

## Clearinghouse Rule 16-019

# PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION REVISING PERMANENT RULES

The scope statement for this rule, SS 074-15, was published in Register No. 716A3 on August 17, 2015, and approved by Superintendent Evers on September 8, 2015. 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*, No. 2013AP416, 2015 WL 686178 (Wis. Ct. App. Feb. 19, 2015).

The state superintendent of public instruction hereby proposes to repeal ss. PI 36.02 (5) and (6), PI 36.02 (33) and (37), PI 36.06 (4) (b) 3. and 4., PI 36.06 (4) (c) 4., PI 36.07 (2) (d), PI 36.06 (2) (d), PI 36.08 (3) (a) 2., PI 36.10 (1) and (4), and PI 36.12 (1) (b) and (2) (a); to renumber ss. PI 26.08 (3) (a) 1.; to amend ss. PI 36.02 (10) and (14), PI 36.06 (4) (b) 2. and (c), PI 36.07 (2) (c) and (3) (b), PI 36.06 (2) (c) 1. and 2. and (3) (b), PI 36.10 (2) (a) 1. and 2., and PI 36.12 (2) (b); and to create ss. PI 36.02 (20m) and PI 36.08 (3) (c), relating to changes to Open Enrollment.

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

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## ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

**Statute interpreted:** 118.51, Stats.

**Statutory authority:** 118.51 and 227.11 (2) (a) (intro.), Stats.

**Explanation of agency authority:**

Under s. 227.11 (2) (a) (intro.), stats., "Each 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." As such, a rule is required to effectively implement and administer the payment of state aid under s. 118.51, stats.

**Related statute or rule:** None.

**Plain language analysis:**

This proposed rule will align PI 36 with current statute, which was modified by 2015 Wisconsin Act 55. 2015 Wisconsin Act 55 modified the public school open enrollment program as it relates to pupils with disabilities beginning in the 2016-17 school year. Specifically, Act 55 made the following changes:

- Deleted the authority of a resident school district to deny an open enrollment application on the basis of undue financial burden.
- Established a new per pupil aid transfer amount for pupils with disabilities of \$12,000. Similar to the current open enrollment transfer amount for regular education pupils, the \$12,000 is to be transferred from the resident district to the nonresident district for each open-enrolled special education pupil.
- Indexed the new \$12,000 transfer amount annually similar to the transfer amount for regular education pupils. The indexing amount is based on the revenue limit per pupil adjustment and the change in categorical aid funding per pupil in a given year.
- Deleted the requirement that the resident district pay tuition to the nonresident district for a special education pupil attending under open enrollment.

- Deleted the requirement that a nonresident district provide an estimate to the resident district of the costs to provide the special education services required in the individualized education program (IEP) for a pupil with disabilities who applies for open enrollment.

The proposed rule will align DPI Administrative Code and practice with these provisions contained in Act 55.

**Summary of, and comparison with, existing or proposed federal regulations:** N/A

**Comparison with rules in adjacent states:** N/A

**Summary of factual data and analytical methodologies:**

This proposed rule change is needed to align PI 36 with the statutory changes in 2015 Wisconsin Act 55.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:** N/A

**Anticipated costs incurred by private sector:** N/A

**Effect on small business:**

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

**Agency contact person: (including email and telephone)**

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**Place where comments are to be submitted and deadline for submission:**

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at [Carl.Bryan@dpi.wi.gov](mailto:Carl.Bryan@dpi.wi.gov). The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

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**SECTION 1. PI 36.02 (5) and (6) are repealed.**

**SECTION 2. PI 36.02 (10) and (14) are amended to read:**

**(10)** “Currently-attending pupil” means a pupil who is currently enrolled in a school district and is required to apply for open enrollment to remain in the district, and it includes an eighth grade pupil who is attending an underlying elementary school of a union high school district.

**(14)** “Guaranteed approval” means that a pupil is included by the nonresident school district in its count of occupied spaces and is therefore guaranteed approval to attend the nonresident school district.

**SECTION 3. PI 36.02 (20m) is created to read:**

**(20m)** “Open enrollment payment” means the amount calculated under s. 118.51 (16) (a) or (17) (b), Stats.

**SECTION 4. PI 36.02 (33) and (37) are repealed.**

**SECTION 5. PI 36.06 (4) (b) 2. is amended to read:**

2. ~~Except as provided in subd. 3., if~~ If the resident school board has not notified the parent that an alternative application is denied on or before the 20th calendar day after the application was submitted, the application shall be considered approved by the resident school board.

**SECTION 6. PI 36.06 (4) (b) 3. and 4. are repealed.**

**SECTION 7. PI 36.06 (4) (c) is amended to read:**

(c) If an application is denied by a nonresident or resident school board, or a parent is notified that a pupil is required to return to the resident school district under s. 118.51 (11) ~~or (12) or (b) 2.~~, Stats., the notice of denial shall include the following:

**SECTION 8. PI 36.06 (4) (c) 4. is repealed.**

**SECTION 9. PI 36.07 (2) (c) is amended to read:**

(c) Notwithstanding par. (b), if the parent intends to file an appeal of the resident school board’s denial under s. 118.51 (3m) (b) 8. or (d) ~~4.~~, Stats., the pupil may attend the nonresident school district pending the outcome of the appeal. If the parent fails to file a timely appeal or if the department affirms the resident school board’s decision, the pupil shall cease attending the nonresident school district.

**SECTION 10. PI 36.07 (2) (d) is repealed.**

**SECTION 11. PI 36.07 (3) (b) is amended to read:**

(b) Except as provided under s. 118.51 (3m) (d) ~~2.~~, Stats., a resident school board may not deny a pupil’s application under s. 118.51 (3m) (b) 8. or (d) ~~4.~~, Stats., if the pupil meets at least one of the criteria specified in s. 118.51 (3m) (b), Stats.

**SECTION 12. PI 36.08 (2) (c) 1. and 2. are amended to read:**

1. If the pupil was attending the nonresident school district under open enrollment on the 3rd Friday in September, the school district in which the pupil resided on the 3rd Friday in September in any school year shall be the resident school district for purposes of the full-time open enrollment program and shall be responsible for the ~~basic and special education~~ costs open enrollment payment for the pupil for the remainder of that school year.

2. If the pupil first attended a nonresident school after the 3rd Friday in September, the school district in which the pupil resided when the pupil began attending the nonresident school district shall be the resident school district for purposes of the full-time open enrollment program and shall be responsible for the ~~basic and special education costs~~ open enrollment payment for the pupil for the remainder of that school year.

**SECTION 13. PI 36.08 (2) (d) is repealed.**

**SECTION 14. PI 36.08 (3) (a) 1. is renumbered PI 36.08 (3) (a).**

**SECTION 15. PI 36.08 (3) (a) 2. is repealed.**

**SECTION 16. PI 36.08 (3) (b) is amended to read:**

**(b)** If the pupil attended the nonresident school district for less than a full school year under the full-time open enrollment program, the amount under s. 118.51 (16) ~~or (17) (b)~~, Stats., shall be equal to the ~~basic~~ open enrollment payment divided by 180 and multiplied by the number of days the pupil was enrolled in the nonresident school district in the school year. The days of enrollment are calculated as follows:

**SECTION 17. PI 36.08 (3) (c) is created to read:**

**(c)** If, during the school term, a pupil is found to no longer be receiving special education services in the nonresident school district, the open enrollment payment for the pupil shall be calculated as the sum of the following:

1. The amount under s. 118.51 (17), Stats., divided by 180 and multiplied by the number of day the pupil was receiving special education services in the nonresident district.
2. The amount under s. 118.51 (16), Stats., divided by 180 and multiplied by the number of days the pupil was not receiving special education services in the nonresident district.

**SECTION 18. PI 36.10 (1) is repealed.**

**SECTION 19. PI 36.10 (2) (a) 1. and 2. are amended to read:**

1. If an application is submitted by a child with a disability who does not have a current IEP, the nonresident school board shall use the following records to determine whether it has the special education program or space ~~and to estimate the amount of the basic and special education cost for the pupil:~~

2. If neither an IEP nor an evaluation is available to review, the nonresident school board shall treat the application as an application from a child who is not disabled. ~~If the pupil subsequently attends school in the nonresident school district under the full-time open enrollment program and the nonresident school board evaluates the pupil and develops an IEP for the pupil, the nonresident school board shall provide the resident school board with an estimate of the basic and special education cost as provided under sub. (1).~~

**SECTION 20. PI 36.10 (4) is repealed.**

**SECTION 21. PI 36.12 (1) (b) and (2) (a) are repealed.**

**SECTION 22. PI 36.12 (2) (b) is amended to read:**

**(b)** Except as specified in ~~pars. (a) and~~ par. (c), the nonresident school board may not provide any pupil records to the resident school board, including but not limited to the following:

**SECTION 23. EFFECTIVE DATE:**

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015

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Tony Evers, PhD  
State Superintendent