day of August, 2002



Elizabeth Burmaster
State Superintendent

FISCAL ESTIMATE <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED)	LRB or Bill No./Adm. Rule No. Ch. PI 16, Wis. Admin. Code
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DOA-2048 (R10/92) <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	Amendment No. If Applicable
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Subject: Testing Pupils with limited-English proficiencies

<p>Fiscal Effect</p> <p>State: <input checked="" type="checkbox"/> No State Fiscal Effect</p> <p>Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation</p> <p><input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues</p> <p><input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues</p> <p><input type="checkbox"/> Create New Appropriation</p>	<p><input type="checkbox"/> Increase Costs-May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Decrease Costs</p>
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<p>Local: <input type="checkbox"/> No local government costs</p> <p>1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p>	<p>(see attached)</p> <p>3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory</p>	<p>5. Types of Local Governmental Units Affected:</p> <p><input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities</p> <p><input type="checkbox"/> Counties <input type="checkbox"/> Others _____</p> <p><input type="checkbox"/> School Districts <input type="checkbox"/> VTAE Districts</p>
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<p>Fund Sources Affected</p> <p><input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>Affected Ch. 20 Appropriations</p>
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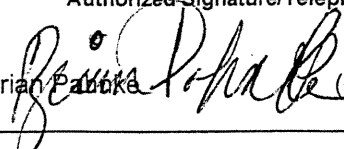
Assumptions Used in Arriving at Fiscal Estimate

Chapter PI 16 establishes criteria relating to the testing of limited-English proficient (LEP) pupils in the 4th, 8th, and 10th grade assessments under s. 118.30, Stats. Currently, the state administrative rules exempt LEP pupils at lower proficiency levels from taking these tests. The proposed rules eliminate the automatic exemption of such pupils and require that all LEP pupils be tested unless it has been determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil's academic knowledge and skills. School districts may incur new costs if a translator is used to administer a standardized test to a pupil who is currently exempt. Additional costs will vary within each district depending on its decisions about whether to administer standardized tests and on its population of LEP pupils. However, since most school districts already offer these services to LEP pupils who are taking tests, as well as other services, these new costs are not expected to be significant.

Districts that meet the criteria under subch. VII of ch. 115, Stats., are eligible to be partially reimbursed by state bilingual-bicultural aids for costs resulting from implementing LEP programs. It is important to note that if the exemption of LEP pupils at lower English proficiency levels continues, the State of Wisconsin could lose more than \$130 million in federal Title I funds because the U.S. Department of Education has found this practice to be out of compliance with federal regulations.

These proposed rules are not expected to result in new costs for the department.

Long-Range Fiscal Implications

<p>Agency/Prepared by: (Name & Phone No.)</p> <p>Department of Public Instruction</p> <p>Lori Slauson (608) 267-9127</p>	<p>Authorized Signature/Telephone No.</p> <p> Brian Pankke (608) 266-2804</p>	<p>Date</p> <p>5/4/01</p>
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WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-069

AN ORDER to repeal PI 16.02 (4) and 16.03 (2) and subchapter III of chapter PI 16; to renumber PI 16.03 (1) and (4); to renumber and amend PI 16.03 (5); to amend chapter PI 16 (title) and PI 16.02 (1), (2) and (3), 16.03 (3), subchapter II (title) of chapter PI 16, 16.04 (1), (2) (a) and (b) and (3), 16.05 (title), (1) (intro.) and (c), (2) and (3) (intro.) and (d) and 16.06 (1), (2) and (3); and to create PI 16.03 (1) and (4) and 16.05 (4) and (5), relating to testing of pupils with limited-English proficiencies and disabilities.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

06-12-01 RECEIVED BY LEGISLATIVE COUNCIL.

07-05-01 REPORT SENT TO AGENCY.

RS:RW;jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-069

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

The material in SECTIONS 5 to 9 should be reordered in the following manner: SEC. 6, SEC. 8, SEC. 5, SEC. 9 and SEC. 7.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The reference in s. PI 16.02 (3) to “the test” is ambiguous; if it is intended to refer to the test given under s. 118.30, Stats., it should be changed to include that information.

b. In s. PI 16.05 (1) (intro.), the requirement would be clearer if it referred directly to “testing” a limited-English proficient student rather than “including” a limited-English proficient student in a test.

c. In s. PI 16.05 (2), the agency might consider referring to “any tested subject area” instead of “each tested subject area” in order to allow alternative assessments to be used selectively, as appropriate. Also, in this section, a comma after “used” in the last sentence would clarify its meaning.

**FINAL REPORT
CLEARINGHOUSE RULE 01-069
CHAPTER PI 13
LIMITED-ENGLISH PROFICIENT PUPILS**

Analysis by the Department of Public Instruction

Statutory authority: ss. 115.996, 118.30 (2) (b) 2., and 227.11 (2) (a), Stats.

Statute interpreted: subch. VII of ch. 115 and ss. 118.30 and 121.02 (1) (r), Stats.

On June 12, 2001, the department submitted modifications to Chapter PI 16, Wis. Admin. Code, relating to testing of pupils with limited-English proficiencies and disabilities (CHR 01-069). However, as a result of on-going negotiations with the U. S. Department of Education, the department is now making germane modifications to CHR 01-069. The following paragraphs describe the original rule proposal (CHR 01-069) and the modifications made to CHR 01-069:

Original Rule Proposal (CHR 01-069):

Under s. 118.30, Stats., the state superintendent must adopt or approve examinations designed to measure pupil attainment of knowledge and concepts in the 4th, 8th, and 10th grades. Currently, the rules establish criteria and procedures to determine whether a pupil with limited-English proficiency (LEP) or a pupil having an exceptional educational need or EEN (now referred to as child with a disability) may be exempt from taking a test under s. 118.30, Stats.

The proposed rules:

- Repeal the criteria and procedures relating to testing children with disabilities. In 1998, the legislature made sweeping changes to the statutes regarding special education for children with disabilities. The legislature also repealed most state rules regarding special education contained in Chapter PI 11, Wisconsin Administrative Code. The reduction in state rules was intended to eliminate conflicts between the rules and the new state statute and federal law. In addition, in an effort to reduce regulatory complexity and potential incongruence between state rule and federal law, the department eliminated rules in areas adequately addressed by state statute or federal law. Because the provisions in the current rule under chapter PI 16 conflict with provisions in state statute and federal law, the proposed rule repeals the subchapter relating to testing children with disabilities. New rule language in this area is not necessary because testing and assessment issues relating to children with disabilities are already comprehensively addressed in state and federal special education statutes and regulations.
- Ensure that all LEP pupils participate in the Wisconsin Knowledge and Concept Examinations (WKCE) unless it is determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil's academic knowledge and skills. The statutes require the state superintendent to set criteria by rule, regarding the testing of LEP pupils. The current rules conflict with federal regulations under the Elementary and Secondary Education Act because the rules automatically exempt LEP pupils at lower English proficiency levels from taking any of the Wisconsin Knowledge and Concept Examinations (WKCE).
- Ensure that LEP pupils who do not participate in the WKCE are provided with a department-approved alternate assessment.
- Clarify that exempting a pupil from taking the WKCE may not be used as the sole criterion in determining grade promotion, eligibility for courses or programs, eligibility for graduation or eligibility for postsecondary education opportunities. Current rule language could be interpreted to require school districts to promote or graduate an LEP pupil if the pupil is exempt from taking a standardized test.
- Clarify that the criteria under this chapter also apply to the 4th grade test administered under s. 118.30, Stats. At the time the rules were originally developed, only the 8th and 10th grade tests were being administered under s. 118.30, Stats. Since that time, the 4th grade test was added to the WKCE administered under s. 118.30, Stats., and the rules should be changed accordingly.

- Change the term "limited-English speaking" to "limited-English proficient" to be consistent with statutory terminology under s. 115.955 (7), Stats.

Modifications to CHR 01-069:

In December 2000, the department received correspondence from the U. S. Department of Education relating to certain aspects of Wisconsin's assessment system that "must be addressed in order for Wisconsin to remain eligible to receive Title I funds." Wisconsin receives more than \$130 million annually in Title I funds. The following is a summary of the department's plan, in part, to fully implement the assessment and accountability provisions under Title I through a timeline waiver agreement with the U.S. Department of Education:

- The department will work with school districts to increase the number of LEP pupils participating in the state assessment system (WKCE and WRCT).
- All students will be included in the assessment system, either by participation in the state assessments (with or without accommodations) or by participation in alternate assessments, with results incorporated into school and district accountability determinations.
- Additional accommodations will be provided, and administrative rules will be modified to ensure that all LEP pupils are appropriately assessed.
- Alternate assessments will be provided for LEP pupils who are not able to demonstrate at least some of the knowledge and skills on the WKCE. Guidance as to who should participate in these assessments will be provided to districts.

In an effort to comply with U. S. Department of Education's timeline waiver agreement and to organize school district requirements relating to LEP pupils, the germane modifications to CHR 01-069 include:

- Repealing Chapters PI 13 and 16 and recreating and reorganizing the provisions under these chapters into a new Chapter PI 13. The intent is to have all LEP pupil information under one chapter, rather than two chapters, making it easier for schools to find relevant information. The original modifications to Chapter PI 13 proposed under CHR 01-069 remain intact but are now reorganized. Also, the provisions under Chapter PI 16 for the most part remain intact except for the following:
 - The definitions used in determining the English proficiency level of an LEP pupil have been modified and a new definition, level 6 – formerly LEP now fully English proficient, has been added.
 - School boards are required to use a department-approved assessment in determining the English proficiency level of an LEP pupil.
- Ensuring that all LEP pupils participate in the Wisconsin Reading Comprehension Test (WRCT) required under s. 121.02 (1) (r), Stats., unless it is determined, on a case by case basis, that such tests would not be a valid and reliable indicator of the pupil's academic knowledge and skills. Although the department does not have specific statutory authority to set criteria by rule regarding the testing of LEP pupils for the WRCT as it does with the WKCE, criteria for administering this test to LEP pupils are included for the following reasons:
 - For consistency, criteria should be the same when determining whether or not to administer any statutorily required test to an LEP pupil.
 - Under the federal No Child Left Behind Act (which reauthorized Title I), schools must annually assess math and reading skills in grades 3 through 8, and testing criteria for LEP pupils must be specified. To meet the provisions under the Act, the department will administer the WRCT in the 3rd grade and LEP pupils will continue to be included in that testing as specified in this rule.
- Requiring certain information and assurances that were formerly required under Chapters PI 13 and 16 to now be required in a school board's policy.

A public hearing to consider the proposed rule was conducted by the department on July 30, 2002, in Madison. Persons were asked to register in favor, generally in favor (except for . . .), against, generally against (except for . . .), or for information only.

Madison Hearing, July 30, 2002

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Kelley Dawson	Self		X	

The following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Ivy Covert	Milwaukee Public Schools			X

Changes made as a result of oral or written testimony:

The reference to s. 115.966 (2), Stats., under s. PI 13.03 (2) has been changed to s. 115.955 (2), Stats.

Responses to Clearinghouse Report:

2. Form, Style and Placement in Administrative Code:

Because CHR 01-069 has been reorganized, SECTIONS 5 to 9 have been eliminated. Therefore, the suggested changes are no longer necessary.

5. Clarity, Grammar, Punctuation and Plainness:

a. Recommendation accepted. Because chapters PI 13 and 16 are now combined, the information previously included under s. 16.02 (3) is now under s. PI 13.04. The reference to "the test" has been changed to "a test under ss. 118.30 or 121.02 (1) (r), Stats."

b. Recommendation accepted. Section PI 16.05 (1) (intro.) is now under s. PI 13.09 (2) (b) and has been rewritten to read, in part, "A school board shall administer a test to an LEP pupil unless . . ."

c. Section PI 16.05 (2) is now under s. PI 13.09 (2) (e). If an alternate assessment is provided, it must be given in each assessed subject area as the test. The assessments cannot be used selectively.

FINAL REGULATORY FLEXIBILITY ANALYSES

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114(1)(a), Stats.

Summary of Comments:

No comments were reported.