

Wisconsin Department of Public Instruction
**STATEMENT OF SCOPE
FOR ADMINISTRATIVE RULES**

GENERAL INFORMATION

Rule No.: PI 11

Relating to: Standards for disproportionality in special education and LEA determinations

Rule Type: Permanent and Emergency

NARRATIVE

Pursuant to *Coyne v. Walker*, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope for this rule. *Coyne v. Walker*, 2016 WI 38, 368 Wis. 2d 444.

1. Finding/nature of the emergency (Emergency Rule only).

An emergency rule is required for the Department to establish state criteria as required under the Individuals with Disabilities Act and related regulation in a timely fashion until the process for promulgating a permanent rule can be completed.

2. A description of the objective of the proposed rule.

The proposed rule will amend Chapter PI 11 of the Wisconsin Administrative Code and establish standards and/or criteria related to significant disproportionality in special education and local education agency (LEA) determinations under the Individuals with Disabilities Education Act (IDEA). Specifically, the proposed rule will do the following: 1) define LEA determinations and significant disproportionality in special education identification, placement and discipline; 2) identify the data collection and methodology used to calculate significant disproportionality and LEA determinations; 3) identify requirements for LEAs that meet the threshold for significant disproportionality; and 4) identify requirements for LEAs under LEA determinations.

3. A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.

The amendment related to significant disproportionality in special education will set criteria and establishes procedures related to determining significant disproportionality in special education identification, placement, and discipline. The Department followed recommendations from the IDEA Data Center, "Methods for Assessing Racial/Ethnic Disproportionality in Special Education." The Department solicited external feedback from stakeholders and considered multiple factors in defining significant disproportionality, including the population size, size of individual LEAs, and composition of State population. The determination of significant disproportionality by race or ethnicity is based solely on a collection and examination of data and not on policies, procedures, or practices. Procedures related to enforcement of LEA determinations under IDEA are also set based on federal guidance and stakeholder input. No other policy alternatives than a rule are available as the Department is required by statute to promulgate rules in setting such criteria.

4. The statutory authority for the proposed rule.

Under s. 115.28 (9), Stats., the State Superintendent of Public Instruction has a duty to accept federal funds for any function over which the State Superintendent has jurisdiction and act as the agent for the receipt and disbursement of such funds. Federal funds appropriated for the State under the Individuals with Disabilities Education Act are, in part, conditioned upon compliance with 20 USC 1416(b) and 1418(d).

Furthermore, under s. 115.762 (3) (a), Stats., the Department's Division for Learning Support is responsible to ensure all children with disabilities who reside in Wisconsin who are in need of special education and related services are identified, located and evaluated. The Division of Learning and Support is required to do so in compliance with applicable federal law, specifically, and to the extent possible, consistent with 20 USC 1400 to 1482. See s. 115.758 and 115.762 (3) (c), Stats. To that end, LEAs must demonstrate to the Division of Learning and Support that the LEA identifies, locates and evaluates all children with disabilities who are in need of special education and related services, consistent with 20 USC 1400 to 1482. See s. 115.77 (1m) (a), Stats. LEAs must also make available a free and appropriate public education to children with disabilities as required by applicable state and federal law. See s. 115.77 (1m) (b), Stats.

Under s. 227.11 (2) (a) (intro.), Stats., "[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation." See also, *Wisconsin Ass'n of State Prosecutors v. Wisconsin Employment Relations Comm'n*, 2018 WI 17, ¶ 42 ("statutory mandates are also statutory authorizations, and authorization of an act also authorizes a necessary predicate act.") (internal citations omitted). As such, a rule is necessary to ensure the receipt and disbursement of federal aids and comply with the requirements of state law as set forth above.

5. An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

The amount of time needed for rule development by Department staff and the amount of other resources necessary are minimal.

6. A description of all of the entities that will be affected by the proposed rule.

The proposed rule would affect local education agencies that provide programs to children with disabilities in Wisconsin.

7. A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

Related to significant disproportionality in special education, 34 CFR 300.646 and 300.647 regulate compliance with 20 USC 1418(d), requiring states to collect and examine data to determine whether significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to: (1) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment; (2) the placement in particular educational settings of these children; and (3) the incidence, duration, and type of disciplinary removals from placement, including suspensions and expulsions.

Related to LEA determinations, 34 CFR 300.602 regulates compliance with 20 USC 1416(b), requiring the use of targets established in the State's performance plan under 34 CFR 300.601 and the priority areas described in 34 CFR 300.600(d) to analyze the performance of each LEA, identify LEAs using LEA determinations, and require actions for LEAs.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses).

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

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