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CLEARINGHOUSE RULE 98-138

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

a. The arrangement of the sections of Clearinghouse Rule (CHR) 98-138 does not correspond to proper drafting practices and creates confusion regarding what is intended. The text of a rule-making order should treat each provision of the Administrative Code (i.e., each decimal-numbered provision of the Administrative Code or subunit thereof) in the order that they appear in the Administrative Code as it exists at the time of drafting. [See s. 1.04 (1), Manual.] Also, it is not appropriate to renumber a provision and then repeal and recreate it. Instead, the existing provision should simply be repealed and a new provision created with the appropriate number at the appropriate place in the rule-making order. Thus, for example, the treatment clauses of CHR 98-138 could be replaced with the following:

SECTION 1. PI 11.35 (title) and (1) are repealed and recreated to read:

[Fill in text of new PI 11.35 (title) and (1).]

SECTION 2. PI 11.35 (1m) is repealed.

SECTION 3. PI 11.35 (2) (title), (intro.) and (a) are repealed.

SECTION 4. PI 11.35 (2) (b) and (c) are renumbered PI 11.36 (2) and (3).

SECTION 5. PI 11.35 (2) (d) is repealed.

....

SECTION __. PI 11.35 (2) (k) is renumbered PI 11.36 (10).

SECTION __. PI 11.35 (2) and (3) are created to read:

[Fill in text of PI 11.35 (2) and (3).]

SECTION __. PI 11.36 (title), (1), (3), are created to read:

[Fill in text of provisions of s. PI 11.36 newly created by CHR 98-138.]

However, *a better alternative* would be to create a new s. PI 11.345 containing the text of s. PI 11.35 as proposed by CHR 98-178; then repeal or renumber the provisions of existing s. PI 11.35, as appropriate; then create the remaining provisions of s. PI 11.36.

b. CHR 98-138 does not treat s. PI 11.35 (2) (ad) or (L). Thus, it is not clear what is intended to happen to those paragraphs.

c. SECTION 3 of CHR 98-138 states that s. PI 11.36 is created. However, that SECTION creates only s. PI 11.36 (title). The treatment clause of SECTION 3 should reflect that. Also, the section title should follow the format set forth in s. 1.05 (2) (b), Manual.

d. In s. PI 11.36 (1) (b) (intro.), “as follows:” should be added at the end. [See s. 1.03 (8), Manual.]

e. In s. PI 11.36 (6) (b) 2. (intro.), “See Appendix A.” should be placed in a note.

f. In s. PI 11.36 (6) (c) 1., “, Stats.” should follow the first statutory citation.

g. SECTIONS 19 and 20 should be combined as follows:

SECTION 19. PI 11.35 (2) (j) is renumbered PI 11.36 (9) and 11.36 (9) (b), as renumbered, is amended to read:

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the analysis contained in the report to the Legislative Council Rules Clearinghouse, the reference to “42 USC 1412” should be replaced by “20 USC 1412”. Also, it would be helpful to indicate in the citation the specific subunits of 20 USC 1412 that provide authority for the rule. Should 20 USC 1414 also be cited?

b. In SECTION 10 of CHR 98-138, “Chapter 459, Stats.” should be replaced by “ch. 459, Stats.”.

c. In s. PI 11.36 (6) (b) 2. b., the reference to “subpar. a.” should be to “subd. 2. a.”

d. In s. PI 11.36 (6) (b) 2. c., as proposed in SECTION 14 of CHR 98-138, “subds. 1. and 3.” should be substituted for “subd. 1. and 3.”

e. In s. PI 11.36 (6) (d), the reference to “criteria under subd. 1. and 2.” is incorrect. There are no subdivisions in par. (d).

f. In s. PI 11.36 (7) (b) 2., the reference to “subpar. a.” is incorrect. There are no subdivision paragraphs in subd. 2.

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

a. The terms used for various disabilities in the Administrative Code should be consistent with the terms used in the statutes. Specifically, the definition of “child with a disability” in s. 115.76 (5) (a), Stats., uses the terms “speech or language impairments,” “emotional disturbance” and “learning disabilities.” However, CHR 98-138 uses the terms “speech and language impairments,” “emotional behavior disabilities” and “specific learning disability.” These and any other similar inconsistencies should be eliminated.

b. Throughout CHR 98-108, references are made to “IEP team.” However, that term is not defined for the purposes of the rule. Also, throughout the rule, reference is made to “IQ standard score” which also is not defined. Is use of this term even necessary?

c. In s. PI 11.35 (3) (a), as created by SECTION 2 of CHR 98-138, “as currently structured” should be replaced by “as structured at the time the evaluation is conducted.” [See s. 1.01 (9) (b), Manual.]

d. The entire rule should be reviewed to ensure that it clearly states the persons to whom its various provisions refer or apply. Examples of changes that should be made include the following:

- (1) In s. PI 11.35 (3) (b), as proposed in SECTION 2 of CHR 98-138, “in order to” should be replaced by “that will allow the child to.”
- (2) In s. PI 11.35 (3) (c), Stats., “to the child” should be inserted after “effects.”
- (3) In the first sentence of s. PI 11.35 (3) (d), “provided to the child” should be inserted after “related services.”
- (4) In s. PI 11.36 (5) (b) 2., “his or her” should be inserted immediately preceding “educational performance.”
- (5) In s. PI 11.36 (7) (b) h., as created by SECTION 16 of CHR 98-138, “other children” should be substituted for “others.”

e. Section PI 11.35 (3) (d), as proposed in SECTION 2 of CHR 98-138, should be reworded to indicate that it applies to a child already receiving a special education program. Also, in the second sentence of that paragraph, the meaning of the phrase “replacement content” should be clarified. In that sentence, “may” or “should” should replace “should” in order to indicate whether the action is mandatory or discretionary.

f. For consistency with the structure of other subdivisions of s. PI 11.36 (1), s. PI 11.36 (1) (b) 3. a. and b. in SECTION 5 of CHR 98-138, should be reworded to begin: “The child is age” Also, these subdivision paragraphs use the phrase “cognitive impairment,” rather than “cognitive disability.” See comment 5. a. Perhaps these provisions could be reworded to avoid the use of that phrase altogether. For example, s. PI 11.36 (1) (b) 3. a. might be reworded to state: “The child is age 3 to 6 years and has a standard score of”

g. Section PI 11.36 (1) (b) 3. a. and b. contain overlapping age brackets. Is it intended that both subdivision paragraphs apply to 6-year olds? If not, either “3 to 5” and “6 to 22” should be used or “3 to 6” and “7 to 22” should be used.

h. For consistency with the other subsections of s. PI 11.36, s. PI 11.36 (3), in SECTION 8 of CHR 98-138, should begin “Visual impairment means” rather than “A visual impairment means”

i. In s. PI 11.36 (5) (b) 2., as proposed in SECTION 12 of CHR 98-138, it appears that the phrase “the severe or profound range of phonological use” should be clarified, perhaps by referring to “the severely or profoundly impaired range of phonological use.”

j. In s. PI 11.36 (5) (b) 3. and 6., as proposed in SECTION 12 of CHR 98-138, what does it mean to say that the child performs at least “1.5 standard deviations below overall functioning”? Usually, standard deviations are measured relative to a mean or a norm.

k. In s. PI 11.36 (5) (b) 5., a comma should be inserted after “syllables.” Also, “at least or less than 10 percent” is confusing. Are all numbers not at least or less than 10%?

l. Section PI 11.36 (5) (b) 6. uses, as one of the criteria for identifying a child with a speech or language impairment, that the child’s “oral communication is inadequate.” How is adequacy measured or by what standard is it judged? Also in that subdivision, reference is made to a “global” norm-referenced test. What is such a test?

m. In s. PI 11.36 (6) (b) 1. (intro.), as proposed in SECTION 14 of CHR 98-138, “any of” or “all of”, whichever is intended, should be inserted preceding “the following.”

n. The phrases “Upon initial identification,” in s. PI 11.36 (6) (b) 1. (intro.) and 2. (intro.) need further clarification. If these provisions are intended to apply only the first time the child is evaluated and identified as a child with disabilities, but not for any subsequent reevaluations, then that result should be explicitly stated. Also, must the “multiple score instrument,” “single score instrument” and “standardized achievement and ability tests,” referred to in s. PI 11.36 (6) (b) 2. (intro.), be approved by the department? If not, it appears that these tests should be more explicitly described or identified.

o. It appears that s. PI 11.36 (6) (b) 2. b. is a continuation of, and should be combined with, s. PI 11.36 (6) (b) 2. a. It does not appear to be a separate exception.

p. In the Note following SECTION 22, the first letter of the second sentence should be capitalized.

q. The expected achievement formula set forth in Appendix A as proposed in CHR 98-138 is somewhat confusing to read. Perhaps, it would be clearer if stated as follows:

$$(SDa/SDi) \times (r) \times (IQ-100) + 100 = \underline{\hspace{2cm}}$$

Also, in the line defining SD Discrepancy, the square root sign should extend over “ $1-r^2$ ”.