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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 97-035

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section EAB 5.11 (3) (e) imposes a fee based on the adjusted gross annual revenues of a school. The percentage used to determine the final fee is scheduled to be set for a two-year period in a report to affected schools. Although s. 38.51 (10) (c) 2., Stats., authorizes the imposition of fees on a variable structure based on the size of a proprietary school, the percentage used to determine the ultimate fee should be promulgated as an administrative rule under ch. 227, Stats.

2. Form, Style and Placement in Administrative Code

a. The rule is inconsistent with the requirements set forth in the Drafting Manual. The entire rule should be reviewed for compliance with the Manual, particularly the sections dealing with amending, renumbering and titles. Due to the large number of occurrences, general comments have been made regarding drafting form rather than repetitive comments.

b. The following general form for renumbering should be used: “EAB 1.02 is renumbered EAB 1.01 (1).” This form should be followed consistently throughout the rule. [See s. 1.04, Manual.]

c. When creating a section, the new material is not shown as underscored; it should be shown without underscoring. [See s. 1.06 (1), Manual. See, for example, SECTIONS 9, 39 and 161 of the rule.]

d. If a rule provision containing a title is amended, the title should be shown even if it is not amended. [See s. 1.05 (3), Manual.] This practice is not followed consistently in the rule. See, for example, ch. EAB 10.

e. When material is deleted and material is added in the same location, the new underscored language should always follow the stricken material. [See s. 1.06 (1), Manual.] This practice is not followed consistently in the rule. See, for example, SECTION 66 of the rule.

f. When major changes are made to an existing rule, it may be preferable to repeal and recreate the rule rather than changing the rule by amendment. [See s. 1.06 (5), Manual.] See, for example, SECTIONS 7 and 125 of the rule.

g. Considering that substantial revisions are being made by the rule, the agency should consider expanding the analysis provided in order to more completely explain the changes proposed. With this type of revision, a more complete description can be particularly helpful.

h. The word “shall” is used in rules to denote a mandatory or absolute duty or directive. [See s. 1.01 (2), Manual.] Use of terms such as “should” or “must” have uncertain meaning and should be replaced by “shall” or “may” as appropriate. See SECTIONS 108 and 140 of the rule.

i. In s. EAB 1.16 (4), the parenthetical notations should be replaced by commas.

j. Use of the terms “e.g.” and “etc.,” as in SECTION 9, should be avoided. Also, “and/or” in SECTION 98 is not proper form because the meaning is not clear. [See s. 1.01 (9), Manual.] Also, all definitions should be phrased using either the term “means” or the term “includes.” For example, in s. EAB 1.01 (7), the definition should read: “‘Distance education’ means instruction....”

k. The rule contains several typographical errors. [See, for example, SECTION 13 on page 5, line 9, SECTION 127 on page 28, line 17, SECTION 134 on page 31, line 12 and SECTION 183 on page 50, line 9.] The rule should be reviewed in its final form to correct these errors. Also, the rule should be reviewed to assure that subject and verb usage are proper throughout the rule. See, for example, SECTION 46 on page 8, line 16 and SECTIONS 75 and 77 on page 14. In these examples, the word “is” should be replaced by the word “are” since more than the subsection or paragraph are affected.

l. In SECTION 50 of the rule, the proper renumbering should be to “(2), (3), (4).” All renumbering should be carefully reviewed for accuracy in the final rule. Also, when a provision is renumbered in a treatment clause of a section, the text of the rule should simply show the new number of the provision; a strike-through and an underscore should not be used.

m. Throughout the rule, the terms “falsely represent” and “misrepresent” are used interchangeably. See ss. EAB 5.03 (4) and 5.04 (1). Use of a single term consistently throughout the rule would reduce any uncertainties or confusion regarding the terminology.

n. In s. EAB 4.06 (4), the phrase “his/her” should be replaced by the phrase “the student’s.”

o. In SECTION 66, a new title is added to s. EAB 5.07 (1) without being properly identified. This is also an example of where repealing and recreating the provision would appear to be appropriate.

p. SECTIONS 82 and 83 appear to be redundant. Also, it appears that reference to action “by the board” at the end of the material added to s. EAB 4.01 (1) would be appropriate. [See Comment 5., d., below.]

q. In s. EAB 4.01 (3), the phrase “is responsible for” should be replaced by the word “shall.”

r. In s. EAB 4.02 (1), the word “Schools” should be underscored.

s. SECTION 97 amends s. EAB 4.03 (1), but does not show all of the material in current s. EAB 5.05 (1). All material deleted should be shown when provisions are amended. [See s. 1.06, Manual.] See, also, SECTION 183 for the same problem. Also, either the paragraphs in sub. (1) should conclude with a period or each paragraph should conclude with a semicolon. If the latter alternative is used, the word “and” in par. (k) should not be deleted.

t. SECTION 98 is not drafted correctly. It should be redrafted as a “repeal and recreate” rather than a “repeal, amend and renumber.” [See Comment 2., f., above.]

u. Section EAB 4.05 (1) should be rewritten as one sentence. A single paragraph should not be created in a subsection.

v. In SECTION 114, s. EAB 4.05 (4) (a) should be shown as a separate paragraph.

w. In SECTION 125, the amendment of s. EAB 4.08 (1) (a) is drafted incorrectly. There is no need to use “Wisconsin” prior to an agency name and the reference to the “department of agriculture, trade and consumer protection” is not complete. Also, in s. EAB 4.08 (2) (b), the subparagraphs should be renumbered as 1., 2. and 3. and the word “violation(s)” should be replaced by the word “violation.”

x. In SECTION 140, there is no reason to show created material as underscored.

y. In SECTION 133, which amends s. EAB 4.10 (2) (c), the rule should show “(g)” as stricken and the “(e)” as underscored to conform to drafting format.

z. SECTION 134 needs to be redrafted and reformatted. Also, it is not clear what “Level I” and “Level II” refer to in the section. This is a critical element of the revised rule and therefore should be carefully drafted and fully described.

aa. The terms “simple errors” and “complex changes” are used but not defined in s. EAB 4.10 (6). Given the monetary consequences associated with the meaning of the terms, the agency should either define them or more fully describe the intended scope of the terms.

ab. In s. EAB 6.02 (7), the notation “ch.” should be inserted following the word “with.”

ac. When any section, or part of a section, is divided into smaller subunits, at least two subunits should be created. Consequently, in s. EAB 7.01, since there are not two or more

subsections, the notation “(1)” should be deleted. Similarly, in s. EAB 7.02, the introduction should be unnumbered and the remaining subunits should be numbered subs. (1) to (4). [See also s. EAB 7.03.]

ad. In SECTION 166, after the term “pro rata” in s. EAB 8.05 (1), the word “refund” should be inserted. Also, the word “below” should be replaced by an appropriate cross-reference. Finally, s. EAB 8.05 (2) should be reviewed; it appears that material on lines 15, 17 and 19 needs to be deleted.

ae. SECTION 168 should be reformatted. Repealing and recreating the section is advisable.

af. In s. EAB 10.02 (1), the appropriate method of amending the word “form” is through the phrase “~~form~~ forms.”

ag. Given the substantial revision of EAB regulations, the agency may wish to provide a delayed initial applicability clause in the rule to facilitate implementation and compliance.

ah. Because of the significant revision in the fee structure for EAB operations, the agency may wish to complete a more detailed fiscal estimate than the summary provided with the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Without explanatory notes or a more complete analysis, the intended effect of many of the changes and deletions is not clear. A more complete description would be helpful.

b. The definition of “degree” in SECTION 7 is not clear. Is the term intended to include other designations that are not specified, such as “certificate” or “diploma”?

c. The term “hour” is defined in s. EAB 1.01 (11) to mean “either 50 or 60 minutes.” Who decides whether it is 50 or 60 minutes?

d. Several references in the current rule to education approval board staff are deleted. [See SECTIONS 84 and 125.] The agency may wish to clarify, perhaps in the general authority section, which actions may be taken by staff as agents of the board rather than solely by the board.

e. In several places, language is deleted that refers to decisions “by the board” or material filed “with the board.” See, for example, SECTIONS 85, 93, 107, 108, 122, 141, 146 and 152. These instances should be reviewed to assure that the intent is clear with regard to submittals or decisions.

f. In s. EAB 5.02 (2) (b), it appears that the word “organization” should be replaced by the word “organizations.”

g. In s. EAB 5.04 (1), it appears that the comma following the word “equipment” should be replaced by the word “or.”

h. The use of a double negative in SECTION 59 [s. EAB 5.05 (2)] is confusing. The section should be redrafted for clarity.

i. In s. EAB 5.03 (3), it appears that the word “the” before the word “writing” should be deleted.

j. In s. EAB 5.06 (3), it is not clear what is meant by the term “resident” secondary school. Also, in that section, would a reference to the State Superintendent of Public Instruction be appropriate?

k. A definition or description of the term “blind” advertisement as used in s. EAB 5.07 (2) would clarify the intended meaning of the term.

l. In SECTION 87, which amends s. EAB 4.01 (5), is it intended that revocation of both school and program approval is required? If not, the provision should be revised to allow revocation of either or both school and program approvals.

m. The repeal of s. EAB 5.04 could create an uncertainty with regard to the regulatory authority of the board over schools operating in more than one location. [See Comment 5., a., above.]

n. The term “learning outcomes” is used but not defined in s. EAB 4.03 (1) (c). A more complete description or definition of the term would be helpful in determining the intended meaning of the term. The same comment applies to the term “innovative programs” in s. EAB 4.04 (1) (d).

o. In s. EAB 4.03 (1) (h), the requirement for an independent audit is repealed. Is the intent to permit unaudited income statements to be submitted? Also, if the “board forms” are to be used, the agency should conform to the requirements regarding such forms in s. 227.14 (3), Stats.

p. The rule contains several discrimination provisions. These should be reviewed to assure consistency in the use of terminology and classifications.

q. In s. EAB 4.04 (7) (c), it appears that the semicolon following the word “dropouts” should be replaced by a comma and that a semicolon should be inserted following the word “employed.”

r. The term “court of record” is used but not defined in s. EAB 4.08 (2) (b) (iii). The reference could be to “any court” or an “appropriate court” unless the agency has some reason to use the specific term.

s. In s. EAB 7.04 (1) (b), what will be negotiated for “assignment”? A school’s records?

t. In s. EAB 8.05, should the comma on line 22 be replaced by the word “and”?

u. In s. EAB 8.05, it appears that subs. (5) and (6) could conflict on occasion. The relationship of these two subsections should be clarified.