

CR 89-143

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CERTIFICATE

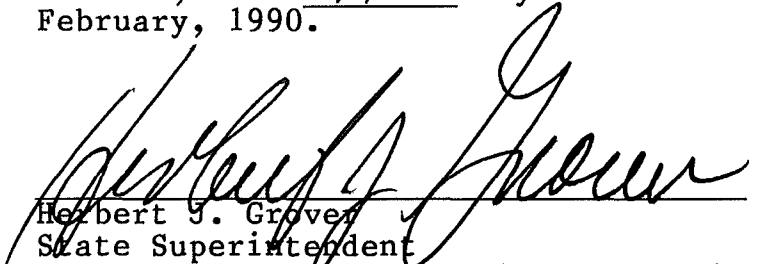
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STATE OF WISCONSIN)
) SS
DEPARTMENT OF PUBLIC INSTRUCTION)

I, State Superintendent of the Department of Public Instruction and custodian of the official records of said department, do hereby certify that the annexed rule relating to special education was duly approved and adopted by this Department on the first day of the month following publication in the Wisconsin Administrative Register.

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

IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the official seal of the Department at General Executive Facility (GEF) 3, 125 South Webster Street, P.O. Box 7841, in the city of Madison, this 14th day of February, 1990.


Herbert J. Groves
State Superintendent
State Department of Public Instruction

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CHR 89-143

02/14/90

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ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AMENDING RULES

1 To repeal PI 11.01(2)(b) and (f) (intro.) and 27, PI 11.28, PI 11.32, PI 11.33 and PI 11
2 appendices A, C, D, E, F and G; to renumber PI 11.05, PI 11.11, PI 11.12, PI 11.13,
3 PI 11.14, PI 11.15, PI 11.16, PI 11.17, PI 11.19, PI 11.20, PI 11.21, PI 11.22, PI 11.23,
4 PI 11.24, PI 11.25, PI 11.26, PI 11.27, PI 11.29, PI 11.31, PI 11.34 and PI 11.35; to
5 renumber and amend PI 11.01(2)(f) 1 to 26 and 28 to 32; to amend PI 11.01(title)
6 and (1); to repeal and recreate PI 11.02, PI 11.03, PI 11.04 and PI 11.06; and to create
7 PI 11.05, PI 11.07, PI 11.08, PI 11.09, PI 11.10, PI 11.11, PI 11.12, PI 11.13, PI 11.14,
8 PI 11.15 and PI 11.16, relating to special education.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statutes interpreted: ss. 115.80, 115.81, 115.85 and 115.89, Stats.

Section 115.77(3)(a), (am) and (c), Stats., makes the state superintendent and the division for handicapped children and pupil services responsible for the provision of special education services to children with exceptional educational needs in Wisconsin and for ensuring that the services provided meet the standards set by law. The proposed amendments to ch. PI 11 establish how those responsibilities will be carried out.

The proposed amendments repeal and recreate the provisions of ch. PI 11 relating to the procedural safeguards provided to children with exceptional educational needs (EEN) to clarify the requirements and to conform state law to federal law. The proposed amendments include the following:

1. The proposal rewrites the provisions regarding screening for special education needs and referring a child for evaluation for special education needs. It specifies that a board is responsible for screening every child who is a resident of the school district and who has

not graduated from high school. Boards are required to date the receipt of all referrals and must send the parent a notice that they have received a referral. The notice must include a list of the procedural safeguards available to the parent and child with respect to special education.

2. The proposed amendments rewrite the multidisciplinary team (M-team) process. Requirements for the membership of the M-team and the evaluation and review conducted by the M-team are specified. The proposal requires boards to notify parents of the M-team meeting a reasonable amount of time before the meeting. If a parent requests, each member of the M-team is required to have his or her individual report available at the M-team meeting. In addition to the individual evaluation report, each member of the M-team must either write a proposed M-team report him or herself or each member must sign another member's proposed M-team report with which he or she agrees. A proposed M-team report sets out the person's conclusions regarding whether the child is a child with EEN. The director of special education or program designee may choose one of the proposed M-team reports submitted to him or her for approval as the M-team report. The parent must be provided a copy of each proposed M-team report submitted and notified of which one has been accepted as the final M-team report. The parent must also be given notice of the parent's and child's procedural rights. The parent has the right to challenge the M-team report.

3. The proposed amendments incorporate the federal requirements for individualized education programs (IEP). The board is required to appoint staff and hold a meeting to write an IEP for each child found to be a child with EEN by an M-team. The board and parent must agree on the time and place for the IEP meeting and the board must provide the parent notice of all of his or her procedural rights within a reasonable amount of time prior to the IEP meeting. The IEP is required to include: the child's present levels of educational performance; annual goals; the ability of a child to participate in regular educational programs; what special education and related services will be provided; and the projected dates for initiation of services and the anticipated duration of the services. The IEP must be reviewed annually.

4. The proposed amendments require a board to appoint a group of persons to develop a placement offer for each child with EEN to carry out the child's IEP. The placement offer shall specify the delivery model to be used and the level at which each of the services will be provided to implement the child's IEP. When deciding on delivery model and level of services the persons are required to consider several factors to ensure that the child is placed in the least restrictive environment in which the child can receive an appropriate education. The placement offer shall also specify the location at which services will be provided. The board is required to send the parent a copy of the placement offer a reasonable amount of time before it is implemented and must include a notice that specifies all the parent's procedural rights.

5. The proposed amendments provide that a board that receives a transfer pupil with EEN from another Wisconsin district shall write a placement offer implementing the pupil's IEP from the sending district. That IEP shall be in effect until the receiving board writes a new IEP.

6. The proposed amendments specify that parents have a right to an independent educational evaluation if they disagree with the board's M-team evaluation. The board is required to pay for the independent educational evaluation unless the parent refuses to

give the board a complete copy of the independent educational evaluation or it is found at a hearing that the board's M-team evaluation is appropriate or that the independent educational evaluation did not meet specific requirements.

7. A board is required to obtain parental consent to conduct a pre-placement M-team evaluation of a child and to implement the child's initial placement offer. Once consent is given it continues in effect to allow subsequent evaluations and to implement subsequent placement offers until the parent revokes his or her consent. Whenever a board is required to give a parent notice of the parent's procedural rights the notice must inform the parent whether his or her consent has been given and that it may be revoked at any time. The proposed amendments specify what must be in a notice of the parent's procedural rights.

8. The proposed amendments specify when a parent may request a hearing to challenge an action by a board. A parent may request a hearing when a board proposes or refuses to initiate or change his or her child's M-team evaluation, identification as a child with EEN, IEP, placement offer or free appropriate public education. The proposal also specifies that a board may request a hearing to override a parent's refusal to consent to an M-team evaluation or a placement. A board may also request a hearing if it believes that it is not liable for paying the costs of an independent educational evaluation obtained by a parent because its M-team evaluation is appropriate or because the person conducting the independent educational evaluation did not meet the board's criteria for evaluators.

A board selects a hearing officer with the consent of an involved parent. If they cannot agree on a person, each will strike one name from a list of three obtained from the department. The one remaining on the list will be the hearing officer.

In relation to the conduct of hearings, the proposal sets out the responsibilities of the board and the hearing officer. A party's rights at a hearing and rights to appeal are also set out.

9. The proposed rules include provisions governing the conduct of appeals when a party requests a review of a hearing officer's decision. The responsibilities of the board, the state superintendent and the reviewing officer are specified as are the timelines for the process. The proposal includes requirements for appealing a reviewing officer's decision to the circuit court.

10. The proposed rules require that hearing and reviewing officers be impartial. It requires each board to maintain a list of persons willing to be hearing officers and their qualifications. It also requires the department to keep a list of hearing officers and it establishes requirements that people must meet to be placed on the department's list. No list is required to be established for reviewing officers but a reviewing officer must be an attorney licensed to practice law in Wisconsin.

11. The proposed amendments specify that a child's educational placement may not be changed during the pendency of a hearing, appeal or court proceeding unless the board and the parent agree otherwise. A board may, however, change the educational placement of a child for a maximum of 10 consecutive school days if the health or safety of the child or of other persons would be endangered by allowing the child to remain in his or her current educational placement.

12. The proposed amendments require boards to appoint a surrogate parent for a child when the board cannot identify a parent, the board cannot locate a parent or when the child is a ward of or is in the custody of the state, a county or a child welfare agency. A

surrogate parent is given the authority to act as the child's parent for special education purposes. The proposal establishes qualifications of surrogate parents, the terms of such an appointment and procedures for terminating an appointment.

13. The proposed rules set forth procedures for the department to follow when it receives a complaint and when it finds a school district out of compliance as a result of a monitoring visit. It specifies that the department may require a board to create a plan to correct any violation the department has found and that the plan must be approved by the department. If the district fails to carry out its plan of correction, the state superintendent may request the attorney general to proceed against a district for injunctive or other appropriate relief.

The proposed amendments also make numerous technical changes, such as renumberings, to incorporate the proposed changes into the current ch. PI 11.

1 **SECTION 1.** PI 11.01(title) and (1) are amended to read:

2 PI 11.01 PURPOSE. (1) **LEGISLATIVE INTENT.** The legislature recognized that
3 many children and youth, 3 to 21 years of age, have not experienced appropriate educa-
4 tional opportunities because comprehensive services were not available through all public
5 schools which were commensurate with their EEN. Subchapter V, ch. 115, Stats., was
6 enacted to ensure the identification of such needs and the development of services for
7 children to appropriately serve these needs. School districts shall provide children with
8 EEN who have attained the age of 3 with a free appropriate public education in accordance
9 with this chapter.

10 **SECTION 2.** PI 11.01(2)(b) and (f) (intro.) are repealed.

11 **SECTION 3.** PI 11.01(2)(f)1, 2, 3 and 4 are renumbered PI 11.02(1), (2), (3) and (4)
12 respectively and are amended to read:

13 PI 11.02(1) "Administrator" means school district administrator.

14 (2) "Behavioral records" ~~means those pupil records defined~~ has the meaning given
15 in s. 118.125(1)(b)(a), Stats., including psychological tests, personality evaluations, records
16 of conversations, any written statement concerning a child's behavior, achievement or

1 ~~ability tests, physical health records and any other pupil records which are not progress~~
2 ~~records.~~

3 (3) "Board" means school board as defined in s. 115.001(7), Stats.

4 (4) "Boarding home" means homes operated by an LEA operating special education
5 programs or services, or both, and used 5 days a week to care for non-resident children
6 being served in that program or service.

7 **SECTION 4.** PI 11.01(2)(f)5, 6, 7, 8, 9, 10 and 11 are renumbered PI 11.02(12), (5),
8 (6), (8), (9), (11) and (13) respectively and are amended to read:

9 PI 11.02(12) "Days" means calendar days unless otherwise specified.

10 (5) "CESA" means cooperative educational service agency created in ch. 116, Stats.

11 (6) "CHCEB" means county handicapped children's education board established
12 under s. 115.86, Stats.

13 (8) "Child advocate" means any person representing the parent during the M-team
14 process and at a board hearing.

15 (9) "Child study team" and "pupil services team" means a team, other than the
16 M-team, of professional support personnel in the district.

17 (11) "Cooperative agreement," or "66.30" means special education programs operated
18 by 2 or more districts or CHCEBs under a cooperative agreement as provided in s. 66.30,
19 Stats.

20 (13) "Department" means the Wisconsin department of public instruction ~~unless~~
21 ~~otherwise specified.~~

22 **SECTION 5.** PI 11.01(2)(f)12, 13, 14 and 15 are renumbered PI 11.02(14), (15), (16)
23 and (17) respectively and are amended to read:

24 PI 11.02(14) "Director" means a Wisconsin level A certified person who is licensed
25 under s. PI 3.63 and who has been appointed by a board as a director of special education.

1 (15) "District" ~~means or "school district" of residence unless otherwise specified~~
2 has the meaning specified in s. 115.01(3), Stats.

3 (16) "Division" means the division for handicapped children unless otherwise specified
4 and pupil services which is established under s. 15.373(1), Stats., and which has the
5 authority granted under s. 115.77, Stats.

6 (17) "EEN" means exceptional educational needs as defined in s. 115.76(3), Stats.

7 **SECTION 6.** PI 11.01(2)(f) 16, 17, 18 and 19 are renumbered PI 11.02(21), (22), (24)
8 and (25) respectively and are amended to read:

9 PI 11.02(21) "Full-time" means that the person is employed for a full day of employ-
10 ment, 5 days a week.

11 (22) "Half-time" means that the person works half-time in terms of hours.

12 (24) "Hearing" means an official private or public proceeding conducted by a board
13 ~~or a hearing officer.~~ It shall be conducted according to the procedures contained in
14 ~~PI 11.06~~ s. PI 11.10.

15 (25) "Hearing officer" means a person ~~appointed by the board to conduct the hearing~~
16 ~~according to the procedures contained in PI 11.06~~ who is selected under s. PI 11.10(3)(a) to
17 conduct a hearing under s. PI 11.10.

18 **SECTION 7.** PI 11.01(2)(f)20, 21, 22 and 23 are renumbered PI 11.02(28), (29), (30)
19 and (31) respectively and are amended to read:

20 PI 11.02(28) "LEA" means a local educational agency, including a district, CESA or
21 CHCEB operated by public schools.

22 (29) "Level A license" means a Wisconsin special education administrative license
23 issued under s. PI 3.63.

24 (30) "Level B license" means a Wisconsin special education administrative license
25 issued under s. PI 3.62.

1 (31) "Local", in terms of program placement, means not only the resident district,
2 but programs in adjoining districts, CESAs, CHCEBs and the state residential schools.

3 **SECTION 8.** PI 11.01(2)(f)24, 25 and 26 are renumbered PI 11.02(32), (34) and (35)
4 respectively and are amended to read:

5 PI 11.02(32) "Multidisciplinary team" or "M-team" means ~~multidisciplinary team a~~
6 group of people appointed under s. PI 11.04(2).

7 (34) "Non-EEN" means or "non-exceptional educational needs", ~~e.g.,~~ means needs
8 which are not exceptional as defined in s. 115.76(3), Stats.

9 (35) "Notice" means written notice sent by mail which shall be complete upon mailing.

10 **SECTION 9.** PI 11.01(2)(f)27 is repealed.

11 **SECTION 10.** PI 11.01(2)(f)28, 29 and 30 are renumbered PI 11.02(38), (41) and (42)
12 respectively and are amended to read:

13 PI 11.02(38) "Personnel/program criteria" means those criteria utilized by the
14 department and required for reimbursement.

15 (41) "Program designee" means the person designated by the board to administer
16 and coordinate all elements of programs and services for children with EEN. ~~This person~~
17 ~~does not hold a level A or level B license.~~ This chapter does not enable a program
18 designee to carry out any duties not permitted by the department license held by the
19 program designee.

20 (42) "Program unit" means a certified special education teacher with an enrollment
21 list of children having EEN as defined in s. 115.76(3), Stats.

22 **SECTION 11.** PI 11.01(2)(f)31 and 32 are renumbered PI 11.02(50) and (51) respec-
23 tively and are amended to read:

24 (50) ~~Superintendent~~ "State superintendent" means the Wisconsin superintendent of
25 public instruction.

1 (51) "Supervisor" means a person who has a level A or level B special education
2 administrative license.

3 **SECTION 12.** PI 11.02, 11.03 and 11.04 are repealed and recreated to read:

4 **PI 11.02 DEFINITIONS.** In this chapter:

5 (7) "Child" means any person under the age of 21 years and, for the duration of a
6 school term, any person who becomes 21 years old during that school term, except as
7 otherwise provided.

8 (10) "Child with exceptional educational needs" or "child with EEN" means a child
9 who has a handicapping condition and who because of the handicapping condition needs
10 special education.

11 (18) "Exceptional educational needs referral" or "EEN referral" means a written
12 statement submitted to a board under s. PI 11.03(2)(a).

13 (19) "Exceptional educational needs transfer pupil" or "EEN transfer pupil" means a
14 child with EEN whose residence changed from one Wisconsin district to another Wisconsin
15 district.

16 (20) "Free appropriate public education" or "FAPE" means special education and
17 related services which:

18 (a) Are provided at public expense, under public supervision and direction, and
19 without charge;

20 (b) Meet the statutes and rules enforced by the department; and,

21 (c) Are provided in conformity with a child's IEP.

22 (23) "Handicapping condition" means one or more of the following:

23 (a) Mental retardation as specified in s. PI 11.35.

24 (b) Physically handicapped as specified in s. PI 11.35.

25 (c) Visually handicapped as specified in s PI 11.35.

26 (d) Hearing handicapped as specified in s. PI 11.35.

1 (e) Speech and language handicap as specified in s. PI 11.35.

2 (f) Learning disabilities as specified in s. PI 11.35.

3 (g) Emotional disturbance as specified in s. PI 11.35.

4 (26) "Independent educational evaluation" means an examination of a child conducted
5 pursuant to s. PI 11.08 by a qualified person or persons not employed by any board involved
6 in the direct provision of educational services to the child, in order to determine whether
7 the child is a child with EEN.

8 (27) "Individualized education program" or "IEP" means a document developed under
9 s. PI 11.05(4).

10 (33) "M-team evaluation" means an examination of a child conducted under s. PI 11.04
11 to determine whether the child is a child with EEN.

12 (36) "Parent" means a biological parent, a husband who has consented to the arti-
13 ficial insemination of his wife under s. 891.40, Stats., a male who is presumed to be the
14 father under s. 891.41, Stats., or has been adjudicated the child's father either under
15 s. 767.51, Stats., or by final order or judgement of a court of competent jurisdiction in
16 another state, an adoptive parent, a guardian, a person acting as a parent of a child, a
17 person appointed as a sustaining parent under s. 48.428, Stats., or a surrogate parent. The
18 term does not include any person whose parental rights have been terminated, or the state
19 or a county or a child welfare agency if a child was made a ward of the state or a county
20 or child welfare agency under ch. 880, Stats., or if a child has been placed in the legal
21 custody of the state or a county or a child welfare agency under ch. 48 or ch. 767, Stats.

22 (37) "Person acting as a parent of a child" means relatives of the child or private
23 individuals allowed to act as parents of a child by the child's biological or adoptive parents
24 or guardian. The phrase includes such people as grandparents, neighbors, friends or private
25 individuals caring for the child with the explicit or tacit approval of the child's biological
26 or adoptive parents or guardian. The phrase does not include any person or agency that
27 receives public funds to care for the child.

1 (39) "Placement offer" means a document developed under s. PI 11.06.

2 (40) "Private school" has the meaning specified in s. 115.001(3r), Stats.

3 (43) "Public agency" means any political subdivision of the state which is respons-
4 ible for providing education to children with EEN.

5 (44) "Reevaluation" means an M-team evaluation conducted after the child has
6 received special education.

7 (45) "Related services" as defined in 34 C.F.R. s. 300.13(a) means transportation,
8 and such developmental, corrective, and other supportive services as are required to assist
9 a handicapped child to benefit from special education, and includes audiology, psychological
10 services, physical and occupational therapy, recreation, early identification and assessment
11 of disabilities in children, counseling services, and medical services for diagnostic or
12 evaluation purposes. The term also includes school health services, social work services in
13 schools, and parent counseling and training.

14 (46) "Reviewing officer" means a person who is selected under s. PI 11.11(3)(b) to
15 conduct an appeal under s. PI 11.11.

16 (47) "School term" has the meaning given in s. 115.001(12), Stats.

17 (48) "Special education" means specially designed instruction, at no cost to a child
18 or the child's parents, to meet the unique needs of a child with a handicapping condition,
19 including classroom instruction, instruction in physical education and instruction at home
20 and in hospitals and institutions.

21 (49) "Special education screening" is a process used to determine whether there is
22 reasonable cause to believe that a child is a child with EEN.

23 (52) "Surrogate parent" means a person who has been appointed in accordance with
24 s. PI 11.14 to act as the child's parent in all matters relating to this chapter and subch. V
25 of ch. 115, Stats.

1 (53) "Wisconsin school for the deaf" means the Wisconsin school for the deaf main-
2 tained and governed by the state superintendent under s. 115.52, Stats.

3 (54) "Wisconsin school for the visually handicapped" means the Wisconsin school for
4 the visually handicapped maintained and governed by the state superintendent under s. 115.52,
5 Stats.

6 **PI 11.03 SPECIAL EDUCATION SCREENING AND EEN REFERRALS.** (1) SPECIAL
7 EDUCATION SCREENING. (a) A board shall have an ongoing special education screening
8 program to locate and screen all children who are residents of the school district and who
9 have not graduated from high school. A board may coordinate its special education screen-
10 ing program with other educational, medical and social service agencies' screening programs
11 conducted within the district such as those for the early and periodic screening, diagnosis
12 and treatment program in 42 CFR ss. 441.50 to 441.62, day care agencies, perinatal clinics
13 and mental health facilities.

14 (b) The director or program designee shall be responsible for developing and
15 administering the board's special education screening program.

16 (c) As part of its special education screening program a board shall have policies
17 and procedures for locating and screening each of the following groups:

- 18 1. Children below school-entry age.
- 19 2. Children entering school for the first time.
- 20 3. Children currently enrolled in public and private schools.
- 21 4. All transfer pupils.
- 22 5. School-age children who are eligible to attend school but who are not attend-
23 ing school and who are residents of the district.

24 (d) A board shall upon request screen any child.

25 (e) A board shall provide information and inservice opportunities to all of its
26 licensed staff to familiarize them with behavioral descriptors which, in terms of frequency,
27 chronicity or severity might indicate an EEN.

1 (f) At least once a year, a board shall publicize the special education screening
2 program and the educational opportunities available in the community for children with
3 EEN through such means as public announcements, notices or paid advertisements.

4 (g) A board shall ensure that an EEN referral is submitted for every child for
5 whom, as a result of the board's special education screening program, it is determined
6 that there is reasonable cause to believe that the child is a child with EEN.

7 (2) EEN REFERRALS. (a) Any person who has reasonable cause to believe that a
8 child is a child with EEN may submit an EEN referral to a school board. An EEN referral
9 shall be in writing and it shall include the reasons why the person believes that the child is
10 a child with EEN.

11 (b) A board shall establish written procedures for accepting and processing EEN
12 referrals. A board shall document and date the receipt of each EEN referral.

13 (c) A board shall provide information and inservice opportunities to all of its
14 licensed staff to familiarize them with the board's EEN referral procedures.

15 (d) At least annually, a board shall inform persons required to make EEN referrals
16 under s. 115.80(1)(a), Stats., about the board's EEN referral and M-team evaluation
17 procedures. This may be accomplished through the use of means such as public announce-
18 ments, notices or paid advertisements.

19 (e) Prior to submitting an EEN referral to a board, a person required to make EEN
20 referrals under s. 115.80(1)(a) or (b), Stats., shall inform the child's parent that he or she is
21 going to submit the EEN referral. The person shall document the manner in which he or
22 she informed the parent.

23 (f) A board shall accept and process all EEN referrals submitted to it regarding
24 children who are residents of the school district and who have not graduated from high
25 school.

1 (g) Whenever a board receives an EEN referral for a child, it shall send a written
2 notice to the child's parent of the EEN referral. The notice shall be sent as soon as
3 possible after receiving the EEN referral and it shall meet the requirements under
4 s. PI 11.09(1). The notice shall also state the date of receipt of the EEN referral and that
5 in accordance with s. PI 11.06(5)(a), the board is required to send to the parent a copy of
6 the child's placement offer within 90 days of the date the board received the EEN referral.

7 **PI 11.04 MULTIDISCIPLINARY TEAMS.** (1) **CONSENT AND NOTICE FOR THE**
8 **M-TEAM EVALUATION PROCESS** (a) 1. Except as provided in subd. 3, a board may not
9 conduct an M-team evaluation of a child without the parent's written consent. The consent
10 obtained by the board shall meet the requirements under s. PI 11.09(2)(a) and, if the child
11 is determined to be a child with EEN, the consent shall continue in effect and thereby
12 grant consent for subsequent reevaluations until the parent revokes his or her consent in
13 writing.

14 2. Except as provided in subd. 3, a board may not conduct a reevaluation of a
15 child if the child's parent has revoked his or her consent for an M-team evaluation unless
16 the parent grants consent again.

17 3. If a parent refuses or revokes his or her consent for an M-team evaluation, a
18 board may initiate a hearing under s. PI 11.10 to determine whether the board shall
19 conduct an M-team evaluation of a child without the child's parent's written consent.

20 (b) Whenever a board proposes or refuses to initiate or change the M-team evalu-
21 ation process, it shall send a written notice to the child's parent of its intent to so propose
22 or refuse. The notice shall be sent within a reasonable period of time before the proposed
23 action or before the refusal to take action and shall meet the requirements under
24 s. PI 11.09(1).

25 (2) **APPOINTMENT AND COMPOSITION.** (a) Whenever a board receives an EEN
26 referral for a child who is a resident of the district and who has not graduated from high

1 school, the board shall appoint an M-team to conduct an M-team evaluation of the child
2 to determine whether the child is a child with EEN. The board shall select the members
3 of an M-team for their expertise in the handicapping condition the child is suspected to
4 have. All members of an M-team shall be employes of the board; a CESA or CHCEB serving
5 the district; a board that is a participant in a 66.30 agreement entered into by the board;
6 a district that has entered into an agreement under s. 121.85, Stats., with the board; a
7 board within the district's CESA, if the employes are serving the district through a CESA
8 program; the Wisconsin school for the visually handicapped; or, the Wisconsin school for
9 the deaf. An employe of the Wisconsin school for the visually handicapped or of the
10 Wisconsin school for the deaf may not be appointed to an M-team unless he or she is
11 licensed under subch. VII of ch. PI 3, is not management personnel, and has been designated
12 by the superintendent of his or her school as being available to participate on an M-team.
13 The professional recommendations made by staff members of the Wisconsin school for the
14 visually handicapped and the Wisconsin school for the deaf, when serving as members of
15 an M-team, shall not be construed to be those of the department. For purposes of this
16 paragraph, a person is an employe of the board even if the only function that he or she is
17 employed to perform is to serve as a member of an M-team.

18 (b) An M-team shall include all of the following:

- 19 1. An employe of the board.
- 20 2. At least 2 persons who are skilled in assessing children and programming for
21 children with handicapping conditions. At least one of these 2 persons shall be a teacher
22 who is licensed to teach in the handicapping condition that the child is suspected to have.
23 If a child is suspected to have or is currently identified as having more than one handi-
24 capping condition, there shall be a teacher or teachers on the M-team who is or are
25 licensed to teach in all of the child's suspected and currently identified handicapping
26 conditions.

1 3. If a child is suspected of having a learning disability, the child's regular
2 education teacher, if the child has one. If the child does not have a regular education
3 teacher, a regular education teacher licensed to teach a child of his or her age.

4 4. Other individuals as needed to evaluate and determine the needs of the child.

5 5. If a child is suspected of needing occupational therapy, an occupational
6 therapist.

7 6. If a child is suspected of needing physical therapy, a physical therapist.

8 (3) M-TEAM EVALUATION. (a) The M-team shall examine all relevant available
9 data concerning the child including the following:

10 1. Records concerning the child's previous and current educational performance,
11 health, and social behavior.

12 2. Records of previous interventions and special education programs provided to
13 the child and the effects of the interventions and programs.

14 3. Records of the child's ability to acquire information via different media such
15 as oral presentations, written documents, and visual displays.

16 (b) If the child is suspected to be or is currently identified as being learning
17 disabled, at least one member of the M-team, other than the child's regular teacher, shall
18 observe the child's performance in the regular classroom. If the child is of less than
19 school age or is out of school, the M-team member shall observe the child in an environ-
20 ment appropriate for a child his or her age.

21 (c) The parent shall be involved and consulted throughout the entire M-team
22 process.

23 (d) The M-team shall use evaluation materials and procedures as needed to assess
24 the child in all areas related to the suspected handicapping condition. If tests and other
25 evaluation materials and procedures are used they shall meet the following requirements:

1 1. They shall be provided and administered to the child in the child's native
2 language or other mode of communication, unless it is clearly not feasible to do so.

3 2. They may not be racially or culturally discriminatory.

4 3. They shall be validated for the specific purpose for which they are used.

5 4. They shall be administered by trained personnel in accordance with the instruc-
6 tions provided by their producer.

7 5. They shall be tailored to assess specific areas of educational need and not
8 simply to provide a single general intelligence quotient.

9 6. Tests shall be selected to ensure that when a test is administered to a child
10 with impaired sensory, manual, or speaking skills, the test results accurately reflect the
11 child's aptitude or achievement level or whatever other factors the test purports to measure,
12 rather than reflecting the child's impaired sensory, manual, or speaking skills, except
13 where those skills are the factors which the test purports to measure.

14 (e) Any member of the M-team may request additional information or conduct
15 additional tests at any time during the evaluation process.

16 (f) An M-team shall comply with pars. (a) to (d) prior to the M-team meeting
17 under sub. (4).

18 (g) Each member of the M-team shall prepare a written report of the evaluations
19 he or she conducted and the findings. The members shall submit their reports to the
20 director or program designee with the proposed M-team report or reports under par. (d)1,
21 unless the parent asks to have the individual reports available at the M-team meeting.
22 The members shall have their individual reports available at the M-team meeting if the
23 parent requests that in writing within 10 days of the date the board sent the notice of the
24 M-team evaluation under sub. (1)(b).

25 (h) An M-team may consult with persons other than employes of the board if it is
26 needed to appropriately assess whether a child is a child with EEN. Individuals other than
27 employes of the board may not be appointed official members of an M-team.

1 (4) MEETING. (a) The board shall set a date for the M-team to meet and discuss
2 the members' evaluations and findings and all the information obtained under sub. (3).

3 (b) The board shall notify the parent of the meeting within a reasonable amount of
4 time prior to the meeting. The notice shall include all of the following:

5 1. The date, time, and location of the meeting.

6 2. Information that the purpose of the meeting is to determine whether the child
7 is a child with EEN.

8 3. The names and titles of the members of the M-team and any additional people
9 who may be attending.

10 4. Information that the parent may attend the meeting and may bring an advocate.

11 5. If the child is a member of a minority, information that a member of that
12 minority may attend the meeting and have input into the M-team's decision-making process.

13 (c) Each member of the M-team shall attend the meeting or shall be represented
14 by a person who is knowledgeable about the child and the member's evaluations and findings.
15 More than half of the members of the M-team shall be present at the meeting.

16 (d) At the meeting the M-team shall discuss and consider all of the information
17 received under sub. (3) and it shall discuss and compare the evaluations and findings of
18 each of the members. Based upon its evaluations and findings the M-team shall, using the
19 criteria established in s. PI 11.35, determine if the child has a handicapping condition. An
20 M-team may not find that a child has a handicapping condition based upon a single evalu-
21 ation procedure. If the child is found to have a handicapping condition, the M-team shall
22 determine whether as a result of the handicapping condition the child needs special educa-
23 tion. The M-team shall reach a conclusion regarding whether the child is a child with
24 EEN. If the M-team concludes that a child is a child with EEN, the M-team shall consider
25 and make recommendations regarding what related services the child may need. If a need
26 for occupational or physical therapy has been considered by the M-team, the M-team

1 shall reach a conclusion regarding such need. An M-team may not reach a conclusion
2 regarding the need for occupational or physical therapy unless an appropriate therapist is
3 a member of the M-team.

4 (5) M-TEAM REPORT. (a) As a result of the M-team meeting, the M-team shall
5 write an M-team report which shall include at least the following:

6 1. A list of the handicapping conditions that the M-team found the child to have
7 using the criteria in s. PI 11.35.

8 2. The M-team's conclusions regarding whether the child needs special education
9 because of a handicapping condition.

10 3. If the child's need for occupational or physical therapy was considered, the
11 M-team's conclusions regarding such need.

12 4. A statement that documents the reasons for each of the M-team's findings and
13 conclusions listed in subds. 1 to 3.

14 5. Recommendations regarding what related services the child may need.

15 (b) If an M-team finds that a child is not a child with EEN the M-team report
16 shall also include the following:

17 1. An identification of the child's non-exceptional education needs.

18 2. A referral to any programs, other than special education programs, offered by
19 the board from which the child may benefit.

20 3. Information about any programs and services other than those offered by the
21 board that the M-team is aware of that may provide a benefit to the child.

22 (c) If there is unanimous agreement among the M-team members about the informa-
23 tion, findings and conclusions required in pars. (a) and (b), the M-team shall write one
24 proposed M-team report which is signed by all of the members and which indicates the
25 team's unanimity. If there is not unanimity among the M-team members, members of the
26 M-team shall write separate proposed M-team reports that meet the requirements under

1 pars. (a) and (b). M-team members may write a separate proposed M-team report indi-
2 vidually or with other members. Each member of the M-team shall sign a proposed M-team
3 report with which he or she agrees.

4 (d) 1. After completing a proposed M-team report or reports under par. (c), the
5 M-team shall send a copy of the proposed M-team report or reports to the director or
6 program designee for his or her approval.

7 2. Subject to subds. 3 and 4, the director or program designee may approve as the
8 M-team report for a child, the unanimously proposed M-team report or one of the separately
9 proposed M-team reports submitted by the M-team under subd. 1.

10 3. If the director or program designee approves as the M-team report either a
11 unanimously proposed M-team report, or a separately proposed M-team report that is
12 signed by a majority of the M-team members, the director or program designee shall send
13 to the board and to the child's parent, a copy of the approved M-team report and all of
14 the separately proposed M-team reports submitted. The director or program designee
15 shall indicate which is the approved M-team report and shall state in writing why that
16 report was selected. If the director or program designee intends to approve as the M-team
17 report, a separately proposed M-team report that is signed by a minority of the M-team
18 members, the director or program designee shall proceed as provided in subd. 4.

19 4. a. The director or program designee may approve as the M-team report, a
20 separately proposed M-team report that is signed by a minority of the M-team members,
21 if the director or program designee attended the M-team meeting that resulted in the
22 proposed M-team reports. The director or program designee shall send to the board and
23 to the child's parent, a copy of all of the separately proposed M-team reports submitted
24 and the director or program designee shall indicate which is the approved M-team report
25 and shall state in writing why that report was selected.

1 b. If the director or program designee intends to approve as the M-team report, a
2 separately proposed M-team report that is signed by a minority of the M-team members,
3 and the director or program designee did not attend the M-team meeting which resulted
4 in the proposed M-team reports, the director or program designee shall set a date for the
5 director or program designee to meet with the M-team and to discuss the proposed M-team
6 reports. The director or program designee shall notify the parent of the meeting within a
7 reasonable amount of time prior to the meeting and the notice shall include the information
8 listed in sub. (4)(b). Each member of the M-team shall attend the meeting or shall be
9 represented by a person who is knowledgeable about the child and the member's evaluations
10 and findings. More than half of the members of the M-team shall be present at the meeting.
11 At the meeting the M-team and the director or program designee shall discuss the members'
12 evaluations and findings and the separately proposed M-team reports. Any member of the
13 M-team may amend his or her proposed M-team report as a result of the meeting. After
14 the meeting the director or program designee may approve as the M-team report any one
15 of the separately proposed M-team reports submitted by the M-team. If the director or
16 program designee approves one of the separately proposed M-team reports as the M-team
17 report, the director or program designee shall send to the board and to the child's parent,
18 a copy of all of the separately proposed M-team reports submitted and the director or
19 program designee shall indicate which is the approved M-team report and shall state in
20 writing why that report was selected.

21 5. If the child's parent was unable to attend the most recent M-team meeting,
22 the director or program designee shall send with the approved M-team report and any
23 separately proposed M-team reports, a notice informing the parent that the parent may
24 request a conference with the director or program designee to discuss any proposed M-team
25 report and the approved M-team report and that an advocate may accompany the parent.

1 6. a. If the director or program designee does not accept the unanimously proposed
2 M-team report or any of the separately proposed M-team reports as the M-team report,
3 he or she shall send the proposed report or reports back to the M-team with a list of
4 questions that the director or program designee wants the M-team to consider. The
5 director or program designee may appoint additional members to the M-team. The new
6 members shall comply with sub. (3)(a) to (e) prior to a new M-team meeting.

7 b. When the director or program designee does not accept a proposed M-team
8 report the director or program designee shall set a date for the M-team to meet and discuss
9 the director's or program designee's concerns. The M-team shall notify the parent of the
10 meeting within a reasonable amount of time prior to the meeting and the notice shall
11 include the information listed in sub. (4)(b).

12 c. Each member of the M-team shall attend the meeting or shall be represented
13 by a person who is knowledgeable about the child and the member's evaluations and findings.
14 More than half of the members of the M-team shall be present at the meeting. At the
15 meeting the M-team shall address the questions and issues raised by the director or program
16 designee. Any member of the M-team may amend his or her proposed M-team report as a
17 result of the meeting.

18 d. After the meeting in subd. 6.a, the M-team shall send a copy of the unanimously
19 proposed M-team report or all of the separately proposed M-team reports to the director
20 or program designee for his or her approval.

21 e. After receiving the proposed M-team report or reports, the director or program
22 designee shall approve an M-team report. If the director or program designee approves as
23 the M-team report a unanimously proposed M-team report or a separately proposed M-team
24 report that is signed by a majority of the M-team members, the director or program
25 designee shall comply with subds. 3 and 5. If the director or program designee intends to
26 approve a separately proposed report that is signed by a minority of the M-team members,
27 the director or program designee shall comply with subds. 4 and 5.

1 (6) REEVALUATION. (a) A board shall initiate a reevaluation for each child who
2 is receiving special education as follows:

3 1. No later than 3 years from the date the last M-team report completed on the
4 child was approved under sub. (5)(d)2 or 7.

5 2. Whenever the board has reason to believe that the child is no longer a child
6 with EEN;

7 3. Whenever the board has reason to believe that the child no longer has a previously
8 identified handicapping condition;

9 4. Whenever the board has reason to believe that the child has a handicapping
10 condition that has not been identified; and

11 5. Whenever a child's parent or teacher requests a reevaluation.

12 (b) Any board and M-team that is conducting a reevaluation shall comply with the
13 requirements under this section.

14 (c) Except as otherwise provided by law, a board may not stop providing special
15 education to a child unless, as a result of a reevaluation, an M-team determines that the
16 child is no longer a child with EEN.

17 (d) A board may not identify or cease to identify a child as having a handicapping
18 condition unless that is a determination made by an M-team as a result of an M-team
19 evaluation.

20 (7) NOTICE FOR IDENTIFICATION PURPOSES. Whenever a board proposes or
21 refuses to initiate or change the identification of a child as a child with EEN it shall send
22 a written notice to the child's parent of its intent to so propose or refuse. The notice
23 shall be sent within a reasonable period of time before the proposed action or before the
24 refusal to take action and shall meet the requirements under s. PI 11.09(1).

25 (8) HEARING RIGHTS. A parent may initiate a hearing under s. PI 11.10 when-
26 ever a board proposes or refuses to initiate or change the M-team evaluation process or
27 the identification of a child as a child with EEN.

1 **SECTION 13.** PI 11.05 is renumbered PI 11.37.

2 **SECTION 14.** PI 11.05 is created to read:

3 **PI 11.05 INDIVIDUALIZED EDUCATION PROGRAM.** (1) **APPOINTMENT OF STAFF.**

4 When an M-team report is approved under s. PI 11.04(5)(d) indicating that a child who is
5 3 years of age or older, a resident of the school district and who has not graduated from
6 high school, is a child with EEN, a board shall appoint staff to develop an IEP for the
7 child. The staff appointed by the board shall include a person who is knowledgeable about
8 the child, the type of evaluation data available on the child and the program options.

9 (2) **IEP MEETING.** (a) The board shall set a date for a meeting to discuss the
10 special education program and related services needs of the child and to develop an IEP
11 for the child. The meeting shall be held within 30 days after an M-team report is approved
12 under s. PI 11.04(5)(d) indicating that the child is a child with EEN. The time and location
13 of the meeting shall be agreed upon by the board and the child's parent. The board shall
14 ensure that the reports required under s. PI 11.04(5)(c) and (d) are completed and in writing
15 prior to the IEP meeting. These reports shall be available to the parent prior to the IEP
16 meeting.

17 (b) The board shall ensure that each IEP meeting includes the following participants:

18 1. A representative of the board, other than the child's teacher, who is qualified
19 to provide, or supervise the provision of, special education.

20 2. The child's teacher.

21 3. One or both of the child's parents, subject to sub. (3).

22 4. The child, if the child's parent feels that the child's presence is appropriate.

23 5. If the IEP process is initiated because of an initial eligibility determination of
24 a child:

25 a. A member of the M-team that evaluated the child; or

1 b. A person who is knowledgeable about the evaluation procedures used with the
2 child and is familiar with the report issued under s. PI 11.04(5).

3 6. If a child is enrolled in a private school and receives or is eligible to receive
4 special education from the board, a representative of the private school. If the private
5 school representative cannot attend the meeting the board shall ensure the school's
6 participation by some other means such as individual or conference telephone calls.

7 7. If a board is considering placing the child in a private school, a representative
8 of the private school. If the private school representative cannot attend the meeting the
9 board shall ensure the school's participation by some other means such as individual or
10 conference telephone calls.

11 8. Persons other than those specified in subds. 1 to 7 may attend the meeting at
12 the discretion of the parent or the board.

13 (c) The participants at the IEP meeting shall review the child's M-team report
14 written in accordance with s. PI 11.04(5) and shall consider the M-team's recommendations
15 regarding related services.

16 (3) PARENT PARTICIPATION. (a) The board shall send a written notice to the
17 parents within a reasonable amount of time prior to the IEP meeting. The notice shall
18 meet the requirements under s. PI 11.09(1) and shall include all of the following:

19 1. The date, time, and location of the meeting and information that the meeting
20 must be scheduled at a time and place agreed upon by the board and the child's parents.

21 2. The purpose of the meeting.

22 3. The names and titles of the persons who will be attending the meeting.

23 4. Information that the parent may bring other people to the meeting.

24 (b) If no parent is able to attend the meeting the board shall ensure the parent's
25 participation by some other means such as individual or conference telephone calls.

1 (c) If no parent can attend the meeting or participate by other means, the board
2 shall maintain a record of its attempts to have the parent attend or participate in the
3 meeting. Notes from any contact made with the parent such as telephone calls or visits
4 to the home or workplace and any correspondence with the parent shall be retained as
5 part of the record.

6 (d) The board shall take the necessary steps to ensure that the parent understands
7 what is said at the IEP meeting, including arranging for an interpreter if the parent is
8 deaf or if the parent's primary language is other than English.

9 (4) THE IEP. (a) The IEP for each child shall include:

- 10 1. A statement of the child's present levels of educational performance.
- 11 2. A statement of annual goals, including short term instructional objectives.
- 12 3. The extent to which the child will be able to participate in regular educational
13 programs.
- 14 4. A statement of the specific special education and related services to be provided
15 to the child.
- 16 5. The projected dates for initiation of services and the anticipated duration of
17 the services.
- 18 6. Appropriate objective criteria and evaluation procedures and schedules for
19 determining, on at least an annual basis, whether the short term instructional objectives
20 are being achieved.

21 (b) A child's IEP may not include occupational or physical therapy unless the
22 M-team has concluded that the child needs such therapy.

23 (c) Within the time period specified under s. PI 11.06(4), a board shall develop and
24 implement a placement offer to carry out a child's IEP.

25 (5) REVIEW OF THE IEP. (a) At least annually a board shall review the IEP of
26 each child with EEN who is a resident of the district. Whenever a board conducts a review
27 of a child's IEP or wants to change a child's IEP it shall comply with this section.

1 (b) If a child is attending a private school and the private school is providing
2 special education services to the child, the private school may conduct reviews of a child's
3 IEP at the discretion of the board. A private school that conducts a review or that wants
4 to change a child's IEP shall comply with the requirements under this section. The board
5 shall ensure that at any IEP meeting held by a private school, the parent and the board are
6 represented and are involved in any decision made about the child's IEP. No changes may
7 be made to the child's IEP unless they are approved by the parent and the board.

8 (c) A parent may request a board to conduct a review of his or her child's IEP. If
9 a board agrees to conduct a review based on a parent's request, it shall comply with the
10 requirements under this section.

11 (6) PURPOSE OF AN IEP. (a) A board shall provide special education and related
12 services to a child consistent with the child's current IEP. A board may not provide
13 special education and related services to a child unless the child has a current IEP.

14 (b) An IEP is a commitment of resources to a child by a board. An IEP is not a
15 guarantee that the goals and objectives found in the IEP will be achieved.

16 (7) NOTICE AND HEARINGS. (a) Whenever a board refuses to initiate or change
17 an IEP it shall send a written notice to the child's parent of its intent to refuse. The
18 notice shall be sent within a reasonable period of time before the refusal to take action
19 and shall meet the requirements under PI 11.09(1).

20 (b) A parent may initiate a hearing under s. PI 11.10 whenever a board proposes or
21 refuses to initiate or change his or her child's IEP.

22 **SECTION 15.** PI 11.06 is repealed and recreated to read:

23 **PI 11.06 PLACEMENT OFFER** (1) **DEVELOPMENT OF A PLACEMENT OFFER.**

24 (a) When an IEP has been completed for a child, the board shall have the director or
25 program designee develop a placement offer for the child. The placement offer shall be
26 based upon and carry out the child's IEP and it shall consist of 2 parts. The director or

1 program designee shall appoint a group to develop the first part of the placement offer
2 and shall ensure that the members of the group are knowledgeable about the child and the
3 type of evaluation data available on the child. The members of the group shall also be
4 familiar with existing special education placement options.

5 (b) The first part of the placement offer shall specify the delivery model to be
6 used and the level at which each of the services will be provided to implement the child's
7 IEP. In arriving at these decisions the group shall consider and shall document that they
8 considered the requirements in subds. 1 to 4 and any potential harmful effect on the child
9 or on the quality of services which he or she needs.

10 1. To the maximum extent appropriate, a child with EEN shall be educated with
11 children who are not children with EEN.

12 2. Special classes, separate schooling, or any other program that would remove a
13 child with EEN from the regular educational environment may only be included when the
14 nature or severity of a child's handicapping condition is such that education in regular
15 classes with the use of supplementary aids and services cannot be achieved satisfactorily.

16 3. Alternative programs that are needed to implement the child's IEP shall be
17 available.

18 4. Appropriate nonacademic and extracurricular services and activities shall be
19 provided.

20 (c) The second part of the placement offer shall be completed by the director or
21 program designee and it shall specify the location at which services will be provided to
22 implement the child's IEP in conformance with the first part of the placement offer. In
23 completing the second part of the placement offer, the director or program designee shall
24 comply with sub. (2) and shall consider and document that he or she considered all of the
25 following requirements:

1 1. Unless the IEP of a child with EEN requires a different arrangement, the child
2 shall be educated in the school which he or she would attend if he or she were not a child
3 with EEN.

4 2. Special education and related services shall be provided as close as possible to
5 the child's home.

6 3. A child with EEN may be placed in a special education program at the child's
7 home, or at a hospital only if there is a physician's statement in writing that the child is
8 unable to attend school.

9 (2) LOCATING A PLACEMENT. (a) If the board for which the director or program
10 designee works, the county in which the child resides, or the CESA for the district in
11 which the child resides operates or can immediately establish an appropriate special
12 education placement as specified in the IEP and in the first part of the placement offer,
13 the director or program designee shall put the child in that placement.

14 (b) If an appropriate special education placement is not available under par. (a),
15 the director or program designee may consult with the division to determine whether an
16 appropriate special education placement as specified in the IEP and in the first part of the
17 placement offer is available that is offered by a different board or a public agency in
18 Wisconsin. If more than one such placement exists, the director or program designee shall
19 put the child in a placement as near as possible to the place where the child resides.

20 (c) Upon the approval of the state superintendent, the director or program designee
21 may put the child in a placement offered by a public agency in another state. The state
22 superintendent shall approve such a placement if he or she determines that it is an
23 appropriate special education placement, that par. (d)2 and 3 are complied with, and that
24 one of the following is true:

1 1. There is no appropriate placement available in Wisconsin without the use of a
2 boarding home or residential placement and the proposed placement will enable the child
3 to reside at home and receive daily transportation to and from the placement; or,

4 2. The proposed placement will result in a significant reduction in daily trans-
5 portation costs or in the child's time in transit to the placement while the child resides at
6 home.

7 (d) 1. If the director or program designee finds that no board or public agency in
8 Wisconsin can provide an appropriate special education placement as specified in the IEP
9 and in the first part of the placement offer, the director or program designee shall consult
10 with the division to determine whether an appropriate special education placement is
11 offered by a private nonsectarian school in or outside of Wisconsin or by a public agency
12 in another state. A director or program designee may not enroll a child with EEN in a
13 private nonsectarian school in or outside of Wisconsin or in any placement that is offered
14 by a public agency in another state without the state superintendent's approval.

15 2. To obtain the state superintendent's approval, the director or program designee
16 shall submit a written report to the state superintendent which shall include the following:

17 a. A record of the steps taken by the director or program designee in attempting
18 to locate an appropriate placement for the child.

19 b. Information about the private or out-of-state public placement standards for
20 instructional and supportive staff certification and placement approval criteria.

21 c. Any additional information requested by the state superintendent.

22 3. The state superintendent may approve such an enrollment if he or she finds all
23 of the following:

24 a. The director or program designee has complied with this subsection.

25 b. The private program or out-of-state public program meets instructional and
26 supportive staff certification standards under ch. PI 3, program approval criteria under
27 this chapter and school district standards under s. 121.02, Stats., and ch. PI 8.

1 (3) COPIES AND REVIEW OF A PLACEMENT OFFER. (a) The director or program
2 designee shall send a copy of a child's placement offer to the child's parent each time the
3 child's placement offer is developed or changed. The director or program designee shall
4 send a copy of the placement offer within a reasonable period of time before implementing
5 the placement offer and the director or program designee shall include a notice that meets
6 the requirements under s. PI 11.09(1).

7 (b) The director or program designee shall review a child's placement offer as
8 needed and each time the child's IEP is changed. Whenever a director or program designee
9 reviews a placement offer he or she shall comply with this section.

10 (4) IMPLEMENTATION OF THE PLACEMENT OFFER. Except as provided in
11 sub.(6)(a), a board shall implement a child's placement offer as soon as possible after the
12 IEP meeting under s. PI 11.05(2).

13 (5) TIMELINE. (a) The board shall send a copy of a child's placement offer to the
14 parent within 90 days of the date the board received an EEN referral or initiated a re-
15 evaluation for the child. If a board needs an extension of that 90-day period, the board
16 shall first inform the child's parent of the need and reasons for an extension and shall ask
17 the parent to agree in writing to a specific extension of time beyond the 90-day period. If
18 the parent will not agree to an extension the board may request an extension from the
19 division. The board shall inform the division of the reasons for the request. The division
20 may grant a specific extension of time beyond the 90-day period if the board shows that it
21 has acted in good faith and that there is good cause to grant the extension. If the division
22 grants an extension it shall notify the parent of the extension and the reasons for granting
23 it.

24 (b) A board may not implement a child's placement offer until a reasonable amount
25 of time has lapsed since it provided the parent with a copy of the placement offer.

1 (6) CONSENT, NOTICE AND HEARINGS. (a) 1. Except as provided in subd. 3, a
2 board may not implement a placement offer for a child without the parent's consent. The
3 consent obtained by the board shall meet the requirements under s. PI 11.09(2)(a) and it
4 shall continue in effect and thereby grant consent for subsequent placement offers until
5 the parent revokes his or her consent in writing.

6 2. Except as provided in subd. 3, a board may not continue a child's placement
7 offer if the child's parent has revoked his or her consent for a placement offer unless the
8 parent grants consent again.

9 3. If a parent refuses or revokes his or her consent for a placement offer, a board
10 may initiate a hearing under s. PI 11.10 to determine whether the board shall implement a
11 placement offer for the child without the parent's consent.

12 (b) Whenever a board refuses to initiate or change a placement offer it shall send
13 a written notice to the child's parent of its intent to refuse. The notice shall be sent
14 within a reasonable period of time before the refusal to take action and shall meet the
15 requirements under s. PI 11.09(1).

16 (c) A parent may initiate a hearing under s. PI 11.10 whenever a board proposes to
17 initiate or change or refuses to initiate or change his or her child's placement offer.

18 **SECTION 16.** PI 11.07, 11.08, 11.09 and 11.10 are created to read:

19 **PI 11.07 TRANSFER PUPILS.** (1) **EEN TRANSFER PUPILS.** (a) When a board receives
20 an EEN transfer pupil, the receiving board shall develop a placement offer to implement
21 the child's IEP from the sending board. The IEP from the sending board shall remain in
22 effect until the receiving board has its own IEP. The receiving board shall conduct a new
23 M-team evaluation or adopt the one of the sending board and it shall develop a new IEP or
24 adopt the IEP of the sending board. The receiving board may not adopt the M-team
25 evaluation or the IEP of the sending board if it does not meet state and federal
26 requirements.

1 (b) When a board receives an EEN transfer pupil and the board does not receive
2 the pupil's records from the sending board, the board shall request in writing the pupil's
3 records from the sending board. The sending board shall transfer the pupil's records to the
4 receiving board within 5 working days of receipt of the written notice as required under
5 s. 118.125(4), Stats.

6 (c) If a hearing is initiated under s. PI 11.10 while the child's IEP from the sending
7 board and the receiving board's placement offer is in effect, for purposes of s. PI 11.13,
8 the child's current educational placement is the child's IEP from the sending board and the
9 placement offer of the receiving board, unless the hearing officer determines otherwise.

10 (2) TRANSFER PUPILS FROM OUTSIDE WISCONSIN. When a board receives a
11 transfer pupil from outside Wisconsin who was receiving special education in the sending
12 state, the board shall treat the child as a new pupil. The board shall conduct an M-team
13 evaluation and develop an IEP and placement offer for the child in accordance with
14 ss. PI 11.04, 11.05 and 11.06 within 90 days after the child enrolls in the receiving school.

15 PI 11.08 INDEPENDENT EDUCATIONAL EVALUATION. (1) RIGHT TO AN
16 INDEPENDENT EDUCATIONAL EVALUATION. (a) A parent of a child who has been
17 evaluated under s. PI 11.04 has the right to obtain an independent educational evaluation
18 of the child if he or she disagrees with the M-team evaluation conducted by a board. The
19 parent has the right to select the person to conduct the independent educational evaluation
20 and to request payment for the independent educational evaluation from the board. A
21 parent's request for payment for an independent educational evaluation shall be in writing.
22 The board shall pay the costs of the independent educational evaluation unless the parent
23 refuses to give the board a complete copy of the independent educational evaluation or it
24 is found at a hearing that the board's M-team evaluation is appropriate or that the
25 independent educational evaluation does not meet the requirements under sub. (2).

1 (b) If a parent requests information from a board about an independent educa-
2 tional evaluation, the board shall provide the parent with information about where an
3 independent educational evaluation may be obtained by people who meet the requirements
4 under sub. (2)(b).

5 (c) Prior to obtaining an independent educational evaluation a parent may ask the
6 board whether the board believes that the person the parent has selected to conduct the
7 independent educational evaluation meets the requirements under sub. (2)(b). If the board
8 finds that the person does not meet the requirements under sub. (2)(b), the board shall
9 inform the parent of that finding and shall also inform the parent about whether the board
10 would request a hearing to challenge the payment or provision of an independent educa-
11 tional evaluation that is conducted by that person as provided under sub. (3). A board may
12 not refuse to pay for or otherwise provide an independent educational evaluation because
13 a parent did not obtain the board's prior approval under this paragraph.

14 (2) REQUIREMENTS OF AN INDEPENDENT EDUCATIONAL EVALUATION. An
15 independent educational evaluation paid for by a board must meet all of the following
16 requirements:

17 (a) The independent educational evaluation shall address each portion of the M-team
18 evaluation that is in dispute.

19 (b) Each portion of the independent educational evaluation shall be conducted by a
20 person whose professional qualifications exceed or are equivalent to those required by the
21 board for a person to be able to conduct for the board the type of evaluation that is in
22 dispute.

23 (c) The independent educational evaluation shall be conducted in accordance with
24 the requirements under ss. PI 11.04(3)(d) and 11.35 and shall address the question of
25 whether the child is a child with EEN.

1 (3) HEARING REGARDING A BOARD'S RESPONSIBILITY TO PAY FOR OR
2 OTHERWISE PROVIDE FOR AN INDEPENDENT EDUCATIONAL EVALUATION. If a
3 parent obtains an independent educational evaluation and the board believes that its
4 M-team evaluation is appropriate or that the independent educational evaluation does not
5 meet the requirements under sub. (2), the board may initiate a hearing under s. PI 11.10 to
6 determine whether the board is required to pay for or otherwise provide the independent
7 educational evaluation. If the hearing officer finds either that the board's M-team
8 evaluation is appropriate or that the independent educational evaluation does not meet
9 the requirements under sub. (2), the board is not required to pay for or otherwise provide
10 the independent educational evaluation.

11 (4) BOARD'S RIGHT TO A COPY OF THE INDEPENDENT EDUCATIONAL
12 EVALUATION. A board is not required to pay for or otherwise provide for an independent
13 educational evaluation if the parent refuses to allow the board to obtain a complete copy
14 of the independent educational evaluation and to make it part of the child's records.

15 (5) THE EFFECT OF A PARENT INITIATED INDEPENDENT EDUCATIONAL
16 EVALUATION. If a parent has obtained an independent educational evaluation at public
17 or private expense, the results of the independent educational evaluation:

18 (a) Shall be considered by the board when making any decision regarding the child's
19 M-team evaluation, IEP, or educational placement or regarding the provision of a free
20 appropriate education for the child; and,

21 (b) May be presented as evidence at a hearing conducted under s. PI 11.10.

22 (6) HEARING AND REVIEWING OFFICERS MAY ORDER AN INDEPENDENT
23 EDUCATIONAL EVALUATION. A hearing officer may order that an independent educa-
24 tional evaluation of a child be conducted as provided under s. PI 11.10(7). A reviewing
25 officer may order that an independent educational evaluation be conducted as provided
26 under s. PI 11.11(7).

1 PI 11.09 NOTICE AND CONSENT. (1) NOTICE. (a) A notice shall be written in
2 language that is understandable to the general public and it shall be written in the native
3 language of the parent or other mode of communication used by the parent, unless it is
4 clearly not feasible to do so.

5 (b) If the native language or other mode of communication of the parent is not a
6 written language the board shall take steps to ensure that the notice is translated to the
7 parent either orally or in the other mode of communication used by the parent. The board
8 shall also ensure that the parent understands the content of the notice. The board shall
9 document the actions it has taken to comply with this paragraph.

10 (c) The notice shall clearly state whether a parent has given consent for an M-team
11 evaluation and for a placement offer, the date the parent gave consent and whether the
12 consent is currently in effect. The notice shall also clearly inform the parent of all of the
13 following:

- 14 1. The fact that consent by the parent is voluntary.
- 15 2. When consent is needed by a board and what it enables a board to do.
- 16 3. The fact that a consent continues in effect until revoked in writing by the
17 parent.
- 18 4. The parent's right to revoke his or her consent at any time.
- 19 5. The effect of revoking consent.
- 20 6. The board's right to initiate a hearing to attempt to override a parent's refusal
21 to grant consent and the board's right to initiate a hearing to override a parent's revoca-
22 tion of consent.

23 (d) A notice shall contain all of the following:

- 24 1. A description of the action proposed or refused by the board, an explanation of
25 why the board proposes or refuses to take the action, and a description of any options the
26 board considered and the reasons why those options were rejected.

1 2. A description of each evaluation procedure, test, record, or report the board
2 used as a basis for proposing or refusing to take an action.

3 3. A description of any other factor which is relevant to the board's proposing or
4 refusing to take an action.

5 4. A full explanation of all of the following:

6 a. The right to an independent educational evaluation under s. PI 11.08.

7 b. The right to have specialists on the M-team and to have the standards followed
8 that are provided under s. PI 11.04(3)(d).

9 c. The right to know about and be present and represented at an M-team meeting
10 as provided under s. PI 11.04(4)(b) and (5)(d)5, and the right to receive a copy of the
11 M-team report and to request a conference to discuss the report under s. PI 11.04(5)(d)3.

12 d. The right to have M-team members' individual reports available at the M-team
13 meeting as provided under s. PI 11.04(3)(g).

14 e. The right to know about and be present and represented at IEP meetings as
15 provided under s. PI 11.05(2)(a) and (3).

16 f. The right to have the child educated in the least restrictive appropriate
17 environment as provided under s. PI 11.06(1)(b) and (c).

18 g. The requirements to provide notice under ss. PI 11.04(1)(b), 11.05(7)(a) and
19 11.06(6)(b) and the notice requirements under this subsection.

20 h. The consent requirements under sub. (2) and ss. PI 11.04(1)(a) and 11.06(6)(a).

21 i. The right to inspect pupil records.

22 j. The right to hearings under ss. PI 11.04(8), 11.05(7)(b), 11.06(6)(c) and 11.10(1).

23 k. The right to be informed of free or low-cost legal or other relevant services as
24 provided under s. PI 11.10(3)(a).

25 l. The rights in the hearing process under s. PI 11.10(4)(a) and (b), (5) and (10).

26 m. The right to appeal a hearing decision under s. PI 11.11(1).

1 n. The rights on appeal under s. PI 11.11(4)(a) and (b), (5), (6) and (9).

2 o. The right to file a complaint under s. PI 11.15.

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

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

5 r. The provisions for the educational placement of a child during hearings and
6 appeals under s. PI 11.13.

7 s. The provisions for the selection of a surrogate parent under s. PI 11.14 and the
8 rights of a surrogate parent under s. PI 11.14(1)(c) and (4).

9 t. The right to receive attorneys' fees as provided under 20 USC s. 1415(e)(4).

10 (2) CONSENT. (a) A board has obtained the consent of a parent if the board
11 meets and documents that it has met all of the following requirements:

12 1. The board shall fully inform the parent of all information relevant to the
13 activity for which consent is sought. The board shall communicate this information in the
14 parent's native language or other mode of communication.

15 2. The board shall obtain the written agreement of the parent to allow the board
16 to carry out its proposed activity. The agreement shall indicate that the parent under-
17 stands what the board proposes to do and shall contain a description of the proposed
18 activity and a list of any records that will be released and of the persons to whom they
19 will be released.

20 3. The board shall explain to the parent that consent by the parent is voluntary
21 and may be revoked in writing at any time. The board shall also explain the effects of a
22 parent's refusal to grant consent and a parent's revocation of consent and it shall explain
23 the board's rights to attempt to override a parent's refusal to grant consent and a parent's
24 revocation of consent by requesting a hearing as provided under ss. PI 11.04(1)(a)3 and
25 PI 11.06(6)(a)3.

1 (b) Except as provided in s. PI 11.04(1)(a) for an M-team evaluation and in
2 s. PI 11.06(6)(a) for a placement offer, a board may not be required to obtain parental
3 consent as a condition of providing or performing any service or function required of a
4 board under this chapter.

5 PI 11.10 HEARINGS. (1) RIGHT TO A HEARING. (a) A parent may initiate a hearing
6 under sub. (2) as provided under ss. PI 11.04(8), 11.05(7)(b) and PI 11.06(6)(c).

7 A parent may also initiate a hearing under sub.(2) whenever a board proposes or refuses to
8 initiate or change his or her child's free appropriate public education.

9 (b) A surrogate parent may initiate a hearing under sub. (2) as provided under
10 s. PI 11.14(1)(c)2.

11 (c) A board may initiate a hearing under sub. (2) as provided under ss. PI 11.04(1)
12 (a)3, 11.06(6)(a)3 and 11.08(3).

13 (2) INITIATING A HEARING. (a) A parent may initiate a hearing by sending a
14 letter to a board requesting a hearing. The letter shall state the specific reasons for the
15 request.

16 (b) A board may initiate a hearing by sending a letter to a parent stating that the
17 board is initiating a hearing. The letter shall state the specific reasons for the hearing.

18 (3) BOARD RESPONSIBILITY. (a) After a board has sent a letter initiating a hear-
19 ing or received a request for a hearing under sub. (2), the board shall select a hearing
20 officer in accordance with s. PI 11.12(2)(c). After the board has selected a hearing officer
21 the board shall send to the division a copy of the letter that initiated the hearing and the
22 name and address of the hearing officer who was selected. The board shall also inform
23 the other party in writing of the name and address of the hearing officer selected and of
24 any free or low-cost legal and other relevant services available in the area.

25 (b) The board shall be responsible for payment of the costs of the hearing which
26 shall include the hearing officer's and stenographer's salaries.

1 (c) When a request for a hearing is settled or withdrawn before a decision is issued
2 by the hearing officer, the board shall inform the division of the settlement or withdrawal,
3 and it shall indicate how the issues were resolved.

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

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

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

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

22 (5) HEARING RIGHTS. (a) The parties to a hearing have a right to:

23 1. Be accompanied and advised by counsel and by individuals with special know-
24 ledge or training of children with EEN.

25 2. Present evidence and confront, cross-examine, and compel the attendance of
26 witnesses.

1 3. Prohibit the introduction of any evidence at the hearing that has not been
2 disclosed to that party at least 5 days before the hearing.

3 4. Receive from the other party a free copy of each document offered into evidence
4 or submitted to the hearing officer by the other party.

5 5. Obtain a written verbatim record of the hearing. The board may charge a
6 reasonable fee for a copy of the transcript unless a parent requests a free copy based upon
7 a showing of indigency or financial need.

8 6. Obtain a written decision which includes findings of fact and conclusions of
9 law.

10 7. Have access to any reports, records or clinical evaluations on which a decision
11 was based or which could have a bearing on the correctness of the decision.

12 (b) Parents have a right to:

13 1. Have the child who is the subject of the hearing present.

14 2. Open the hearing to the public.

15 (6) CONDUCT OF A HEARING. (a) A hearing officer may:

16 1. Administer oaths and affirmations.

17 2. Issue subpoenas and enforce subpoenas under ss. 885.01(4) and 885.12, Stats.

18 3. Regulate the course of the hearing.

19 4. Hold conferences for the settlement or simplification of the issues.

20 (b) The hearing officer shall not be bound by common law or statutory rules of
21 evidence. The hearing officer shall admit all testimony having a reasonable probative
22 value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. The
23 hearing officer shall give effect to the rules of privilege recognized by law.

24 (7) INDEPENDENT EDUCATIONAL EVALUATION. A hearing officer may order
25 an independent educational evaluation of a child as part of a hearing. The independent
26 educational evaluation shall meet the requirements in s. PI 11.08(2) and shall be paid for
27 by the board that is a party to the hearing.

1 (8) HEARING OFFICER'S AUTHORITY. Except as otherwise provided by law, a
2 hearing officer has the authority to issue an order consistent with subch. V of ch. 115,
3 Stats., and this chapter, and to order whatever remedy is reasonably necessary to bring
4 the parties into compliance with subch. V of ch. 115, Stats., and this chapter.

5 (9) RECORD OF A HEARING. The hearing officer shall keep an official record of
6 the hearing which shall contain all of the following:

7 (a) A copy of the letter that initiated the hearing.

8 (b) A written transcript of the proceedings.

9 (c) All notices relevant to the hearing that were sent to the parent, board, or
10 hearing officer.

11 (d) All evidence received or considered, stipulations and admissions.

12 (e) All exhibits introduced at the hearing.

13 (f) All correspondence related to the case.

14 (g) All briefs and papers submitted by either party.

15 (h) Any proposed findings and decisions and any interim decisions and orders.

16 (i) A copy of the hearing officer's decision.

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

22 **SECTION 17.** PI 11.11, 11.12, 11.13, 11.14, 11.15 and 11.16 are renumbered PI 11.17,
23 11.18, 11.19, 11.20, 11.21 and 11.22 respectively.

24 **SECTION 18.** PI 11.11, 11.12, 11.13, 11.14, 11.15 and 11.16 are created to read:

25 **PI 11.11 APPEALS.** (1) **REQUESTING AN APPEAL.** A parent or board may appeal
26 a decision issued under s. PI 11.10(10) by sending a letter to the state superintendent

1 within 45 days after the date the decision was mailed under s. PI 11.10(4)(b). The letter
2 shall identify what decision is being appealed and the specific reasons for the appeal.

NOTE: Any information or document that is required to be sent to the state super-
intendent should be sent to the Wisconsin Department of Public Instruction, Division
for Handicapped Children and Pupil Services, 125 South Webster Street, P.O. Box
7841, Madison, Wisconsin 53707.

3 (2) BOARD RESPONSIBILITY. As soon as possible after a board has sent an appeal
4 letter under sub. (1) or received notice of an appeal under sub. (3), the board shall deliver
5 the official record of the hearing to the division.

6 (3) STATE SUPERINTENDENT RESPONSIBILITY. (a) As soon as possible after
7 receiving an appeal letter under sub. (1), the state superintendent shall send a copy of the
8 appeal letter to the other party to the appeal.

9 (b) After receiving an appeal letter under sub. (1), the state superintendent shall
10 select a reviewing officer in accordance with s. PI 11.12.

11 (c) Immediately after selecting a reviewing officer the state superintendent shall
12 provide the reviewing officer with a copy of the appeal letter and the hearing officer's
13 decision. The state superintendent shall provide a copy of all other parts of the official
14 hearing record to the reviewing officer as the state superintendent receives them.

15 (d) After receiving a brief submitted under sub. (5)(a), the state superintendent
16 shall send a copy of the brief to the reviewing officer.

17 (e) The state superintendent shall be responsible for payment of the costs of the
18 appeal which shall include the reviewing officer's salary.

19 (4) REVIEWING OFFICER RESPONSIBILITY. (a) The reviewing officer shall
20 conduct an impartial review of the hearing and the hearing officer's decision. The
21 reviewing officer shall examine the entire hearing record, ensure that the procedures at
22 the hearing were consistent with the requirements of due process, consider all of the
23 underlying issues on appeal and make an independent decision on completion of the review.

1 (b) The reviewing officer shall issue a decision in the appeal and mail a copy of
2 that decision to the parties and to the state superintendent within 30 days after the state
3 superintendent received the appeal letter. The reviewing officer may grant specific
4 extensions of time beyond the 30-day time period at the request of either party.

5 (c) The reviewing officer shall give to the state superintendent the official record
6 of the appeal, as specified in sub. (8), as soon as he or she has completed his or her
7 responsibilities and the record is complete.

8 (5) APPEAL RIGHTS. (a) The parties to the appeal have a right to submit to the
9 reviewing officer a legal brief to support their case. A party submitting a brief shall send
10 a copy of the brief to the other party and shall send the reviewing officer's copy to the
11 division.

12 (b) If additional testimony is sought under sub. (6)(a), the parties have the rights
13 provided under s. PI 11.10(5).

14 (c) If additional testimony is taken, the parties have a right to obtain a copy of
15 the written transcript from the state superintendent. The state superintendent may charge
16 a reasonable fee for a copy of the transcript unless a party requests a free copy based
17 upon a showing of indigency or financial need.

18 (d) The parties to the appeal have a right to receive from the other party a free
19 copy of each document offered into evidence or submitted to the reviewing officer by the
20 other party.

21 (6) CONDUCT OF AN APPEAL. (a) The reviewing officer may:

- 22 1. Seek additional evidence if he or she finds that it is necessary.
- 23 2. Afford the parties an opportunity for oral argument.
- 24 3. Establish guidelines governing the conduct of the appeal.
- 25 4. Hold conferences for the settlement or simplification of the issues.

1 (b) If additional testimony is sought under par. (a)1 the reviewing officer has the
2 authority granted to the hearing officer under s. PI 11.10(6). The reviewing officer shall
3 make arrangements for a stenographer to record the testimony and to make a written
4 transcript of the testimony as soon as possible after it is completed.

5 (c) If additional testimony is sought or oral arguments allowed under par. (a)2, the
6 time and place where it is heard shall be reasonably convenient to the parent and child
7 involved.

8 (d) The reviewing officer shall make an independent decision upon completion of
9 his or her review of the entire record.

10 (7) INDEPENDENT EDUCATIONAL EVALUATION. A reviewing officer may
11 order an independent educational evaluation of a child as part of an appeal. The
12 independent educational evaluation shall meet the requirements in s. PI 11.08(2) and shall
13 be paid for by the state superintendent.

14 (8) RECORD. The reviewing officer shall keep an official record of the appeal
15 which shall contain all of the following:

16 (a) A copy of the letter requesting the appeal.

17 (b) A copy of the official record of the hearing as specified under s. PI 11.10(9).

18 (c) A written transcript of the proceedings, if additional testimony is sought under
19 sub. (6)(a)1.

20 (d) All evidence received or considered, stipulations and admissions.

21 (e) All correspondence related to the case.

22 (f) All briefs and papers submitted by either party.

23 (g) Any proposed findings and decisions and any interim decisions and orders.

24 (h) A copy of the reviewing officer's decision.

25 (9) DECISION. A reviewing officer's decision shall be based upon a preponderance
26 of the evidence. The decision shall be based solely upon the record and evidence received

1 on appeal. A decision is final unless a party appeals the decision under sub. (10). A final
2 decision is enforceable by an order of a circuit court.

3 (10) APPEAL TO CIRCUIT COURT. A party aggrieved by the decision under sub. (9)
4 may appeal that decision to the circuit court for the county in which the child resides
5 within 45 days after the date the decision was mailed under sub. (4)(b).

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

9 **PI 11.12 HEARING AND REVIEWING OFFICERS.** (1) IMPARTIALITY. No person
10 may be selected as a hearing officer or as a reviewing officer if that person:

11 (a) Is an employee of a public agency that is involved in the education or care of
12 the child who is the subject of the hearing or appeal.

13 (b) Is an employee of or under contract to a board, CESA or CHCEB. For purposes
14 of this paragraph, a person is eligible to serve as a hearing or reviewing officer if the only
15 function that he or she is employed or under contract to perform for any board, CESA or
16 CHCEB, is to conduct a hearing or appeal; or,

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

19 (2) HEARING OFFICERS; LISTS AND SELECTION. (a) Each board shall keep a
20 list of persons who are willing to serve as hearing officers. The list shall include a
21 statement of the qualifications of each person.

22 (b) 1. The department shall maintain and make available to boards a list of
23 persons who are available to serve as hearing officers. The department may not put a
24 person's name on the list unless:

25 a. The person either is an attorney licensed to practice law in Wisconsin or is
26 licensed as a teacher under subch. VII of ch. PI 3 or meets the teacher licensing require-
27 ments under subch. VII of ch. PI 3; and,

1 b. The person has completed the hearing officer training approved by the department
2 as described in subd. 2.

3 2. Before a person's name may initially be put on the list in subd. 1 he or she shall
4 attend an initial training program approved by the department. The training shall include
5 instruction on how to conduct a hearing, state and federal laws concerning the education
6 of children with EEN, and relevant resources that are available to a hearing officer.
7 Annually thereafter each person shall attend a refresher course approved by the depart-
8 ment. The department may charge fees of persons attending the training courses.

9 (c) 1. A board shall select a hearing officer with the written consent of the parent
10 involved in the hearing. A board shall propose a hearing officer to the parent in writing.
11 If the parent does not accept or reject the person proposed within 7 days after the parent
12 received the written proposal, the person proposed by the board shall be deemed accepted
13 and consented to by the parent and shall be the hearing officer.

14 2. If the board and parent cannot agree on a hearing officer, the board shall ask
15 the department for the names of 3 hearing officers from the department's list under
16 par. (b)1. The parent shall reject one of the 3 names and the board shall then reject one
17 of the 2 remaining names. The person whose name remains shall be employed by the board
18 as the hearing officer.

19 (3) REVIEWING OFFICERS; QUALIFICATIONS. The state superintendent may
20 not select a person to act as a reviewing officer under s. PI 11.11 unless the person is an
21 attorney licensed to practice law in Wisconsin.

22 PI 11.13 EDUCATIONAL PLACEMENT OF A CHILD DURING HEARINGS AND
23 APPEALS. (1) During the pendency of a hearing under s. PI 11.10, an appeal under
24 s. PI 11.11, or a court proceeding arising from s. PI 11.11, unless the board and the parent
25 agree otherwise, the child who is the subject of the hearing, appeal or proceeding shall
26 remain in his or her current educational placement.

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

5 (3) Notwithstanding subs. (1) and (2), a board may change an educational place-
6 ment of a child for not more than a total of 10 consecutive school days pending the outcome
7 of a hearing, appeal, or proceeding specified in sub. (1), if the health or safety of the child
8 or of other persons would be endangered by allowing the child to remain in his or her
9 current educational placement. The time period of a suspension under s. 120.13(1)(b),
10 Stats., shall be included when calculating the 10-day period in which a change of educational
11 placement may occur under this subsection.

12 PI 11.14 SURROGATE PARENTS. (1) BOARD DUTIES. (a) A board shall ensure
13 that the rights of all children who are or who are suspected to be children with EEN, who
14 are residents of the district, are protected and it shall appoint a surrogate parent
15 as provided under this section whenever one of the following occurs:

16 1. The board cannot identify a parent of a child.

17 2. The board is unable to discover the whereabouts of a parent after the board
18 has made reasonable efforts to locate a parent.

19 3. The child was made a ward of the state or a county or a child welfare agency
20 under ch. 880, Stats., or has been placed in the legal custody of the state or a county or a
21 child welfare agency under ch. 48 or 767, Stats., and the state, county, or child welfare
22 agency has the authority to make educational decisions for the child.

23 (b) At least annually a board shall review the appointment of each surrogate parent
24 it has appointed. The board shall consider whether there is still a need for a surrogate
25 parent, whether the surrogate parent continues to meet the requirements under sub. (2),
26 whether the surrogate parent has carried out his or her responsibilities as a surrogate

1 parent and whether the surrogate parent has acted in the interest of the child he or she
2 was appointed to represent. A board shall terminate and may only terminate an appoint-
3 ment if it finds one of the following:

- 4 1. There is no longer a need for a surrogate parent.
- 5 2. The surrogate parent no longer meets the requirements under sub. (2).
- 6 3. The surrogate parent has failed to carry out his or her responsibilities.
- 7 4. The surrogate parent's actions threaten the well being of the child he or she
8 was appointed to represent.

9 (c)1. Whenever a board intends to terminate the appointment of a surrogate parent
10 it shall send a notice to the surrogate parent of its intent. The notice shall be sent to the
11 surrogate parent at least 10 days before the termination becomes effective. The notice
12 shall inform the surrogate parent of the reasons for the termination, the date the termi-
13 nation will be effective and the surrogate parent's right to request a hearing under
14 s. PI 11.10.

15 2. A surrogate parent may request a hearing under s. PI 11.10 to challenge the
16 termination of his or her appointment. If a surrogate parent sends a request for a hearing
17 before the effective date of the termination, a board shall continue the surrogate parent's
18 appointment during the pendency of a hearing under s. PI 11.10, an appeal under s. PI 11.11
19 or a court proceeding arising from s. PI 11.11, unless the board and the surrogate parent
20 agree otherwise.

21 (d) A board shall notify the division when it sends a termination notice under
22 par. (c)1 and when it receives notice of a resignation under sub. (3)(b).

23 (e) A board shall establish and be responsible for carrying out policies and
24 procedures in accordance with this section for all of the following:

- 25 1. Identifying children who have been referred to a board under s. PI 11.03(2) and
26 children with EEN who need to have a surrogate parent appointed.

1 2. Identifying people who are willing and qualified to act as surrogate parents.

2 3. Appointing people to act as surrogate parents.

3 4. Conducting reviews of surrogate parents.

4 5. Ensuring that surrogate parents are allowed to function independently from,
5 and are not subject to the influence of, the board and any of its staff.

6 (f) A board may contract for the recruitment and training of surrogate parents.

7 (2) **QUALIFICATIONS OF A SURROGATE PARENT.** A person may not serve as a
8 surrogate parent unless the person:

9 (a) Has no interest that conflicts with the interests of the child the surrogate
10 parent represents;

11 (b) Has knowledge and skills that enable him or her to provide adequate represen-
12 tation for the child;

13 (c) Is committed to acquaint himself or herself with the child and the child's
14 educational needs;

15 (d) Is of the same cultural background as the child or is sensitive to the factors in
16 the child's background that might affect the child's educational experience;

17 (e) Is familiar with the educational options available;

18 (f) Is 18 years of age or older;

19 (g) Is not an employee of a board, CESA, CHCEB, the department or of an agency
20 that is responsible for the care or education of the child; and

21 (h) Does not serve as a surrogate parent as part of a job for a public agency.

22 (3) **TERMS OF AN APPOINTMENT.** (a) A surrogate parent shall be appointed for
23 an indefinite period of time and shall continue to serve until the surrogate parent resigns,
24 the appointment is terminated or the child is no longer eligible for school.

25 (b) A surrogate parent that wishes to resign shall notify the appointing board of
26 the resignation at least 30 days before the resignation takes effect.

1 (c) A surrogate parent may not receive any payment for time spent acting as a
2 surrogate parent.

3 (d) A person may not be appointed as a surrogate parent for more than 4 children
4 at any one time.

5 (4) RIGHTS AND RESPONSIBILITIES OF A SURROGATE PARENT. (a) A surrogate
6 parent has the authority to act as the child's parent in all matters relating to this chapter
7 and subch. V of ch. 115, Stats.

8 (b) A surrogate parent shall represent a child in all matters related to this chapter
9 and subch. V of ch. 115, Stats., including the screening, EEN referral, M-team evaluation,
10 IEP and educational placement of the child and the provision of a free appropriate public
11 education of the child.

12 (c) A surrogate parent shall protect the confidentiality of a child's records.

13 (5) LIABILITY. Neither a surrogate parent nor the board that appointed the
14 surrogate parent nor the department may be found liable for the actions of the surrogate
15 parent unless such actions constitute willful or wanton misconduct.

16 PI 11.15 MONITORING AND COMPLAINT PROCEDURES. (1) MONITORING
17 PROCEDURES. The department shall monitor school districts for compliance with subch. V
18 of ch. 115, Stats., and this chapter. If the state superintendent finds that a board has
19 violated subch. V of ch. 115, Stats., or this chapter, the state superintendent shall proceed
20 under sub. (3).

21 (2) COMPLAINT PROCEDURES. (a) 1. Any person may file a written complaint
22 with the state superintendent alleging that the department or a board has violated a state
23 law under subch. V. of ch. 115, Stats., or this chapter.

24 2. A complaint shall contain the name of the person submitting it and shall be
25 signed. A complaint shall also contain a statement alleging that the department or board
26 violated a state law cited in subd. 1 and it must set forth the facts on which the allegation
27 is based.

1 3. A complaint shall be filed with the state superintendent within 3 years of the
2 alleged violation.

3 (b) 1. Within a reasonable amount of time after receiving a complaint against a
4 board, the state superintendent shall send a letter informing the board of the complaint.
5 The letter shall tell the board who filed the complaint and what the complaint alleges and
6 it shall describe the department's responsibility to investigate the complaint.

7 2. Within 60 days after receipt of a complaint under par. (a), the state super-
8 intendent shall:

9 a. Carry out an independent investigation and, if the state superintendent finds it
10 necessary, carry out an independent on-site investigation; and

11 b. Either dismiss the complaint if no violations are found or, if violations are
12 found, have a plan developed under sub. (3)(a) for resolution of the complaint.

13 3. The time limit under subd. 2 may be extended by the state superintendent
14 when exceptional circumstances exist regarding a particular complaint.

15 4. If the state superintendent finds it necessary he or she may request additional
16 information from the complainant to clarify or further substantiate the complaint. The
17 complainant shall provide the state superintendent with the additional information within
18 10 days of receipt of a written request.

19 5. If the state superintendent finds that there is not sufficient information on file
20 relating to a board's implementation of subch. V, ch. 115, Stats., or of this chapter, the
21 state superintendent may request whatever information is needed from the board. The
22 board shall provide the state superintendent with the information within 10 days of receipt
23 of a written request.

24 6. If the state superintendent finds that the department or a board is in compliance
25 with subch. V of ch. 115, Stats., and this chapter, the state superintendent shall send to
26 the parties to the complaint a report of the issues raised in the complaint, the disposition
27 of the issues and any agreement reached by the parties.

1 7. If the state superintendent finds that the department or a board has violated
2 subch. V of ch. 115, Stats., or this chapter the state superintendent shall proceed under
3 sub. (3).

4 (3) PLAN OF CORRECTION. (a) If as a result of conducting a monitoring procedure
5 or of investigating a complaint, the state superintendent finds that the department or a
6 board has violated subch. V of ch. 115, Stats., or this chapter the state superintendent
7 shall require the department or the board to develop a plan of correction. The plan shall
8 specify the time period within which compliance will be achieved. The plan must be
9 approved by the state superintendent.

10 (b) If a board fails to comply with the plan under par. (a) the state superintendent
11 may take appropriate action under s. 115.89, Stats.

NOTE: Any information or document that is required to be sent to the state superintendent should be sent to the Wisconsin Department of Public Instruction, Division for Handicapped Children and Pupil Services, P.O. Box 7841, Madison, Wisconsin 53707.

12 **PI 11.16 RIGHTS AT ADULTHOOD.** (1) RIGHTS ACCRUE TO THE CHILD. Except
13 as provided in sub. (2), when a child with EEN attains the age of 18 years he or she shall
14 have all the rights and responsibilities that were formerly provided to his or her parents
15 under this chapter.

16 (2) RIGHTS ACCRUE TO A GUARDIAN. If a child with EEN who has attained
17 the age of 18 years has a guardian appointed under ch. 880, Stats., the rights and respons-
18 ibilities provided to parents under this chapter shall accrue to the child's guardian unless
19 specifically otherwise provided in the guardianship proceeding.

20 **SECTION 19.** PI 11.17, 11.19, 11.20, 11.21, 11.22, 11.23, 11.24, 11.25, 11.26 and
21 11.27 are renumbered PI 11.23, 11.24, 11.25, 11.26, 11.27, 11.28, 11.29, 11.30, 11.31 and
22 11.32 respectively.

23 **SECTION 20.** PI 11.28 is repealed.

1 **SECTION 21.** PI 11.29 and 11.31 are renumbered PI 11.33 and 11.34 respectively.

2 **SECTION 22.** PI 11.32 and 11.33 are repealed.

3 **SECTION 23.** PI 11.34 and 11.35 are renumbered PI 11.35 and 11.36 respectively.

4 **SECTION 24.** PI 11 appendices A, C, D, E, F and G are repealed.

1 **SECTION 25. Cross-reference changes.** In the sections of the rules listed in Column A,
2 the cross-references shown in Column B are changed to the cross-references shown in
3 Column C:

A	B	C
Rule Sections	Old Cross-References	New Cross-References
PI 11.17(2)(a), as renumbered	PI 11.11	PI 11.17
PI 11.18(1), as renumbered	PI 11.11(1)(a) through (e)	PI 11.17(1)
PI 11.18(2)(c), as renumbered	PI 11.11(3)	PI 11.17(3)
PI 11.18(2)(d), as renumbered	PI 11.11(2)	PI 11.17(2)
PI 11.18(2)(e), as renumbered	PI 11.11(5)(a)	PI 11.17(5)(a)
PI 11.18(3), as renumbered	PI 11.11(3)	PI 11.17(3)
PI 11.18(4), are renumbered	PI 11.11(4)	PI 11.17(4)
PI 11.19(1), as renumbered	PI 11.11(1)(a) through (e)	PI 11.17(1)
PI 11.19(2)(b), as renumbered	PI 11.11	PI 11.17
PI 11.19(2)(d), as renumbered	PI 11.11(3)	PI 11.17(3)
PI 11.19(2)(e), as renumbered	PI 11.11(2)	PI 11.17(2)
PI 11.19(2)(g), as renumbered	PI 11.11(5)(a)	PI 11.17(5)(a)

A	B	C
Rule Sections	Old Cross-References	New Cross-References
PI 11.19(3), as renumbered	PI 11.11(3)	PI 11.17(3)
PI 11.20(1), as renumbered	PI 11.11(1)(a) through (e)	PI 11.17(1)
PI 11.20(2)(d), as renumbered	PI 11.13(2)(f)	PI 11.19(2)(f)
PI 11.20(2)(f), as renumbered	PI 11.11(2)	PI 11.17(2)
PI 11.20(2)(g), as renumbered	PI 11.11(5)(a)	PI 11.17(5)(a)
PI 11.20(2)(h), as renumbered	PI 11.13(2)(h)	PI 11.19(2)(h)
PI 11.20(2)(i), as renumbered	PI 11.13(2)(i)	PI 11.19(2)(i)
PI 11.20(3), as renumbered	PI 11.11(3)	PI 11.17(3)
PI 11.20(4)(a), as renumbered	PI 11.13(4)(a)	PI 11.19(4)(a)
PI 11.20(4)(b), as renumbered	PI 11.13(4)(b)	PI 11.19(4)(b)
PI 11.21(1), as renumbered	PI 11.11(1)(a) through (e)	PI 11.17(1)
PI 11.21(2)(a), as renumbered	PI 11.11	PI 11.17
PI 11.21(2)(c), as renumbered	PI 11.13(2)(f)	PI 11.19(2)(f)
PI 11.21(3) (intro.), as renumbered	PI 11.11(3)	PI 11.17(3)
PI 11.23(1), as renumbered	PI 11.16(1)	PI 11.22(1)
PI 11.23(4)(a)1, as renumbered	PI 11.17(2)	sub. (2)

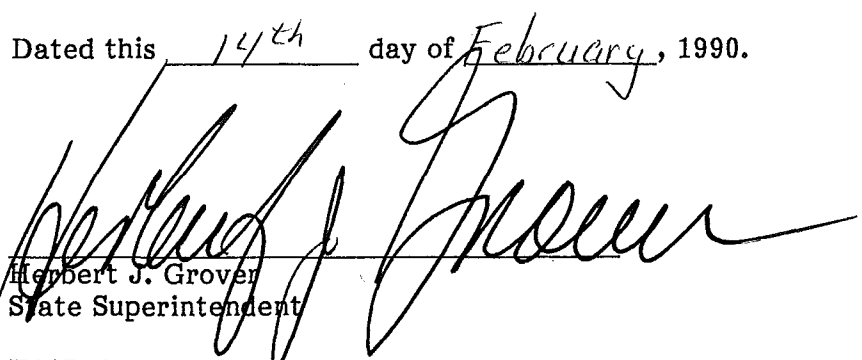
A	B	C
Rule Sections	Old Cross-References	New Cross-References
PI 11.23(4)(a)2, as renumbered	PI 11.17(5)	sub. (5)
PI 11.23(4)(a)3, as renumbered	PI 11.17(6)	sub. (6)
PI 11.23(4)(a)4, as renumbered	PI 11.17(7)(9)	subs. (7) and (9)
PI 11.23(4)(a)5, as renumbered	PI 11.17(3)	sub. (3)
PI 11.23(6), as renumbered	PI 3.20(1)	PI 3.54
PI 11.24(3)(intro.), as renumbered	PI 11.03	PI 11.04
PI 11.24(6)(a), as renumbered	PI 11.05(2)(e)7	PI 11.37(2)(e)7
PI 11.24(8)(b)4, as renumbered	PI 11.05(2)(e)7	PI 11.37(2)(e)7
11.25(1), as renumbered	PI 11.11(1)(a) through (e)	PI 11.17(1)
11.25(2)(a), as renumbered	PI 11.11	PI 11.17
11.25(2)(f), as renumbered	PI 11.15(2)(f)	PI 11.21(2)(f)
PI 11.25(3)(intro.), as renumbered	PI 11.11(3)	PI 11.17(3)
PI 11.25(3)(a), as renumbered	PI 11.15(3)(a)	PI 11.21(3)(a)
PI 11.25(3)(b), as renumbered	PI 11.15(3)(b)	PI 11.21(3)(b)
PI 11.25(4), as renumbered	PI 11.15(4)(a) through (e)	PI 11.21(4)
PI 11.25(5)(a), as renumbered	PI 11.15(5)(a)	PI 11.21(5)(a)

A	B	C
Rule Sections	Old Cross-References	New Cross-References
PI 11.25(5)(b), as renumbered	PI 11.15(5)(b)1-8	PI 11.21(5)(b) 1 through 8
PI 11.27(1)(c), as renumbered	PI 11.21(1)(c)	PI 11.26(1)(c)
PI 11.27(1)(d), as renumbered	PI 11.21(1)(d)	PI 11.26(1)(d)
PI 11.27(1)(e), as renumbered	PI 11.21(1)(e)1	PI 11.26(1)(e)1
PI 11.27(1)(f), as renumbered	PI 11.21(1)(f)	PI 11.26(1)(f)
PI 11.28(1)(c), as renumbered	PI 11.21(1)(c)	PI 11.26(1)(c)
PI 11.28(1)(d) as renumbered	PI 11.21(1)(d)	PI 11.26(1)(d)
PI 11.28(1)(e), as renumbered	PI 11.21(1)(e)1	PI 11.26(1)(e)1
PI 11.28(1)(f) as renumbered	PI 11.21(1)(f)	PI 11.26(1)(f)
PI 11.29(1)(c), as renumbered	PI 11.21(1)(c)	PI 11.26(1)(c)
PI 11.29(1)(d), as renumbered	PI 11.21(1)(d)	PI 11.26(1)(d)
PI 11.29(1)(e), as renumbered	PI 11.23(1)(e)	PI 11.28(1)(e)
PI 11.30(1)(c), as renumbered	PI 11.21(1)(c)	PI 11.26(1)(c)
PI 11.30(1)(d), as renumbered	PI 11.21(1)(d)	PI 11.26(1)(d)
PI 11.31(1)(c), as renumbered	PI 11.21(1)(c)	PI 11.26(1)(c)
PI 11.31(1)(d), as renumbered	PI 11.21(1)(f)	PI 11.26(1)(f)

A	B	C
Rule Sections	Old Cross-References	New Cross-References
PI 11.32(1)(intro.), as renumbered	PI 11.21 through PI 11.26	PI 11.26 through PI 11.31
PI 11.33(2)(a)(intro.), as renumbered	PI 11.21(1)(c)	PI 11.26(1)(c)
PI 11.33(3)(d), as renumbered	PI 11.29(3)(a), (b) and (c)	pars. (a), (b) and (c)
PI 11.33(4)(intro.), as renumbered	PI 11.35(2)(a)1	PI 11.36(2)(a)1
PI 11.34(1)(a), as renumbered	PI 11.04(1)(d)	PI 11.02(40)
PI 11.34(3)(intro.), as renumbered	PI 11.35(2)(a)1	PI 11.36(2)(a)1
PI 11.35(1)(intro.), as renumbered	PI 11.03, 11.32, 11.33 and 11.34	PI 11.04 and this section
PI 11.36(2)(c), as renumbered	PI 11.11(3), 11.35(2)(a)1	PI 11.17(3) and par. (a)1
PI 11.36(3)(a)2, as renumbered	PI 11.19(5)(d)	PI 11.24(5)(d)
PI 11.37(1), as renumbered	Chapter 89	subch. V of ch. 115, Stats.
PI 11.37(2)(e)7, as renumbered	s. 115.80(3)(e), Stats.	s. 115.85(2)(e), Stats.

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

Dated this 14th day of February, 1990.


Herbert J. Grover
State Superintendent