

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF EXTENSION OF
ARM 10.16.3010, 10.16.3011,) COMMENT PERIOD ON
10.16.3022, and 10.16.3806) PROPOSED AMENDMENT
pertaining to special education)

TO: All Concerned Persons

1. On February 8, 2019, the Superintendent of Public Instruction published MAR Notice No. 10-16-132 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 165 of the 2019 Montana Administrative Register, Issue Number 3.

2. A public hearing was held on March 12, 2019. Several comments were received regarding the changes to ARM 10.16.3011. The intent of OPI and the public was to modify the current rule to reflect the advances to the clinical and scientific understanding of autism as well as treatment options that have been made since the last revisions to this rule 19 years ago. In addition, changes were made to eliminate contradictions and confusing language. The changes were made in an effort to make it easier to provide services to the children who need them. After the public hearing, the comments were reviewed and taken into consideration. The superintendent is proposing new changes to the original proposal as set forth below. In light of these changes, the superintendent is extending the comment period on this rule to 5:00 p.m., July 22, 2019.

3. ARM 10.16.3010, 10.16.3022, and 10.16.3806 remain as proposed in the original notice.

4. ARM 10.16.3011 is proposed to be amended from the original proposal as follows, new matter underlined, deleted matter interlined:

10.16.3011 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING AUTISM (1) The student may be identified as having autism if the results of a comprehensive evaluation document significant difficulties in social communication; ~~and~~ and social interaction; ~~;~~ ; and in restricted and repetitive behaviors and interests. A student must have at least one characteristic in each of these three areas and a total of eight or more characteristics to be identified as a student with autism.

(2) The characteristics below are those which most frequently occur with the student but may not occur in every situation.

(a) Significant difficulties in social communication must be documented for at least ~~six~~ one of the following characteristics:

(i) ~~does not initiate~~ initiating or maintaining eye contact while interacting with others;

(ii) ~~does not use or has limited use of~~ facial expressions to communicate with others;

(iii) ~~has difficulty~~ identifying and/or understanding the communicative intent of another person's facial expressions;

(iv) ~~does not use~~ using gestures to direct attention to an object (for example, showing, bringing, or pointing out objects of interest);

(v) ~~does not use~~ using gestures for communication;

(vi) ~~does not~~ responding to or ~~misinterprets~~ interpreting other's use of gestures;

(vii) ~~does not notice~~ noticing or ~~misinterprets~~ interpreting other's use of body language;

(viii) ~~does not use or has inconsistent~~ use of own body language for communication;

(ix) ~~does not use~~ expressive verbal or alternative language for communication and social interaction;

(x) ~~echolalia (immediate and/or delayed) is present~~;

(xi) ~~(x) has verbal language but has difficulties in expressive verbal communication~~ receptive verbal communication; or

(xii) ~~has verbal language but has difficulties in receptive verbal communication~~; or

(xiii) ~~(xi) interpretation of other's verbal communication is often concrete and literal (for example: does not understand idioms or sarcasm)~~. interpretation of other's verbal communication (often concrete and literal; for example, does not understand idioms or sarcasm).

(b) Significant difficulties in social interaction must be documented for at least five one of the following characteristics:

(i) ~~does not~~ seeking to share enjoyment, interests, or achievements with others;

(ii) ~~does not initiate~~ initiating social interaction unless seeking preferred items or help;

(iii) ~~no or minimal response~~ responding to social interactions initiated by others;

(iv) ~~has difficulty~~ initiating a conversation on non-preferred topics;

(v) ~~has difficulty~~ sustaining a conversation on non-preferred topics;

(vi) ~~has difficulty~~ explaining another person's perspective ~~in verbal and/or non verbal communication~~. (e.g., for example, what other people are thinking or feeling);

(vii) ~~does not~~ joining play activities of others (solitary play preferred);

(viii) play lacks elements of make-believe (e.g., ~~using blocks as food~~);

(ix) ~~has difficulty in~~ participating in make-believe play with others; or

(x) ~~does not engage in social imitative play (such as playacting, fantasy characters, animals, pretending adult role)~~.

(x) engaging in social imitative play (for example, playacting, fantasy characters, animals, pretending adult role).

(c) Significant difficulties ~~in~~ resulting from restricted and repetitive behaviors and interests must be documented for at least ~~three~~ one of the following characteristics:

(i) makes repeated vocalizations or verbalizations (e.g. for example, repeats same word, phrase, or sound);

(ii) through (vii) remain the same.

~~(3) A student must have the minimum number of characteristics in all three areas above to be identified as a student with autism.~~

~~(4) A student who has the minimum number of required characteristics in social communication and social interaction, and restricted and repetitive behaviors and interests, shall be identified as a student with Autism Type 1. A student who has more than the minimum number of required characteristics in social communication and social interaction, and restricted and repetitive behaviors and interests, shall be identified as a student with Autism Type 2.~~

5. The Superintendent of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on July 10, 2019, to advise us of the nature of the accommodation that you need. Please contact Brittany Divine, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-4402; fax (406) 444-2893; or e-mail Brittany.Divine@mt.gov.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Brittany Divine, Office of Public Instruction, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-4402; fax (406) 444-2893; or e-mail Brittany.Divine@mt.gov, and must be received no later than 5:00 p.m., July 22, 2019.

/s/ Julia Swingley
Julia Swingley
Rule Reviewer

/s/ Elsie Arntzen
Elsie Arntzen
Superintendent of Public Instruction

Certified to the Secretary of State June 11, 2019.