WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 16-038

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

a. In its analysis, the department cites the same statutory provisions as the basis for its statutory authority to promulgate the proposed rule and as the statutes interpreted by the proposed rule. It appears, however, that ch. PI 24 actually interprets ss. 118.43 (6) and (8) and 118.44 (6), Stats., which are separate from the rule-making authority granted in ss. 118.43 (6m) and 118.44 44 (6) (e), Stats. The department should replace the statutes cited under "statute interpreted" with "ss. 118.43 (6) and (8) and 118.44 (6), Stats."

b. In its analysis, the department properly cites ss. 118.43 (6m) and 118.44 (6) (e), Stats., as the basis for its statutory authority to promulgate the proposed rule. However, in its explanation of agency authority, the department describes only the general rule-making authority given in s. 227.11 (2) (a) (intro.), Stats. Because ss. 118.43 (6m) and 118.44 (6) (e), Stats., explicitly require the department to promulgate rules to administer the payment of state aid under the SAGE and AGR programs, the department does not need to rely upon the general authority granted under ch. 227, Stats., and could remove it from its explanation. The department should describe its obligation under ss. 118.43 (6m) and 118.44 (6) (e), Stats., to promulgate rules.

2. Form, Style and Placement in Administrative Code

a. In the enumeration of provisions treated, "consolidate, number and amend" should be changed to "consolidate, renumber, and amend". [s. 1.02 (1) (b), Manual.]

b. In both the enumeration of provisions treated and the treatment clause for SECTION 5 of the proposed rule, the designation "(title)" should be added after "PI 24.03 (2)" so that it reads as "PI 24.03 (2) (title)". Also, in SECTION 5, the rule text following the amended title should not be shown, as that material is not revised in the proposed rule. Only the amended title should be shown in the rule text. [s. 1.05 (3) (a), Manual.]

c. In both the enumeration of provisions treated and the treatment clause for SECTION 7 of the proposed rule, the designation "(intro.)" should be added between "PI 24.03 (3)" and "and (a)" so that it reads as "PI 24.03 (3) (intro.) and (a)".

d. The department should insert a plain language analysis of the proposed rule. The purpose of a plain language analysis is to provide an understandable and objective description of the effect of the rule. It should contain sufficient detail to enable the reader to understand the content of the rule and the changes made, if any, in existing rules. [s. 1.02 (2) (b), Manual.]

e. A specific date should be given for the deadline to submit comments on the proposed rule. [s. 1.02 (2) (a) 13., Manual.]

f. The colon following the heading "SECTION 3" should be changed to a period. Additionally, the treatment clause should be revised to read as: "PI 24.03 (1) (a) 1. is renumbered PI 24.03 (1) and amended to read:". The treatment of this section should likewise be corrected in the enumeration of treated provisions.

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

a. In s. PI 24.02, it appears that the citation to s. 118.43 (6) (b) 10., Stats., should actually be a citation to s. 118.43 (6) (b) 11., Stats.

b. In s. PI 24.015 (1), it appears that the citation to s. 118.43 (7) could be removed as the evaluation under that section ended with the 2014-15 school year. If not removed, the words "amount" and "evaluation" should be made plural.

c. In s. PI 24.015 (4), one of the citations should be removed because both citations give the same meaning and it is confusing to cite to two separate statutory sections for one definition. The department could consider removing the citation to s. 118.42 (1) (b), as the SAGE program under that section is no longer active.

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

a. The department should clarify its aid calculation under s. PI 24.03 (1). It is unclear how the department makes the initial calculation of the amount to be paid to each school district. As it is currently drafted, the calculation appears to be circular: the amount to be paid to each school district, as determined by the department, is divided by the number of reported low income pupils and then multiplied by the number of low-income pupils in order to determine the amount of aid to be paid to the school district.

Suggested changes include: (a) specifying that the initial amount to be divided is the total amount appropriated under s. 20.255 (2) (cu), Stats., as noted in s. 118.44 (6) (bm), Stats., not an alternative amount calculated by the department; and (b) specifying that the appropriation is divided by the total number of eligible low-income pupils **in the state** to determine a per-pupil amount which is

then multiplied by the total number of eligible low-income pupils **within a school district** to determine how much aid will be paid to each school district.

b. The department should clarify the recalculation language under s. PI 24.03 (2m). If payments made to school districts are on a per-pupil, per-day basis, then the calculation language should include reference to "per-day" or to another method of proration. The last sentence of the section should also be clarified. It appears that the department means that any funds that would have otherwise been paid to a school district that withdraws from a contract shall be disbursed proportionately among the remaining eligible school districts.

c. The department should review the proposed rule and consistently use the phrase "low-income pupil" with a hyphen throughout. For example, there are no hyphens in the phrase "low income pupil" in SECTION 3, but there are hyphens in the phrase in SECTION 7.