



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-001

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 January 2005.]

I. Statutory Authority

Section 115.001 (11), Stats., defines a “school nurse” as a “registered nurse licensed under ch. 441 or in a party state, as defined in s. 441.50 (2) (j), who is *also* certified by the department [of public instruction (DPI)] as being qualified to perform professional nursing services in a public school.” (Emphasis added.) This definition of “school nurse” then applies in s. 115.28 (47), Stats., which provides a grant program for school districts (other than the Milwaukee Public Schools (MPS)) to “employ additional school nurses or contract for additional nursing services.”

Thus, s. 115.28 (47) provides that the grant may be used to: (1) “employ” additional school nurses, that is, registered nurses who have DPI certification; and (2) “contract for additional nursing services” that is, not employ, but contract with others for “additional nursing services.”

In contrast to s. 115.001 (11), Stats., s. PI 33.02 (6) defines a “school nurse” for purposes of this grant program as a “registered nurse in Wisconsin with a baccalaureate degree in nursing.” Section PI 33.03 (1) then provides that the grant may be used to employ “additional school nurses,” that is, nurses who do not have DPI certification.

There does not appear to be statutory authority to define “school nurse” in a manner that differs from this statutory definition and, thus, permit use of the grant moneys to employ nurses who do not have DPI certification.

2. Form, Style and Placement in Administrative Code

Section 20.255 (2) (dL), Stats., provides that the grants must be awarded to school districts that demonstrate the greatest need for school nursing services based on criteria such as: the ratio of pupils to nurses; the rate of chronic health problems among pupils; and the number of pupils from low-income families. Section PI 33.03 (3) (b) provides that the application must provide evidence of need, and s. PI 33.04 (2) (a) lists one of the criteria on which DPI will base its decision to award grants as including the extent there is a need for the grant.

Section VIII., Statement of Need, of Form PI 2124 (the application form) specifies in the third bullet point of the first paragraph that “priority will be given to projects with at least one school with the percentage of student’s (sic) eligible for free or reduced lunch at or above the 70% rate.” This statement of policy must be included in the rule, not just in a form. See ss. 227.01 (13) and 227.10 (1), Stats.

In addition, two of the bullet points of the third paragraph in Section VIII. of this form refer to issues that also may be included in considering the need for the grant, namely, the number of pupils without medical insurance and the number of pupils qualifying for exceptional educational services in three specified areas. If these are criteria that DPI will use in considering which school districts have the greatest need, they also should be included in the rule, not just in a form.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. PI 33.04 (1), the reference to “s. 20.255 (2) (fz), Stats.” should be changed to “s. 20.255 (2) (dL), Stats.”

b. Section PI 33.05 requires each grant recipient to submit a report to DPI. The rule should specify the deadline by which the report must be submitted.

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

a. In the first sentence of the second paragraph of the analysis, “greatest need such as the ratio” would be clearer if it were changed to language more similar to the statutory provision, namely, “greatest need for such services based on criteria such as the ratio.”

b. Section PI 33.02 (2) defines “nursing services” as “any duties provided or delegated by the school nurse to increase the health and safety of children and youth.” If a school district did not have a school nurse on staff, this means that no such duties could be provided or delegated, which would mean that the grant could not be used to contract for additional nursing services. Is that the intent?

c. In s. PI 33.02 (4) and (5), “meaning defined” should be changed to “meaning given.”

d. In s. PI 33.03 (1), the phrase “Annually by December 14, 2007, and by April 30 in subsequent years” should be changed to “Annually by April 30” since the December 14, 2007 deadline is not pertinent to the permanent rule.

e. In s. PI 33.03 (2), the phrase “communicable disease” is confusing as all of the other listed items are activities. Was something such as “communicable disease prevention,” “communicable disease control,” or “communicable disease prevention and control” intended?

f. In s. PI 33.03 (2), the phrase “advocacy for health” should be changed to “advocacy for the health.”

g. In s. PI 33.04 (1), “inform school district” should be changed to “inform school districts.”

h. In s. PI 33.04 (2) (b), “student” should be changed to “pupil” to be consistent with the statutes relating to K-12 education and other provisions in the administrative code.

i. In the third bullet point of the first paragraph of Section VIII., Statement of Need, of Form PI 2124: “free or reduce lunch” should be changed to “free or reduced-price lunch”; “student’s” should be changed to “students”; and “free or reduced lunch” should be changed to “free or reduced-price lunch.”

j. The second bullet point of the last paragraph of Section VIII. of Form PI 2124 refers to the number of pupils without “medical insurance.” Many individuals have health care coverage that is not technically “insurance,” for example, Medical Assistance, BadgerCare, and self-funded employer plans. It appears that it would be more appropriate to use a generic phrase such as “health care coverage” rather than “medical insurance” to avoid ambiguity on this point.

k. The third bullet point of the last paragraph of Section VIII. of Form PI 2124, uses the phrase “exceptional educational services.” However, with the revisions of subch. V, ch. 115, Stats., this phrase is no longer used in the statutes. Consideration should be given to using the terminology used in current law to describe a child with a disability who needs special education and related services.