

Report From Agency
FINAL REPORT
CLEARINGHOUSE RULE 21-011
CHAPTER PI 11
CHILDREN WITH DISABILITIES

Analysis by the Department of Public Instruction

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

Statute interpreted: ss. 115.76 (5) (a) 10. and 115.762 (3) (a), Stats.

The proposed rule seeks to update ch. PI 11 of the Wisconsin Administrative Code with respect to eligibility criteria for children with specific learning disabilities. The current rule is burdensome and does not reflect current research, recent changes in progress monitoring tools, and alignment with the Every Student Succeeds Act. The proposed revisions are more responsive to individual student needs and allow for more alignment to each area of specific learning disabilities. The proposed revisions are consistent with the federal requirements under the Individuals with Disabilities Education Act (IDEA), and in particular with sections 34 CFR §§ 300.307-311, which in part requires states to develop criteria for determining whether a child has a specific learning disability.

The hearing notice was published in the January 25, 2021 edition of the Wisconsin Administrative Register. A public hearing was held on February 19, 2021.

The following persons testified at the February 19, 2021 hearing:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Kathy Champeau	Wisconsin State Reading Association			X
Kim Coronado	Representing Self			X
Katie Kasubaski	Decoding Dyslexia Wisconsin			X
Carrie Ballman	Decoding Dyslexia Wisconsin			X
Amanda Kidwell	Madison Metropolitan School District	X		
Tracy Stanislawski	Representing Self			X
Jane Detmerring	Prentice School District			X
Martha Siravo	Madtown Mommas and Disability Advocates			X
Mattie Reese	Madtown Mommas and Disability Advocates			X

The following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Von Saunders	Merrill Area Public Schools			X
Britney Gabert	Chippewa Falls Area Unified School District		X	
Tanya Milanowski	St. Croix Falls School District			X
Jennifer Gossen	Representing Self			X
Janell Decker	Racine Unified School District			X
Karen Wydeven	Representing Self			X
Christilee Sprinkle	School District of Black Hawk, Monticello, and Juda		X	
Stacy Boehm	CESA 10	X		
Kelly Plitt	Representing Self			X
Timothy Bonson	Representing Self		X	
Angelica Brefczynski	Representing Self			X
Timothy Bonson	Representing Self		X	
Angelica Brefczynski	Representing Self			X
Moriah Quackenbush	Representing Self		X	
Jorie O'Hagan	Representing Self			X
Kristin Kashian	Representing Self			X
Gabby Hansen	Representing Self			X
Katie Kasubaski	Decoding Dyslexia Wisconsin			X
John Humphries	Representing Self		X	
Chan Stroman	Representing Self			X
Kathy Champeau	Wisconsin State Reading Association			X
Mary Newton	Wisconsin Reading Coalition		X	
Priscilla Gresens	Arnold Reading Clinic, Inc.		X	
Lynette Magnin	Howard-Suamico School District			X
Tonya Klem	Wisconsin School Psychologists Association, Inc.			X
Kim Brown	Oshkosh Area School District			X
Jeanne Murphy Curtis	Representing Self		X	
Deborah Cromer	Representing Self			X
Debra Zaring	Representing Self			X

Summary of public comments relative to the rule and the agency's response to those comments:

Some respondents had comments regarding flexibility in the identification process and the use of alternate procedures for children with a specific learning disability, including the following:

1. One respondent requested that the stricken language in s. PI 11.36 (6) (h) providing that a child "who performs to generally accepted expectations in the general education classroom... is no longer a child with a disability" remain in the rule, arguing that children who are performing up to expectations in the classroom, without needing specially designed instruction, should not be labeled as having a learning disability.

Agency Response: This sentence was removed because the criteria and re-evaluation procedures are specific to a child who has met eligibility under the category of a specific learning disability. Anytime a student is performing at or above grade level, the individualized education program (IEP) team is required to consider whether or not the child requires special education services or specially designed instruction as a matter of practice. This part of the rule, related to re-evaluations, already states “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.” Eligibility upon re-evaluation is already defined. No changes are necessary.

2. One respondent requests providing another method of evaluating older students for a specific learning disability that is different from the current or proposed rule. The respondent proposes a version of the prior methodology which may be used only with students for whom research-based interventions are not available or plausible and timely. The respondent believes this change could provide an opportunity to properly identify students who perhaps were overlooked earlier in their education and help students with their postsecondary goals.

Agency Response: Evidence-based interventions, or interventions which research has shown to be effective, exist for older students (Evidence for ESSA 2021; Institute of Education Sciences 2020; National Center on Intensive Intervention 2021). Scientific, research-based interventions restrict options for working with older students suspected of having a specific learning disability. Further, there is general consensus that the significant discrepancy model has little empirical evidence and many conceptual and psychometric flaws for identifying specific learning disabilities (Maki & Adams 2020; Ysseldyke 2005). Providing evidence-based interventions as part of a diagnostic or problem solving process within an evaluation for older students is intended to help students make progress toward their postsecondary goals when implemented properly. No changes are necessary.

3. One respondent requests the eligibility criteria for a student with a specific learning disability needs to include processing deficits as a major component of the rule. The respondent argues the eligibility criteria under the current rule emphasizes lack of progress after interventions and creates a mismatch between the definition and eligibility. While the respondent argues it is good to do interventions in areas such as reading, it should not be done primarily so that a student might be eligible for a specific learning disability.

Agency Response: The purpose of interventions should be to help a student accelerate in the area in which they are struggling. If the IEP team properly conducts a comprehensive special education evaluation, that includes multiple data sources and collection methods, and has eliminated exclusionary factors as a primary cause for inadequate achievement and insufficient progress, the evaluation has in effect established that the underlying cause of the specific learning disability is due to a deficit in one or more basic psychological processes as defined by IDEA, whether or not the team explicitly identifies one or more theoretical psychological processes as “disordered.” Additionally, the purpose of a special education evaluation is to not only determine whether a student meets eligibility criteria, but also to provide the necessary information to develop the student’s IEP. Nothing in the proposed rule prevents an IEP team from more closely examining psychological processing to identify student needs or align and implement specialized instruction. No changes are necessary.

4. One respondent expressed disagreement with how parentally-placed private school students with specific learning disabilities are identified, which the respondent believes is not only unclear but does not align with the statutes. The respondent points to a form based on standard discrepancy which is utilized for students enrolled in private school and states a standard discrepancy model of 1.75 standard deviation below the mean is utilized for those who are in enrolled in private school, which is outdated in the statutes as it is no longer in effect. The respondent argues the system should not be working against children with learning disabilities regardless of the school they are enrolled in, and guidance from the department should be clear and based on current law. Further, the respondent believes the department should be holding school districts accountable to Federal Child Find mandates

in identifying all students who are suspected of needing special services, including parentally placed private school students.

Agency Response: Local education agencies (LEAs) cannot require private schools to implement various parts of the current rule. Under the federal Child Find law, LEAs must identify, locate, and evaluate all students suspected of having a disability, including students enrolled by their parents in private schools and home-based education programs. The current rule places requirements on private schools that cannot be implemented. The proposed rule fixes this by replacing these requirements with specific requirements in line with federal law for conducting evaluations of students suspected of having a specific learning disability who attend private school or home based education programs. A parent who believes the LEA conducting the evaluation may be in violation of child find obligations may use the dispute resolution options available under special education law. No changes are necessary.

5. One respondent raised concerns about the wording in s. PI 11.36 (6) (d) 2. that schools will see this change as a way to disqualify a student and push them back to response to intervention and will bar even more children who truly have a disability in reading from getting the additional help they need or bar the student and protections provided through the IEP process. Further, the respondent requested a clarification as to why appropriate instruction in the general education setting for mathematics is not defined, believing this change is discriminatory against those with a reading disability who need to reach a higher bar to qualify for special education services.

Agency Response: This section of the rule will allow IEP teams to gather data and have in depth discussions related to the primary reason for a child's inadequate achievement and insufficient progress. This change is necessary in order to ensure children that have a specific learning disability are accurately identified. The IEP team is required to consider whether a lack of appropriate instruction is the primary cause of insufficient progress and inadequate achievement for an individual student. If a lack of appropriate instruction is present, but is not the causal factor for a child's inadequate achievement or lack of progress, it cannot be used to deny a student a free and appropriate public education or allow a student to languish before, during or after a referral for an evaluation is made. It is the responsibility of the LEA to ensure all students are provided adequate instruction in reading and math that align with state standards. The expectation is that LEAs must provide adequate instruction in both reading and math. Reading is specifically defined within the rule because within a specific learning disability, reading-related specific learning disabilities, such as basic reading, reading fluency, reading comprehension, represent the vast majority of identifications (Alfonso & Flanagan 2018). No changes are necessary.

6. One respondent requested changes to s. PI 11.36 (6) (e) to require parent notification before their child is being observed. The way this is worded, the respondent believes the student may have started the response to intervention process with no prior notification to the parents.

Agency Response: LEAs make determinations every day regarding how to best structure interventions and supports for students in the general education setting. When a specific learning disability is considered as part of a special education evaluation, the IEP team must document that the parent was notified of the progress monitoring data collected and the strategies used for increasing the student's rate of learning, including the intensive interventions. While there is nothing in the law that requires such notification prior to a special education referral, it would be recommended practice for schools to develop a system in which parents are notified of the general education instruction, including interventions, used with their children. During these interventions, observations may occur as part of a general education problem solving process. Anytime a school initiates a special education referral, the parent receives a notice of receipt of referral and start of initial evaluation, as well as a notice of child and parent procedural safeguards, commonly referred to as parent rights. The IEP team will also contact the parent to determine any additional assessments needed, which includes interventions. However, as part of a special education evaluation when a specific learning disability is considered, the IEP team must document the

parent was notified of the progress monitoring data collected and the strategies used for increasing the student's rate of learning, including the intensive interventions. No changes are necessary.

7. One respondent believes it would be helpful to allow for further flexibility in the rule with the addition of alternate methods of identification of specific learning disabilities, such as pattern of strengths and weaknesses or use of professional judgement. The respondent believes the requirement of two interventions may cause unnecessary delay in the identification of specific learning disabilities for a number of students.

Agency Response: If the IEP team conducting the evaluation completes a comprehensive special education evaluation, including multiple data sources and collection methods, and has eliminated exclusionary factors as a primary cause for inadequate achievement and insufficient progress, then the IEP team determines the specific learning disability is due to deficits in one or more basic psychological processes involved in understanding or using language, spoken or written. Additionally, the purpose of a special education evaluation is to not only determine whether a student meets eligibility criteria, but it must be sufficiently comprehensive to develop the student's IEP. Nothing in this rule prevents an IEP team from more closely examining cognitive processing to identify student needs or align and implement specialized instruction. The intent behind two interventions is to accelerate student progress in the areas in which they are struggling. The IEP team may request an extension to allow for the completion of required interventions and collection of progress monitoring data that meet the standards described in the rule. Finally, if an eligibility decision is delayed because data needed by the IEP team were not collected in a manner consistent with the rule or because the LEA unnecessarily delayed the implementation of interventions and collection of progress monitoring data following a specific learning disability referral, the LEA may be required to consider whether compensatory services are needed due to the delay if the student is found eligible. No changes are necessary.

8. Another respondent argues the proposed rule should be evaluated and considered in light of regressing performance of students who are economically disadvantaged. The respondent questioned how many students with a specific learning disability have needs that are not being identified nor met by their school because of their economic disadvantage or did not have the financial resources to get help elsewhere. Further, the respondent notes the proposed rule maintains response to intervention as the exclusive criterion without other research-based procedures for determining whether a student has a specific learning disability, as provided under 34 CFR § 300.307(a)(3), as another acceptable way of establishing eligibility. The respondent notes several reasons maintaining response to intervention as the exclusive gateway to identification of specific learning disabilities is problematic, due to the following: the lack of adequate information to parents about if, when, what, and how long interventions are being administered to their children prior to special education referral; the uncertainty as to the legal right to an independent educational evaluation if parents disagree with the evaluation; the lack of guidance on how the IEP team is to objectively determine when evaluation results that would otherwise meet the criteria for a specific learning disability determination are instead primarily due to exclusionary factors; and the barriers to eligibility for students who, but for their disability, would be capable of achieving at a gifted and talented level. The respondent argues the proposed rule should provide clear direction to schools and the families of students who are underachieving, are not making appropriate progress, or are suspected of having a disability, so that those students can be promptly evaluated and be appropriately served.

Agency Response: The IEP team must 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. All other concerns regarding objectivity of evaluations and exclusionary factors are addressed in best practice. No changes are necessary.

Some respondents submitted comment about the shift from scientific, research-based interventions under the current rule to evidence-based interventions in the proposed rule, including the following:

9. Some respondents questioned the proposed rule's shift from scientific, research-based interventions, under the current rule, to evidence-based interventions.

Agency Response: The term scientific, research-based interventions used in the current rule comes from a cross-reference to No Child Left Behind, which is no longer in effect and has been replaced with Every Student Succeeds Act (ESSA). ESSA uses different terminology, referring to evidence-based interventions. ESSA recognizes four levels of evidence. The rule references only the top three levels, as those require findings of a statistically significant effect on improving student outcomes or other relevant outcomes. The top three levels of evidence are: strong evidence, using at least one well-designed and well-implemented experimental (i.e., randomized) study; moderate evidence, using at least one well-designed and well-implemented quasi-experimental (i.e., matched) study; and promising evidence, using at least one well-designed and well-implemented correlational study with statistical controls for selection bias. The proposed rule also requires the interventions implemented were at the highest level of evidence base available for the areas of specific learning disability being assessed under par. (c) 1. The use of evidence-based interventions will allow educators to use interventions or practices in areas of specific learning disabilities in which scientific, research-based interventions were difficult to locate or did not exist, such as oral expression, listening comprehension, written expression, and math reasoning.

10. One respondent voiced concern regarding the amount of subjectivity the proposed rule provides. Depending upon the team conducting an evaluation, the respondent believes evidence can be interpreted with a high degree of variability and could result in a large number of students who show some level of academic struggle meeting the criteria for a specific learning disability. The respondent also notes the removal of many aspects of the current rule will create a high level of unpredictability for evaluation teams after having grown accustomed to many of the requirements for identifying a student with a specific learning disability under the current rule.

Agency Response: The rule still requires interventions to be implemented with adequate fidelity. The definition for evidence-based interventions, as given in this rule and under ESSA, is clearer and allows for more targeted and individualized intervention relative to scientific, research-based interventions under the current rule. The proposed rule also requires the interventions implemented were at the highest level of evidence base available for the areas of specific learning disability being assessed under par. (c) 1. However, the proposed rule does not prohibit school districts from using interventions that are already in place. Many interventions currently used by school districts meet the first or second tier of evidence-based interventions as defined under ESSA and referenced in the proposed rule. No changes are necessary.

11. One respondent requests that the proposed rule's definition for evidence-based interventions be reviewed to ensure school districts have the flexibility to create their own research-based interventions. The respondent fears a situation that may result from the proposed rule in which school districts are required to procure interventions from third parties because school districts don't have the resources to conduct their own interventions. Rather than require school districts to require evidence-based interventions, the respondent argues the current rule definition for interventions is adequate for implementation of the rule.

Agency Response: Changing the requirement from scientific, research-based interventions under the current rule to evidence-based interventions under the proposed rule gives school districts more flexibility to meet student needs based on evidence. It does not force school districts to purchase interventions from a third party. A number of evidence-based interventions are available, many at no cost. It is important to note that a school district that

creates their own research-based interventions would not meet the requirements around scientific, research-based interventions under the current rule. If that school district were implementing a strategy that is based on research that meets the ESSA definition of evidence-based interventions, they would likely be meeting the requirements under the proposed rule. The use of evidence-based interventions allows school districts to find interventions or evidence-based practices for areas that do not have existing interventions that meet the definition of scientific, research-based as defined in the current rule, such as written expression, oral expression, listening comprehension, and math reasoning. No changes are necessary.

12. One respondent argues the proposed rules do not put a limit on how long interventions can be extended or implemented. Based on current and suggested guidelines, this can prevent a student from receiving timely and needed special education services because an evaluation for a specific learning disability delays eligibility in other areas. The respondent requests the addition of a maximum timeline for providing interventions to students with a specific learning disability.

Agency Response: Establishing a timeline which limits interventions for students with a specific learning disability may put the rule in conflict with IDEA. The determination of whether to extend a specific learning disability evaluation timeline is made on a case-by-case basis through written agreement between the IEP team and the child's parent. Establishing a firm maximum timeline would limit the IEP team's ability to be responsive to individual situations and could potentially violate a parent's due process rights. State and federal law do not limit the amount of time for which an evaluation may be extended. However, timeline extensions may not be used to unnecessarily delay special education determinations (Ryder 2011). If a timeline is extended through written agreement in order to implement interventions with fidelity and gather data, the IEP team must determine a timely manner in which the evaluation will be completed. Additionally, the proposed rule requires a determination that to be identified with a specific learning disability, learning problems cannot be primarily due to the presence of other areas of impairment under s. PI 11.36. Therefore, if an IEP team has conducted a comprehensive evaluation that identifies a student's learning problems are primarily due to the presence of another disability, extending the timeline for an evaluation would not be necessary. If the IEP team feels additional intervention and progress monitoring is necessary to determine whether the cause of the learning difficulties are due to a specific learning disability, then an extension would be appropriate. No changes are necessary.

13. One respondent requests additional clarification regarding the terms "well-developed" and "well-evidenced" practice as well as guidelines regarding where to obtain research that supports evidence-based interventions. Additionally, while the respondent supports the addition of an observation by a member of the IEP team with knowledge in first and second language instruction and second language acquisition if the child is an English Learner, the respondent questions if this type of service provider is trained to observe as part of an evaluation. Finally, the respondent believes "highest level of evidence base available" in s. PI 11.36 (6) (f) 4. is vague and could be interpreted differently within the context of a school and between school districts.

Agency Response: There are several well-regarded resources to support LEAs in identifying evidence-based interventions that align with their local multi-level systems of support (Evidence for ESSA 2021; Institute of Education Sciences 2020; National Center on Intensive Intervention 2021). Additionally, school psychologists who practice within the National Association of School Psychologists Practice Model are trained to "evaluate and apply research as a foundation for service delivery and, in collaboration with others, use various techniques and technology resources for data collection, measurement, and analysis to support effective practices at the individual, group, and/or systems levels." (National Association of School Psychologists 2020) All preparation programs for school psychologists in Wisconsin provide training within this model. Additional clarification, including guidelines on obtaining research that supports evidence-based interventions, and determining selection of evidence-based interventions based on the highest level of evidence base available will be addressed in best practice resources for educators. The purpose of the additional team member conducting an observation of an

English Learner is to provide the IEP team with information related to the extent to which the student's English language skills are impacting their access, engagement and progress in general education. Thus, this additional team member is the likely the most qualified person to conduct that specific observation within the rule. It is the IEP team's responsibility then, to use that information when making a team decision related to eligibility for special education as a student with a specific learning disability. The additional IEP team member's observation is limited to this role. Additional best practice resources on conducting observations are available and will be included in resources for educators specific to specific learning disabilities. No changes are necessary.

Some respondents made comments regarding the proposed rule as applied to children with a reading disability such as dyslexia:

14. One respondent argues the rule change must ensure students are being identified with a specific learning disability at school and qualifying for an appropriate intervention. The respondent argues school districts are not identifying every student with a specific learning disability, specifically dyslexia. In these situations, parents have to pay for a medical diagnosis, which health insurance often does not cover, resulting in an equity issue with only the students whose parents have the means to get their child tested are being identified. The respondent argues dyslexic students make some progress so they may not qualify for special education, and any progress that they make in the classroom without an intervention does not allow them to live up to their fullest potential. The respondent argues the rule change needs to be designed so that students with a specific learning disability are given the appropriate intervention in an equitable manner.

Agency Response: Dyslexia is specifically named in the rule as one potential area of a specific learning disability. For a child suspected of having a specific learning disability, the documentation of the determination of eligibility shall contain all educationally relevant medical findings, including dyslexia. Medical diagnoses do not automatically make a student eligible for special education services under state and federal special education law (U.S. Department of Education, 2021). For instance, although specifically named as learning disabilities within the rule, diagnoses alone such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and perceptual disabilities are not a determination of special education eligibility (Yudin 2015). A comprehensive evaluation is still required to determine the presence of a specific learning disability and a need for special education. Some students with a medical diagnosis who are not eligible for special education services may still qualify for an accommodations plan under section 504 of the Rehabilitation Act of 1973. The criteria for diagnosing a reading disorder such as dyslexia is used during an outside evaluation and does not necessarily correspond with state and federal special education eligibility criteria, a student may be diagnosed with dyslexia, but may or may not be determined to be a student with a disability under the law. The rule is designed to allow teams to provide appropriate and individualized interventions in a manner that aligns with federal law and regulations. No changes are necessary.

15. A number of respondents requested a change to the rule which would require a reading specialist to complete assessments, oversee interventions, and provide recommendations in the case of a suspected reading disability. While the rule only requires a "licensed person," the respondents argue every school is required to employ a reading specialist and their expertise in assessment and interventions is valuable when making determinations.

Agency Response: Based on feedback from public comments and stakeholder focus groups, the department is revising the proposed rule to require a reading teacher or reading specialist be added to the evaluation team when considering reading fluency, basic reading skills, or reading comprehension as possible areas of a specific learning disability.

16. One respondent asked for clarification as to why dyslexia is not mentioned in the rule other than a condition of a possible specific learning disability and requested the use of a reading specialist trained in phonemic awareness

and knowledgeable on dyslexia for the school evaluation. Additionally, the respondent requested rule changes that require no part of the assessment may be skipped due to the child's ability and standardize the screening form, so that there is no question of what was and was not screened.

Agency Response: As stated above, the department will incorporate rule changes to require a reading specialist to be a part of a student's evaluation team. Reading specialists have specific knowledge in phonemic awareness and dyslexia along with other foundational areas such as phonics, vocabulary, reading comprehension, and fluency. State and federal rules require comprehensive evaluation of students suspected of having a specific learning disability. Evaluations are individualized and require parent collaboration and consent and must take into account a student's age and development. The IEP team determines what assessments are appropriate and needed in order to determine eligibility and need for special education. Finally, the screening process described above is outside the scope of the proposed rule, so no further changes are necessary.

17. One respondent disagrees with the rule's absence of a requirement that a family history of reading difficulty be made part of the evaluation. The respondent points to the fact that dyslexia is heritable and family history provides important information. Further, the respondent is concerned that there is not enough guidance on how to select interventions or progress monitoring tools that truly are based in evidence and science. The respondent believes this could result in children with word recognition problems receiving interventions that will not improve those skills and assessments with progress monitoring tools that do not measure progress in the skills the child needs to improve.

Agency Response: Information provided by family, outside evaluations, and relevant medical findings are important and required as part of any comprehensive special education evaluation. These requirements are referenced throughout the rule as IEP teams are required to follow all requirements listed under s. 115.782, Stats., which provides, as part of an initial evaluation of a child and as part of any reevaluation of a child, the individualized education program team and other qualified professionals, as determined by the local educational agency, shall review existing evaluation data on the child, including evaluations and information provided by the child's parents; previous interventions and the effects of those interventions; current classroom-based, local, or state assessments; classroom-based observations; and observations by teachers and related services providers. Further, s. PI 11.36 (6) (f) 5. specifically requires IEP teams to document the educationally relevant medical findings, if any exist. Although IEP teams are required to consider all information provided by parents, medical providers, and independent evaluations, this does not mean a student will automatically qualify for special education under the category of specific learning disability. In order to be determined eligible, the student must meet the criteria for specific learning disability, and need special education as a result of the disability. Additional information is available regarding dyslexia and specific learning disabilities, and further best practices are being developed around evidence-based interventions. No changes are necessary.

Some respondents offered the following comments regarding individually administered academic achievement tests for children with specific learning disabilities:

18. One respondent requested the following changes to the proposed rule: 1) replacing standardized scores as eligibility criteria with criteria that utilize question-based approach employed by other states, including specific questions directly related to the needs of the student and relevant data to the student, as well as inclusion of assessments relating to curriculum-based materials, problem-solving plans, and continuing with observations of response to intervention and regular education classes; and 2) flexibility for schools to be able to use paraprofessionals that provide Tier 2 interventions, while Tier 3 interventions are implemented by a certified teacher.

Agency Response: The proposed rule states 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. Formal and informal assessment data may be obtained from sources which may include, but are not limited to: standardized tests, error analysis, criterion referenced measures, curriculum-based assessments, child's work samples, interviews, systematic observations, analysis of the child's response to previous interventions, analysis of classroom expectations, and the curriculum. The placement of this requirement is based on administrative rule writing style and does not impact the necessity of fulfilling this requirement for evaluation teams. With regard to the comment about paraprofessionals, the more intensive supports or intervention a student needs in a tiered system, the higher degree of training and expertise the interventionist should have. Thus, interventions must be provided by appropriately trained staff as a requirement of federal special education law, specifically 34 CFR § 300.156. Paraprofessional responsibilities include supporting the lesson plan of a properly licensed teacher, providing technical assistance to the teacher, and helping with classroom management. Paraprofessionals cannot be assigned teacher duties such as providing interventions under federal law. It is possible for a paraprofessional to support the skills taught during intervention, but a licensed teacher must be the one to deliver the intervention. However, school districts should ensure paraprofessionals are appropriately trained in appropriate reading, writing, math, and social and behavioral strategies so they are able to successfully support students with disabilities under the direct supervision of a licensed special education teacher. If tier 2 interventions are being implemented with students who are not being evaluated for a potential specific learning disability, school districts are free to choose who provides those interventions. If students are struggling with reading or other academic skills requiring intervention, school districts should provide the most highly-qualified staff providing interventions. No changes are necessary.

19. One respondent called for research to be made more evident throughout the rule in order to avoid the problems the respondent argues are incurred by the current rule, including the lack of and overgeneralization of existing research grounding the rule. Further, the respondent argues student achievement should not be defined as data from one or more standardized achievement assessments but should emphasize what 34 CFR § 300.304 states. Finally, the respondent believes language referencing equity would expand how LEAs provide high quality instruction and engage in assessment practices, and coordinating the language between the department's multilevel systems of support and the proposed rule would provide school districts with a more cohesive plan and collaboration when addressing student needs.

Agency Response: 34 CFR § 300.304 is the federal regulation that applies to all special education evaluations, including evaluations in which a specific learning disability is being considered. Further, student achievement is not defined in the rule as data from one or more standardized achievement assessments. Rather, that is one component a team uses to identify inadequate classroom achievement. Standardized achievement data must be considered along with comprehensive evaluation data that demonstrates "the child does not achieve adequately for the child's age, or meet state-approved grade-level standards in one or more area of potential specific learning disability when provided with learning experiences and instruction appropriate for the child's age or grade" as described in s. PI 11.36 (6) (c) 1. a. of the proposed rule. The rule states in PI 11.36 (6) (g) that 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. Finally, students identified as having a specific learning disability make up 2.97 percent of all students. The purpose of the IEP is to ensure all students have what they need to be successful in the general education curriculum. No changes are necessary.

Some respondents made comments about progress monitoring for specific learning disabilities under the proposed rule, including the following:

20. One respondent in favor of the rule requested clarification for the definition of progress monitoring to mean evidence-based practices used to assess the effectiveness of the intensive interventions in accordance with the expectations at the intervention level being used. The respondent believes the tool should be suitable to the skill and intervention level in order to determine if the intervention is a) providing an accelerated rate of growth significant enough to close the gap; b) if a change in intervention strategies is needed; and c) in the final determination of a specific learning disability.

Agency Response: Grade-based progress monitoring is necessary in order to compare student progress to that of their peers. The tool used as part of an evaluation to determine if a student has a specific learning disability needs to allow for the IEP team to establish insufficient progress, which is defined in rule. Using a tool matched to the student's individual level of performance does not allow for a determination of insufficient progress in comparison to age or grade level peers. Progress monitoring specific to the child's individual level of performance and instruction is an important and beneficial part of a comprehensive special education evaluation, especially for determining the content of the child's IEP. However, matching the progress monitoring tool to the child's current performance level does not allow for comparison to the rate of progress of same-age peers for the purposes of identifying a specific learning disability. If exclusionary factors do not apply and progress monitoring at the level of the intervention being used is demonstrating an accelerated rate of growth, it is still highly unlikely that the child would reach the average range in comparison to peers in a reasonable period of time or without the resources of special education to maintain a rate of progress that would allow the child to reach the average range.

21. One respondent argues evidence-based interventions should use trend lines for decision making and not be based on a standard intervention timeline that is usually dictated by the intervention's publisher and less frequently based on research articles. Further, the respondent believes the current proposed rule change is vague and doesn't specify that progress monitoring and instructional data can be the primary tools to guide instruction or make instructional changes.

Agency Response: This comment assumes that the intervention being used would be a published or commercial product. There is no requirement in the rule to use a published product or follow such products' timelines. If the LEA does use a published or commercial product, it is their responsibility to determine if the publisher's evidence base meets the ESSA standard required by the rule. Interventions that are stopped or changed prior to the evidence base that demonstrates positive results are, by definition, not evidence based. The academic growth or progress of an individual student in any of the eight areas of specific learning disability do not follow a straight linear progression. Progress can accelerate, plateau, or regress for many reasons. Therefore, it would not be appropriate in the analysis of insufficient progress for the purpose of identifying specific learning disabilities without completing interventions with fidelity as defined in the rule. Additionally, interventions should be implemented long enough to determine if the intervention is effective. IEP teams should use their progress monitoring data to determine whether or not an intervention is working and is meeting student needs. The duration of the intervention must be long enough to allow for enough progress monitoring data points to be collected to establish a reliable trend line and provide the data the IEP team uses to reliably decide if the student's progress has been sufficient. No changes are necessary.

22. One respondent argues evaluation teams should evaluate the psychometric properties and usefulness of the progress monitoring tools in order to determine how often to progress monitor students. The respondent points to available literature and cites multiple viewpoints on how often progress monitoring should occur, arguing that teams and practitioners should be able to make the decisions of whether weekly or biweekly data is appropriate for intervention progress monitoring.

Agency Response: The language around progress monitoring was revised to give IEP teams the flexibility to progress monitor on a schedule that aligns with the design of the intervention. In some areas of specific learning disability, such as reading fluency, it is appropriate to progress monitor weekly. Other areas of specific learning disability, such as written expression, can be progress monitored on a less frequent basis. The proposed rule provides that progress monitoring shall be conducted at regular intervals that accurately assess the rate of progress during the evidence-based interventions, therefore allowing for progress monitoring to occur at a frequency that aligns with research based on the skill area that is being assessed. No changes are necessary.

23. One respondent requested further clarity on the requirement that progress monitoring shall be conducted at regular intervals in the rule, including the minimum frequency of intervals. Further, the respondent requested that progress monitoring be made appropriate to the child's age, grade placement, and the skill area being monitored.

Agency Response: The progress monitoring tool used as part of an evaluation to determine if a student has a specific learning disability needs to allow for the IEP team to determine insufficient progress. As written, the proposed rule does require progress monitoring to be appropriate to the child's age, grade placement and skill being monitored. The proposed rule also provides progress monitoring shall be conducted at regular intervals that accurately assess the rate of progress during the evidence-based interventions, allowing for progress monitoring to occur at a frequency that aligns with research based on the skill area that is being assessed. No changes are necessary.

Some respondents offered the following comments about equity in the use of exclusionary factors in the proposed rule:

24. One respondent voiced concerns about the proposed s. PI 11.36 (6) (a), which does not account for learning problems that are primarily due to the presence of other impairment areas under ch. PI 11, cultural or linguistic factors, environmental, or economic factors. The respondent believes the proposed change appears to be discriminatory against minority students and English Learner students as it appears the burden is on the parent or teacher to prove that being an English Learner is not a reason for not achieving grade level achievement. The respondent argues if a student has a reading disability, this should be identified through the evaluation for a specific learning disability no matter the language spoken by the student.

Agency Response: The proposed rule requires additional expertise to be brought into the IEP team to determine the reason for insufficient progress. Furthermore, 34 CFR § 300.304, which describes required evaluation procedures for all special education evaluations, includes multiple requirements related to conducting non-discriminatory assessments, such as requiring that assessments and other evaluation materials be selected and administered so as not to be discriminatory on a racial or cultural basis and be provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally. The proposed rule requires additional individuals to participate in the evaluation team, including a speech-language pathologist if there are concerns in the areas of oral expression or listening comprehension, and an educator with foundational knowledge in first and second language instruction and second language acquisition if the student is identified as an English Learner under 20 USC 7801 (20). Exclusionary factors must be the primary reason for inadequate achievement or insufficient progress in order for the team to determine the student does not have a specific learning disability. Exclusionary factors are considered and a determination is made after all other criteria have been met. The team should have enough data gathered through a comprehensive evaluation to discuss and make a determination regarding the impact of cultural factors on the student's progress and achievement. In terms of identification and eligibility, the main potential cultural factor is likely to be language related. Thus, the addition of speech-language pathologists and teachers of English Learners is intended to ensure the proper identification of specific learning disabilities, as well as the implementation of culturally responsive interventions, supports and services. As with

all special education evaluations, determining whether or not exclusionary factors apply is made by the IEP team as a whole, not by an individual team member. No changes are necessary.

25. One respondent questioned the rule's responsiveness to cultural factors, specifically in the possibility that cultural factors could be used as a reason for schools to deny services to students suspected of having a specific learning disability. The respondent fears the amount of subjectivity used by schools to classify deficits due to cultural factors could be especially harmful to students if schools cannot definitively prove that the cultural factors are the primary reason for the documented achievement deficit before they deny services. The respondent warns unless there is unambiguous guidance in this area, cultural factors may be used to exacerbate achievement gaps in the state, especially when applied to immigrant, low income, and minority children.

Agency Response: Cultural factors as an exclusionary factor need to meet the same standard as all other exclusionary factors under the rule. As described above, inadequate achievement or inadequate progress must be due solely to an exclusionary factor to not qualify for special education. The determination of exclusionary factors is made after all other criteria has been met. The team should have enough data gathered through a comprehensive evaluation to discuss and make a determination regarding the impact of cultural factors on the student's insufficient progress and inadequate achievement. In terms of identifying a specific learning disability, the most relevant cultural factor is likely to be language related. Thus, the rule's addition of a speech-language pathologist and an individual with knowledge in first and second language instruction and second language acquisition on evaluation teams will ensure the proper identification of a specific learning disability, as well as the implementation of culturally responsive interventions, supports and services. The use of evidence-based interventions will also allow for more culturally responsive interventions relative to the current rule. No changes are necessary.

26. One respondent argues these proposed rules were developed without adequate input from stakeholders relative to when the current rule was developed, which they argued required extensive development and analysis of the impacts of the rule. Further, the respondent disagreed with several proposed changes, which the respondent argues is likely to result in an increase in the number of students who will be found eligible for special education under the disability category of specific learning disability. These changes include the removal of several elements of intervention and evaluation, including the 80 percent fidelity requirement for interventions, the definitions for progress monitoring probes and the rate of progress. Further, the respondent argues the changes to the progress monitoring requirement is problematic in that it allows for tools that have inadequate statistical properties for the purpose of disability assessment.

Agency Response: The department embarked upon extensive stakeholder engagement as a part of this rule revision. Once a scope statement was approved, the department held five stakeholder group sessions with 55 representatives from education stakeholder groups for feedback in drafting the proposed rule, including: the Wisconsin RTI Center, Wisconsin State Reading Association, Wisconsin Council of Administrators of Special Services, Wisconsin Association of School District Administrators, Association of Wisconsin School Administrators, Wisconsin Family Assistance Center for Education, Training & Support, Wisconsin School Psychologists Association, Wisconsin Chapter of The Council on Exceptional Children, CESA 2, CESA 9, Wisconsin International Dyslexia Association, Decoding Dyslexia Wisconsin, Wisconsin Reading Coalition, the Dyslexia Guidebook Advisory Committee, school districts including Wrightstown Community School District, Suring Public Schools, Verona Area School District, Prentice School District, Green Bay Area Public School District, Milwaukee Public Schools, Iowa-Grant School District, School District of Superior, Madison Metropolitan School District, Appleton Area School District, and institutions of higher education including UW-Madison, UW-La Crosse, UW-Stout, UW-Milwaukee, Carroll College, Alverno College, the State Superintendent's Special Education Advisory Council, among others. A survey to each stakeholder and stakeholder group listed above was also distributed and considered prior to receiving formal public comments.

The department also met with former department staff involved in the creation of the current rule to solicit additional feedback. Public comments and testimony from preliminary public hearings on the statement of scope were also considered when revising this rule. In addition, the department, as noted in this report, received comment from a large number of individuals and organizations as a part of the rules promulgation process. The department made several changes to the rule based on the comments that were received.

The timeline around the development that resulted in the current rule and the proposed rule is different as no two rules are comparable. The process around rulemaking is governed by ch. 227 of the Wisconsin Statutes and has changed significantly relative to the process in promulgating the current rule. Further, there has been a decade of research and implementation of response to intervention as a method for identifying children with a specific learning disability, as opposed to during the time the current rule was developed.

The definition of adequate fidelity was revised so the intervention could be implemented in accordance with the design of the intervention while also allowing IEP teams to be responsive to student needs. Interventions must still be implemented with adequate fidelity. The proposed rule also requires the interventions implemented were at the highest level of evidence base available for the areas of specific learning disability being assessed under par. (c) 1. It is impossible to predict how this rule may increase or decrease the number of students identified with a specific learning disability. The purpose of the rule is to provide LEAs with the tools to accurately identify students with a specific learning disability, not to arbitrarily identify a specified number of students. Further, to identify a specified number of students would be in violation of federal law, as students are required to be identified for special education based on their individual identification.

The definition of probes was removed from s. PI 11.02 because it is a restrictive definition that does not apply to all of the eight areas of potential learning disabilities addressed under this rule. Probes, as defined in the current rule, 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. Probes are not an appropriate or available measure for areas of specific learning disability such as reading comprehension or math reasoning because direct measures of these skills that meet this definition do not exist. Whereas, the revised definition of progress monitoring requires IEP teams to measure the rate of progress in a manner that aligns with current best practices. The definition of rate of progress was removed from s. PI 11.02 because insufficient rate of progress is already described clearly within the rule under the current and proposed rule in s. PI 11.36 (6) (c) 2. Additionally, as defined in the current rule, s. PI 11.02 requires the outmoded use of least squares regression statistical process to measure rate of progress. More recent research indicates that least squares regression should not be the sole and is not the optimal statistical procedure that can provide an accurate trend line that demonstrates a rate of progress (Christ & Desjardins 2018). Based on feedback submitted during public comment regarding progress monitoring, the proposed language on progress monitoring was revised to ensure progress monitoring tools have adequate statistical properties for the purposes of specific learning disability evaluation and eligibility determination.

Changes made as a result of oral or written testimony:

Amended s. PI 11.36 (6) (c) to clarify that progress monitoring shall be administered on a weekly or other schedule supported by empirical research that results in a reliable, valid and diagnostically accurate trend line of the rate of progress during the evidence-based interventions.

Amended s. PI 11.36 (6) (c) to provide how an IEP team may use a pattern of strengths and weaknesses method when evaluating a child in a parentally-placed private school or home-based private education program.

Amended s. PI 11.36 (6) (d) to additionally require the IEP team for children being evaluated for specific learning disabilities to include a reading teacher or reading specialist licensed under ch. PI 34 if inadequate classroom achievement in the areas of reading comprehension, basic reading or reading fluency are being considered.

Changes to the analysis or the fiscal estimate:

No changes were made.

Responses to Clearinghouse Report:

2. Form, Style and Placement in Administrative Code:

The changes are accepted.

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

The changes are accepted.

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