

CR 94-59

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF PUBLIC INSTRUCTION)

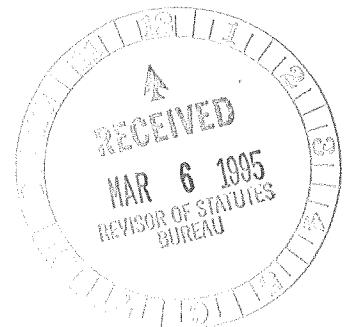
I, State Superintendent of the Department of Public Instruction and custodian of the official records of said Department, do hereby certify that the annexed rule relating to special education handicapping conditions was duly approved and adopted by this Department on the first day of the month following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

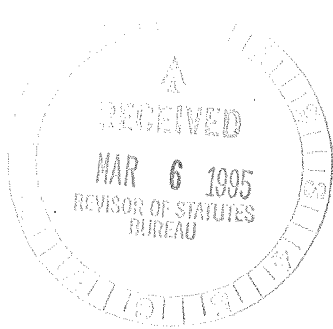
I further certify that said copy has been compared by me with the original on file in this Department and the same is a true copy thereof, and of the whole of such original.

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 6th day of March, 1995.



John T. Benson
State Superintendent
State Department of Public Instruction





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

The state superintendent of public instruction hereby repeals and recreates PI 11.35 (2) (b) and creates PI 11.35 (2) (i) to (k), relating to special education handicapping conditions.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statute interpreted: s. 115.76 (3), Stats.

1993 Wisconsin Act 15 amended s. 115.76 (3), Stats., relating to the definition of a child with exceptional educational needs to comply with the special education eligibility regulations of the Individuals with Disabilities Education Act (IDEA). The handicapping conditions of "autism," "traumatic brain injury," and "other health impairment" have been added to the list of present handicapping conditions and the term "orthopedic impairment" has been substituted for the existing term "physical handicapped" under s. 115.76 (3), Stats.

The proposed rules amend ch. PI 11 to conform to current statutory language. The proposed rules set forth criteria for determining eligibility for the handicapping conditions of orthopedic impairment, autism, traumatic brain injury (TBI), and other health impairment. These eligibility criteria are based on the federal IDEA regulations and recommendations from two task forces charged with developing definitions for autism and TBI. The TBI Task Force recommended that children having degenerative conditions of the brain or traumatic head injuries as a result of "internal occurrences" should qualify under the term TBI. However, the U.S. Department of Education, Office of Special Education and Rehabilitative Services, concluded that degenerative conditions of the brain do not apply to the term TBI and an "internal occurrence" would expand the term beyond its use in professional practice and would be more appropriately diagnosed under another handicapping condition such as other health impaired.

Prior to developing these proposed rules, the department held four informational public hearings to receive comments regarding these four disability categories. A majority of the testimony received requested that attention deficit disorder (ADD) be referenced in the rules.

As a result of these hearings and the September 16, 1991, memo from the U.S. Department of Education clarifying its policy to address the needs of children with ADD within general and/or special education, the rules address ADD in an explanatory note.

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- 1 **SECTION 1.** PI 11.35 (2) (b) is repealed and recreated to read:
2 PI 11.35 (2) (b) Orthopedic impairment. Orthopedic impairment means a severe orthopedic impairment that
3 adversely affects a child's educational performance. The term includes, but is not limited to, impairments caused
4 by congenital anomaly, such as a clubfoot or absence of some member; impairments caused by disease, such as

1 poliomyelitis or bone tuberculosis; and impairments from other causes, such as cerebral palsy, amputations, and
2 fractures or burns that cause contractures.

3 **SECTION 2.** PI 11.35 (2) (i) to (k) are created to read:

4 PI 11.35 (2) (i) Autism. 1. Autism means a developmental disability significantly affecting a child's social
5 interaction and verbal and nonverbal communication, generally evident before age 3, that adversely affects
6 learning and educational performance. Other characteristics often associated with autism are engagement in
7 repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines,
8 and unusual responses to sensory experiences. The term does not apply if a child's educational performance is
9 adversely affected primarily because the child has an emotional disturbance, as defined in par. (g).

10 2. The results of standardized or norm-referenced instruments used to evaluate and identify a child under
11 this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-
12 referenced assessments, achievement assessments, observation, and work samples, shall be considered to identify a
13 child under this paragraph. Augmentative communication strategies, such as facilitated communication, picture
14 boards, or signing shall be considered when evaluating a child under this paragraph. To identify a child under this
15 paragraph, the criteria under subpars. a and b and one or more criteria under subpars. c through f shall be met.

16 a. Social participation. The child displays difficulties or differences or both in interacting with people and
17 events. The child may be unable to establish and maintain reciprocal relationships with people. The child may
18 seek consistency in environmental events to the point of exhibiting rigidity in routines.

19 b. Communication. The child displays problems which extend beyond speech and language to other
20 aspects of social communication, both receptively and expressively. The child's verbal language may be absent
21 or, if present, lacks the usual communicative form which may involve deviance or delay or both. The child may
22 have a speech or language disorder or both in addition to communication difficulties associated with autism.

23 c. Developmental rates and sequences. The child exhibits delays, arrests, or regressions in motor, sensory,
24 social or learning skills. The child may exhibit precocious or advanced skill development, while other skills may
25 develop at normal or extremely depressed rates. The child may not follow normal developmental patterns in the

1 acquisition of skills.

2 d. Cognition. The child exhibits abnormalities in the thinking process and in generalizing. The child
3 exhibits strengths in concrete thinking while difficulties are demonstrated in abstract thinking, awareness and
4 judgment. Perseverant thinking and impaired ability to process symbolic information may be present.

5 e. Sensory processing. The child exhibits unusual, inconsistent, repetitive or unconventional responses to
6 sounds, sights, smells, tastes, touch or movement. The child may have a visual or hearing impairment or both in
7 addition to sensory processing difficulties associated with autism.

8 f. Behavioral repertoire. The child displays marked distress over changes, insistence on following
9 routines, and a persistent preoccupation with or attachment to objects. The child's capacity to use objects in an
10 age-appropriate or functional manner may be absent, arrested or delayed. The child may have difficulty
11 displaying a range of interests or imaginative activities or both. The child may exhibit stereotyped body
12 movements.

13 (j) Traumatic brain injury. 1. Traumatic brain injury means an acquired injury to the brain caused by an
14 external physical force resulting in total or partial functional disability or psychosocial impairment, or both, that
15 adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in
16 impairments in one or more areas, such as cognition; speech and language; memory; attention; reasoning; abstract
17 thinking; communication; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial
18 behavior; physical functions; information processing; and executive functions, such as organizing, evaluating and
19 carrying out goal-directed activities. The term does not apply to brain injuries that are congenital or degenerative,
20 or brain injuries induced by birth trauma.

21 2. Children whose educational performance is adversely affected as a result of acquired injuries to the brain
22 caused by internal occurrences, such as vascular accidents, infections, anoxia, tumors, metabolic disorders and the
23 effects of toxic substances or degenerative conditions may meet the criteria of one of the other handicapping
24 conditions under this section, such as other health impairment, learning disability, or multiple handicapped.

25 3. The results of standardized and norm-referenced instruments used to evaluate and identify a child under

1 this paragraph may not be reliable or valid. Therefore, alternative means of evaluation, such as criterion-
2 referenced assessment, achievement assessment, observation, work samples, and neuropsychological assessment
3 data, shall be considered to identify a child who exhibits total or partial functional disability or psychosocial
4 impairment in one or more of the areas described under subd. 1.

5 4. Before a child may be identified under this paragraph, available medical information from a licensed
6 physician shall be considered.

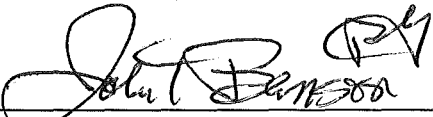
7 (k) Other health impairment. Other health impairment means having limited strength, vitality or alertness,
8 due to chronic or acute health problems. The term includes but is not limited to a heart condition, tuberculosis,
9 rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, or
10 acquired injuries to the brain caused by internal occurrences or degenerative conditions, which adversely affects a
11 child's educational performance.

NOTE: With respect to the eligibility criteria under s. PI 11.35, in September 1991 the U.S. Department of Education issued a memorandum clarifying state and local responsibilities for addressing the educational needs of children with attention deficit disorder (ADD). (See 18 IDELR 116). As a condition of receipt of federal funds under the Individuals with Disabilities Act (IDEA), the state and local school districts are bound to comply with the federal policy outlined in that memo. (See e.g. Metropolitan School District of Wayne Township, Marion County, Indiana v. Davila, 969 F. 2d 485 (7th cir. 1992)).

Pursuant to that federal policy memo, a child with ADD is neither automatically eligible nor ineligible for special education and related services under Chapter 115, Stats. In considering eligibility, a multidisciplinary team (M-team) must determine whether the child diagnosed with ADD has one or more handicapping conditions under Chapter 115, Stats., and a need for special education. For example, pursuant to the federal policy memo, a child with ADD may be eligible for special education and related services under Chapter 115, Stats., if the child meets the eligibility criteria for "other health impaired" or any other condition enumerated in Chapter 115, Stats. A copy of the federal policy may be obtained by writing the Exceptional Education Mission Team, Division for Learning Support: Equity and Advocacy, Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841.

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

Dated this 6th day of March, 1995



John T. Benson
State Superintendent

