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CLEARINGHOUSE RULE 98-010

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.]

General Comments

a. Organization

The provisions of Clearinghouse Rule 98-010 relating to the full-time open enrollment program and the provisions relating to the part-time open enrollment program, except the appeal process, are organized according to: (1) parent and pupil responsibilities; (2) nonresident school board responsibilities; and (3) resident school board responsibilities. Since this organizational approach does not correspond to the organizational structure of the statutes, it is difficult to relate the provisions of the rule to corresponding provisions of the statutes and to find all the relevant provisions of law related to a particular step in the open enrollment process.

This organizational approach also leads to some repetition and the separation of similar provisions which would be clearer if combined. For example, stating the obligation of the resident and nonresident school districts to provide an application form, upon request, in two separate places could be confusing to a person who wants to know all the places a form may be obtained. [See ss. PI 36.04 (1) and 36.05 (1).] Additional examples include the second sentences of ss. PI 36.03 (1) (h) and PI 36.04 (12); ss. PI 36.04 (1) and 36.05 (1); ss. PI 36.04 (13) and 36.05 (9); and ss. PI 36.04 (16) and 36.05 (16).

If the department wishes to assist parents and school districts by identifying, in one place, what each of their responsibilities are under the open enrollment programs, it could do so with separate “informal” documents which identify parent and school district responsibilities *and* other pertinent information (such as, for the parent, where to obtain and application form), as set forth in the statutes *and* administrative rules.

A reorganization of the rule might also make it significantly shorter and is likely to make the rule easier to amend in the future if changes are made in the relevant statutes.

b. Application Form

(1) The department may wish to consider whether the use of a single form (the application form) for all steps in the full-time open enrollment process (initial parent application, resident and nonresident school district approval or denial, nonresident school assignment and notification of intent for a student to attend a nonresident school district) is practical. It is not clear, under the rule, where the original of the form will be at all steps during the process and, in some cases, it is not clear whether a school district will be making a notation on the original or on a copy. More importantly, it appears that the rule could lead to the existence of multiple copies of the form in various stages of completion leading to possible confusion, including the addition of information to the form by a parent or school district, on the wrong copy of the form. Specifically, the following questions arise regarding the use of a single form for all steps:

- (a) Section PI 36.04 (8) states that the nonresident school board's notice of acceptance or rejection shall be made on the application form (presumably this is on the original of the application form). However, it is nowhere actually stated that either the application form or a copy of the application form shall be sent to the parent.
- (b) Section PI 36.05 (7) states that the notification of rejection by the resident school board shall be made on the application form. However, at this step in the process, the resident school district does not have the original of the form; the resident school board is provided with a copy under s. PI 36.04 (3).
- (c) Section PI 36.04 (11) states that the notice of placement in a particular school or program shall be made by the nonresident school district on the application form. This appears to be on the original of the application form but, at this step in the process, it appears that the parent will have possession of the original application form pursuant to s. PI 36.04 (8).
- (d) Section PI 36.04 (12) states that if the nonresident school board does not receive notification of intent from the parent by the specified date, it shall note that fact on the form and send a copy of the form to the department. Is the nonresident school board in possession of the original form at this time?
- (e) Section PI 36.04 (15) requires the nonresident school board to maintain all completed application forms for a period of three years. Who has the original of the form at this time?

(2) Section 118.51, Stats., specifically requires that one copy of the application form be sent to the department. (Under s. 118.51 (3), Stats., when the application is first submitted to the nonresident school board, that school board must send a copy of the application to the department.) However, Clearinghouse Rule 98-010 requires that four copies be submitted to the department. (The application form must be submitted to the department under s. PI 36.04 (3) by

the nonresident school board when the application is first submitted; under s. PI 36.04 (9), by the nonresident school board if it rejects the application; under s. PI 36.05 (7) (b), by the resident school board if it rejects the application; and under s. PI 36.04 (12), by the nonresident school board if it does not receive a notice of intent to attend from the parent.) Assuming that the department needs the information obtained by each of the extra submissions to meet its reporting requirement under s. 118.51 (15) (c), Stats., or that the Legislative Audit Bureau needs the information for its evaluation under s. 13.94 (11), Stats., is this the easiest way for school districts to report and the department to collect the information?

(3) The department may wish to update the application form to reflect the correct dates for 1999 applications since Clearinghouse Rule 98-010 is unlikely to go into effect as a permanent rule before February 20, 1998, the date by which parents must submit applications for 1998.

(4) Section 118.51 (14) (b), Stats., states that a parent may apply for transportation reimbursement *on* the application form used for the full-time open enrollment program. However, the department is proposing that a separate form be used to apply for transportation assistance. One of the purposes of the statutory requirement that the open enrollment application form include provisions to permit a parent to apply for transportation reimbursement is to ensure that parents are aware of their opportunity for this reimbursement. Section PI 36.04 (1) requires only that the full-time enrollment program application form and the application form for transportation reimbursement be provided “upon request.” Also, see comment 1. d.

1. Statutory Authority

a. Section PI 36.02 (7) states that a pupil aged 18 years or older may take any action authorized to or required of a parent. This exceeds the authority in s. 118.51 or 118.52, Stats., for parents to submit applications and take other actions.

Also, as drafted, this is a substantive provision which, if retained in the rule, should not be included in a definition. [See s. 1.01 (7) (b), Manual.] If the provision is retained, “18 years of age or older” should replace “age 18 or older.”

b. Section PI 36.03 (1) (d) and the related heading on the application form conflict with s. 767.24 (6), Stats., which allows a court, in making an order for joint legal custody, to give one parent the power to make specified decisions regarding the child.

c. What is the statutory authority for requiring, under s. PI 36.03 (1) (f), that parents of a pupil who is enrolled in a private school or a home-based private educational program ensure that the pupil enroll in the resident school district prior to attending school in the nonresident school district? If the concern is to clarify that these pupils shall be included in the resident school district’s membership for the purposes of computing its general state aid, the rule could simply state that for the purposes of s. 121.05 (1) (a) (intro.), Stats., these pupils shall be considered to be enrolled in the resident school district if they are attending a nonresident district under s. 118.51, Stats.

d. There appears to be no statutory authority for the provisions of s. PI 36.03 (2) (b) which allow parents to submit applications for transportation reimbursement after the third

Friday in February and to submit those applications directly to the department, rather than to the nonresident school board. Section 118.51 (14) (b), Stats., provides that the parent may apply for transportation assistance to the department, on the full-time open enrollment application form. Under s. 118.51 (3) (a) 1., that form must be submitted to the nonresident school district not later than the third Friday in February.

e. Section PI 36.07 (4) appears to conflict with s. 118.52 (5), Stats. The statute provides that a school board “may” give preference in attendance in a course to residents of the school district. Since a school board is not required to give a preference to residents, it appears that a school board could give preference to some categories of resident students (such as those enrolled in other schools of the district which do not offer a similar course), but not to other residents.

f. Section PI 36.09 provides a tuition computation for the part-time open enrollment program which does not reflect an individual school district’s costs (statewide average costs are used). In addition, the section does not allow for differences that may be associated with the different costs a school district may have for different types of courses. The department should review this section for consistency with s. 118.52 (12), Stats., which provides that the resident school board shall pay to the nonresident school board, for each pupil attending a course, an amount equal to “the costs of providing the course to the pupil,” calculated in a “manner” determined by the department.

g. In the first sentence of s. PI 36.10 (2) (a), “within 30 days after the decision” should be substituted for “within 30 days after receiving the decision.” [See ss. 118.51 (9) and 118.52 (8), Stats.] Also, the cover page to the instructions for application form PI-9410 indicates that the 1998 deadline for appeals is May 9, 1998. However, this is misleading since the deadline may be earlier if the school board issues the decision being appealed prior to April 10, 1998. Also, the last possible date for filing the appeal (if the school board does not issue the decision being appealed until April 10, 1998) is May 11, 1998, not May 9, 1998. [See ss. 118.51 (9), 118.52 (8) and 990.01 (4) (a) and (b), Stats.] There is no authority to change these dates.

2. Form, Style and Placement in Administrative Code

a. The terms defined in s. PI 36.02 (3) and (4) should be reversed so that they are in alphabetical order.

b. In s. PI 36.03 (2) (d) (intro.), “the following amounts” should replace “the amount under subd. 1. or 2., as follows.”

c. In s. PI 36.06 (1) (a), “be responsible to” should be deleted.

d. Clearinghouse Rule 98-010 should include a reference to the forms required under the rule in a note or notes to the rule. No such notes are included in Clearinghouse Rule 98-010. Also, a copy of each required form or a description of how to obtain a copy should be attached to the rule. Clearinghouse Rule 98-010 includes a copy of the application form for the full-time open enrollment program, but includes neither a copy nor information on how to obtain a copy of the part-time open enrollment application form. [s. 227.14 (3), Stats; s. 1.09 (2), Manual.] A note indicating where forms may be obtained would be helpful.

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

a. Section 227.11 (2) (a), Stats., is cited as authority for Clearinghouse Rule 98-010 on the cover page to the rule (entitled, “REPORT TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE, OPEN ENROLLMENT PROGRAM, PI 36 Wisconsin Administrative Code”), and in s. PI 36.01 (1). It appears that s. 227.11 (2) (b), Stats., should also be cited. A citation to s. 227.11 (2) (b), Stats., should also be included at the beginning of the analysis of the rule.

b. The cover page to Clearinghouse Rule 98-010, under the heading, “Analysis of the Rule-Rule Effect-Reason for the Rule,” indicates that the rule establishes procedures and requirements relating to the full-time open enrollment program under s. 118.51, Stats. However, the rule also establishes procedures and requirements relating to the part-time open enrollment program under s. 118.52, Stats.

c. The introductory clause to Clearinghouse Rule 98-010 indicates that the state superintendent proposes to amend “ss. 40.06 (4) (b) and (c).” However, those provisions of the Wisconsin Administrative Code are not affected by Clearinghouse Rule 98-010.

d. The department may also wish to indicate on the cover page, in the analysis and in s. PI 36.01 (1), that Clearinghouse Rule 98-010 interprets s. 121.05 (1) (a), Stats. See comment 1. c.

e. It might be helpful if the statutory references in the first sentence of s. PI 36.03 (1) (a), the second sentence of s. PI 36.03 (2) (b) and the first sentence of s. PI 36.06 (1) (a) were replaced by a reference to the appropriate form numbers. Alternatively, it appears that these statutory references could simply be deleted since they do not appear to add to the clarity of the rule.

f. The reference to “procedures established by the resident school board” in the second sentence of s. PI 36.03 (1) (f) would be clarified by a cross-reference to s. PI 36.05 (10). In addition, the sentence would be clarified if the clause “prior to attending school in the nonresident school district,” were moved from the end of the sentence and inserted after “the parent shall ensure that.” However, see comment 1. c.

g. The second sentences of ss. PI 36.04 (4) and 36.05 (5) would be clarified if each of those sentences began with “Except as provided in sub. (6),”.

h. In s. PI 36.04 (5) and 36.05 (3), it appears that the cross-references to s. PI 36.03 (1) (d) should be replaced by cross-references to s. PI 36.03 (1) (e).

i. The second sentence of s. PI 36.05 (5) would be clarified by rewording it to include a cross-reference to s. 118.51 (6), Stats.

j. The first sentence of s. PI 36.05 (5) would be clarified by the insertion of “under s. 118.51 (3) (a) 1.” after “nonresident school board.”

k. In s. PI 36.06 (1) (d), the cross-reference to s. 118.51 (8), Stats., should be replaced by a cross-reference to s. 118.52 (10), Stats.

- l. In s. PI 36.06 (2) (b) 5., “subd. 3” should be replaced with “subd. 3.”.
- m. In s. PI 36.06 (2) (b) 6., “PI” should precede the cite.
- n. In s. PI 36.10 (1), “, Stats.,” should follow s. 118.52 (6).”
- o. In s. PI 36.10 (3):
 - (1) “ss. 118.51 (4) or 118.52 (4), Stats.,” should be replaced with “s. 118.51 (4) or 118.52 (4), Stats.,”.
 - (2) “ss. 118.51 (3)(a), (5),(6)(7) or (12), or 118.52 (3) (b), or (6), Stats.,” should be replaced with “s. 118.51 (3) (a), (5), (6), (7) or (12) or s. 118.52 (3) (b) or (6), Stats.,”.

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

a. In the last sentence of the first paragraph of the analysis to the rule, “a nonresident school district” should be replaced by “nonresident school districts” since, under the part-time open enrollment program, a pupil may take one course in one nonresident school district and another course in a different nonresident school district.

b. Some provisions of Clearinghouse Rule 98-010 provide that a postmark does not constitute timely submission [e.g., s. PI 36.03 (1) (a)], while other provisions provide that a notice is timely if postmarked by a certain date [e.g., s. PI 36.04 (8)]. However, some provisions do not specify whether a postmark of a certain date is considered to be timely [e.g., s. PI 36.03 (1) (h)]. All provisions of Clearinghouse Rule 98-010 should be reviewed to clarify whether or not a postmark of a certain date is considered timely.

c. The first sentences of ss. PI 36.03 (1) (c) and 36.06 (1) (c) should be clarified by inserting “applicable” after “all.”

d. Section PI 36.03 (1) (d) provides that, if parents have joint custody of a pupil, both parents sign the application. Should a similar requirement be stated in s. PI 36.06? However, see comment 1. b.

e. The second and third sentences of s. PI 36.03 (2) (b) should be reworded to indicate that, to apply for transportation assistance *and* receive an estimate of the amount of reimbursement that the parent will receive, the parent shall submit the transportation assistance application form to the nonresident school board.

f. It is not clear what is meant by the statement in s. PI 36.03 (3) (a) that “[t]his notification shall be final.” It appears that the phrase could be deleted without changing the meaning of the sentence.

g. Should the notice required under s. PI 36.03 (3) (c) also be provided to the school board of the pupil’s new resident school district?

h. Under s. PI 36.04 (2), why is the nonresident school board not required to notify parents of the dates of the application period if the application is received after 4:00 p.m. on the third Friday in February? This would help explain the situation to the parent. It seems that the material between the commas in the third sentence could be deleted.

i. Section PI 36.04 (7) should be reworded to indicate that it applies only if the child has been identified as having exceptional educational needs.

j. Generally, s. 118.51 refers to the “acceptance or rejection” of an application by the nonresident school board. Clearinghouse Rule 98-010 frequently makes use of words “denied” and “approved.” To avoid any possible confusion, the department may wish to consider using the statutory terms “rejected” and “accepted” to the extent feasible.

k. The first sentence of s. PI 36.04 (9) should be clarified by inserting “by the nonresident school board” after “rejected.” The same phrase should be inserted after “approved” in the first clause of s. PI 36.04 (10).

l. The department may wish to consider substituting a provision similar to s. PI 36.05 (8) for s. 36.04 (9). In particular, s. PI 36.05 (8) (a) requires the provision of information regarding the appeal that is not required under s. PI 36.04 (9).

m. In the second sentence of s. PI 36.04 (11), the reference to the first Friday following the first Monday in April should be replaced by a reference to the second Friday following the first Monday in May. [See s. 118.51 (3) (a) 5., Stats.]

n. In s. PI 36.05 (3), “record” should be replaced with “records.”

o. Is s. PI 36.05 (4) necessary? Under s. 118.125 (4), these records must be provided within five working days.

p. The second sentence of s. PI 36.05 (5) would be clarified by the substitution of “nonresident school districts” for “other school districts.”

q. Section PI 36.05 (6) (b) should be clarified to indicate that the preference must only be given if the parent has applied to have the siblings attend the same nonresident school district.

r. In s. PI 36.05 (12), should the first “board” be changed to “district”?

s. In s. PI 36.06 (2) (b) 3., “a free or reduced-price meal” should be replaced by “a free or reduced-price lunch.” A similar comment applies to s. PI 36.06 (2) (b) 4.

t. Proposed s. PI 36.06 (2) (b) 3. to 6. might be clarified by reordering those provisions to state the substance of subd. 6., then the substance of subd. 3.

u. Should s. PI 36.08 include a provision similar to s. PI 36.07 (9) to require the resident school district to similarly notify the nonresident school district?

v. Section PI 36.10 (2) (d) is unnecessary and could be deleted.

w. The statutes and ch. PI 36 use the word “pupil” while the application forms use the word “student.” Is there a reason for changing the terminology for the purposes of the forms?

x. Section 1. of the full-time enrollment application instructions indicate that all spaces on the application “should” be filled in. This statement should be replaced with the statement that all spaces “must” or “shall” be filled in.

y. On the full-time open enrollment application form:

- (1) The form asks the parent to specify whether there are any disciplinary proceedings pending “that could lead to expulsion.” The inclusion of that phrase may be asking the parent to make a judgment he or she is not in a position to make.
- (2) In the box asking parents to indicate whether they will be applying for transportation reimbursement, “nonresidential school district” should be replaced by “nonresident school district.”
- (3) The title to Section IV of the form should be “IV. Nonresident School District Approval or Denial”, rather than “Nonresident Approval/Denial”.

z. On the transportation reimbursement form:

- (1) In the first paragraph under “GENERAL INFORMATION,” the reference to the “public school open enrollment program” should be replaced by a reference to the “full-time public school open enrollment program.”
- (2) The letter “T” is missing from the box relating to the telephone number.
- (3) The explanatory phrases in the Resident School District, Nonresident School District, Starting Point and Destination boxes should be enclosed in parentheses.
- (4) In the Starting Point box, it is not clear why reference is being made to a bus stop in the resident district.