

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 99-030**

### **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 September 1998.]**

#### **2. Form, Style and Placement in Administrative Code**

a. In the second sentence of s. PI 3.01 (5), “Alternative education program” should be in quotes.

b. In s. PI 3.02, the format used for the rule could be simplified by including the subject (“the teacher,” “the school administrator” or “the public service professional”) in the introductory clause rather than in each individual subsection. Also, in this subchapter and throughout the rules, the agency should take care to draft in parallel terms. For example, in s. PI 3.02, reference is made to “*the* teacher” but in s. PI 3.03, reference is made to “*a* school administrator” and in s. PI 3.04, the term used is “public services professionals.” [Emphasis added.] Thus, the agency is using three different forms for parallel references.

c. Generally, the rule should be drafted in a manner that uses similar terms for similar activities. Use of synonyms is generally to be discouraged. For example, in s. PI 3.02 (7), the term “pupil” is used; but in s. PI 3.02 (8), the term “learner” is used. Also, in subch. II, the phrase “demonstrate proficient performance” is used in s. PI 3.02 (intro.) and “demonstrate through proficient performance” is used in s. PI 3.03 (intro.). It appears that these two terms should be the same.

d. In s. PI 3.05 (5), “Educational Approval Board” should be lower case.

e. In s. PI 3.06 (7) (intro.), “all of” should be inserted after “under.” In par. (a), a period should replace “; and”.

f. In s. PI 3.15 (6) (a) 2. and elsewhere in the rule, “to” should replace the hyphen.

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

a. The statutory citation in s. PI 3.15 (3) (a) 3. b. is not correct. It appears that the correct citation would be to s. 115.425, Stats.

b. In s. PI 3.34 (3) (a) 4. b. and (5) (c), reference is made to “ch. HSS 267”. The correct reference appears to be “ch. HFS 77”. Also, the department is now called the Department of Health and Family Services.

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

a. The rule appears to have a fundamental weakness with respect to the parameters of the teaching categories. [See s. PI 3.28 and 3.29.] For each of these categories, a general statement is made, but a formal definition of the level is left to be determined by each school district through “a collaborative in process to include community, district personnel and school board members” and must be based on the “organizational structure of the schools and the philosophy and needs of the district.” This appears to leave very uncertain what will be the exact boundaries of each of these licensing categories. In particular, it appears to leave this determination to each individual school district which may not provide adequate certainty for teachers preparing at a particular institution for a particular level of licensure.

b. It is not clear how a person would move from one teaching category to another. For example, a person who is at the early childhood through middle childhood level who wants to move to a middle childhood through early adolescence level would appear to need to meet totally new criteria even though they may be moving only one or two grade levels. This should be carefully reviewed before the final rule is promulgated.

c. For an educational licensing rule, the rule is remarkably free of jargon. However, there are isolated incidences of terms that are used that have meaning primarily within the educational community or that are such that their meaning is not likely to be clear to all readers. A sampling of these terms follows with the citation to the sections provided after each term. It is suggested that the terms either be revised or, if necessary, defined at the beginning of the chapter. Terms in need of revision are as follows: “departmentally licensed” in s. PI 3.01 (16), “authentic documentary evidence” and “used as a vehicle” in s. PI 3.01 (39), “tools of inquiry” in s. PI 3.02 (1), “learner” in s. PI 3.02 (8), “reflective practitioner” in s. PI 3.02 (9), “terminal degree” in s. PI 3.11 (2) (a), “weeding” in s. PI 3.12 (3), “authentic evidence” in s. PI 3.17 (4) (b), “strands” in s. PI 3.29 (2) (a) 2. and elsewhere, and “contrastive” in s. PI 3.33 (3) (c) 1. c.

d. In s. PI 3.01 (4), the phrase “to do so” appears to be unnecessary. Also, the sentence containing the phrase is substantive and should therefore not be part of a definition.

e. Section PI 3.01 (20) is unclear as drafted. For example, are the 180 days intended to be in a single year or single school year? Also, it is not clear what the one class period minimum is intended to refer to, especially for teachers in the early grades. Also, “full time” should be hyphenated.

f. In s. PI 3.01 (22), does the agency intend that the term “IHE” also include off-campus sites or is it only main campus sites?

g. In s. PI 3.01 (23), it is not clear what is intended by the phrase “licensed for the first time.” Does the phrase refer to the first time a person is licensed in a particular area or the first time the person is licensed in any area as a teacher? This should be clarified.

h. In s. PI 3.01 (26), the term “specific license” is somewhat unclear. It is not clear how this will be done if the precise level of licensure is not known at the time that the institution grants the license. [See comment 5. a.]

i. In s. PI 3.01 (28), it appears that “school” should be inserted after “middle.”

j. Under s. PI 3.01 (29), intern licenses are referred to as being held by “paid” students. Is this intended to preclude practices by an intern who is not paid?

k. In s. PI 3.01 (45), the term “required in” should be changed to “under.”

l. In s. PI 3.01 (46), the term “PK” should be spelled out or defined.

m. In s. PI 3.01 (48), the relevance of the reference to the summer session is somewhat unclear. Also, this definition should be compared to the definition of full-time teaching in s. PI 3.01 (20).

n. In s. PI 3.01 (52), the reference to “superintendent” is unclear. Should the reference be to the local district administrator?

o. A very broad definition of the term “teacher” is provided in s. PI 3.01 (58). Although appropriate in a broad context, the definition may be overly broad for other purposes in the rule. For example, it is not clear how broad the term “supervising any educational activity” in the definition is intended to be. This definition should be carefully reviewed to assure that it reflects the intent of the agency. Likewise, the definition of “teaching” appears to be quite broad in s. PI 3.01 (59). This definition should also be carefully reviewed.

p. It appears in s. PI 3.03 (7) that the term “influences” could more appropriately be “interacts with.”

q. In s. PI 3.04 (7), the agency may wish to rewrite the clause to require that pupil services professionals “are able to” interact successfully with pupils.

r. In s. PI 3.06 (2), the agency may wish to review the rule to determine whether the term in the rule should be “shall” or “may.” Also, under s. PI 3.06, the agency may wish to differentiate further between the “annual review” and the “on-site review.”

s. Under s. PI 3.06 (3) (b), the term “review and recommend” is somewhat unclear. Is the intent of this paragraph to require a positive recommendation or is it to allow for any recommendations, even if approval is not recommended? This should be clarified.

t. In s. PI 3.06 (4), the scope of the phrase “changes in previously approved programs” is not clear. For example, to what extent are minor changes considered to be important enough to require approval by the department?

u. In s. PI 3.06 (5) (a) 2., reference is made to an “official warning.” It is not clear what constitutes an official warning; is it the notice given under s. PI 3.06 (5) (a) 1.? Also, should “at least” be inserted before “30 days”?

v. The role of the professional standards council in the approval or nonapproval process is somewhat unclear. For example, will recommendations need to be presented and approved by the entire council or are the representatives authorized to make such recommendations? Also, in this subsection and in the rest of the rule, there is some ambiguity and inconsistency relating to whether action is to be taken or reviewed by the state superintendent or by the department. This is potentially a very important distinction which should be carefully reviewed by the agency prior to final promulgation of the rule.

w. In s. PI 3.07 (2), the term “received” should be “receives.” Generally, rules should be drafted in the present tense.

x. In s. PI 3.07 (4), the agency may wish to replace “may not be” with “is not” if there are no circumstances under which evidence may be considered at the hearing regarding subsequent institutional changes. If the agency intends for evidence to be allowed in certain circumstances, then that should be clearly stated in the rule.

y. Section PI 3.09 (1) should be rewritten in the active voice. The first and second sentences could be combined to read: “The professional standards council shall review . . . and ensure . . . .” The third sentence should read: “The professional standards council shall recommend . . . .” The fourth sentence is unnecessary and should be deleted.

z. The requirement under s. PI 3.10 (3) (a) is unclear. It is not clear how the institution can ensure “adequate . . . scholarships” for faculty and students. This section should be rewritten for clarity purposes.

aa. In s. PI 3.10 (3) (c), the term “represented constituent groups” is not clear in its meaning.

ab. The reference in s. PI 3.11 (2) to “exceptional expertise” is not particularly clear.

ac. It is not clear in s. PI 3.11 (2) (d) why faculty are required to be actively engaged in education-related endeavors at the local, state *and* national level. While desirable, this seems to be somewhat beyond expected basic qualifications. Is this intended?

ad. In s. PI 3.11 (3) (a), “workload” should replace “work load.”

ae. It is not clear why the requirements under s. PI 3.11 (3) (d) relating to part-time and adjunct faculty are more specific and seem more demanding than those for regular faculty under s. PI 3.11 (2) (d).

af. The requirement under s. PI 3.12 that institutions provide, among other things, appropriate furniture seems particularly specific and appears to be covered in the requirement for providing adequate workspace. This provision should be reviewed in the final rule to assure that it reflects the intent of the agency.

ag. Under s. PI 3.12 (2), would it be permissible for an institution to have a combined instructional materials center and library?

ah. Under s. PI 3.13, relating to advising, it appears that the institution under sub. (2) is only required to ensure that students are provided an advisor upon entry into the program. There does not appear to be a continuing requirement contained in the subsection.

ai. Are the student records retained under s. PI 3.13 available to any requestor or are they considered confidential in some manner? This should be clarified in the final rule.

aj. Under s. PI 3.14 (1) (b) and (2) (a) 2., the terms “admission period” and “graduation period” are used for what appears to be the same purpose. These terms and their usage should be reviewed in the final rule to assure that they reflect the agency’s intent.

ak. Under s. PI 3.14 (2) (c), the requirements on the school with regard to student support is not clear. It is not clear, for example, whether the paragraph is intended to require that all students be given adequate resources and assistance in the form of financial aid in order to permit them to successfully complete their program. This provision should be carefully reviewed to assure that it is an accurate depiction of the agency’s intent.

al. The drafting of s. PI 3.15 needs to be carefully reviewed. The various subsections do not always track with the introductory phrase and as a result are difficult to follow. Further, the scope of the authority to rewrite standards under s. PI 3.15 (2) (a) is unclear.

am. In s. PI 3.15 (2) (b) and elsewhere, “SCDs” should replace “SCD’s.”

an. Is it the intent of the agency under s. PI 3.15 (3) (a) 3. a. that the standardized tests are the exclusive means to demonstrate content knowledge?

ao. The terms “cooperating school” in s. PI 3.15 (5) and “cooperating teacher” in s. PI 3.15 (6) (a) 3. a. need to be further described or defined in the rule.

ap. The term “sufficient length” used in s. PI 3.15 (6) (a) 1. could be more specific. The term as used is indeterminate.

aq. Under s. PI 3.15 (6) (a) 3., it is not clear whether the required evaluations must be done by both the cooperating teacher and the supervisor or whether one could do both evaluations and observations.

ar. It is not clear under s. PI 3.15 (6) (b) 3. a. whether the reference to “primary supervisor” and “supervisor” are intended to refer to the same person. The last sentence of that subdivision paragraph could be rewritten for clarity purposes. It is also unclear under s. PI 3.15 (6) (b) 3. b. who is to complete the written evaluations. Also under this subdivision paragraph, it is not clear what is intended by the term “permanent record.”

as. It is not clear under s. PI 3.17 (2) (b) what is intended by the phrase “shall be provided support seminars.”

at. It is not clear who selects the initial educator team described in s. PI 3.17 (3). There may be several concerns raised about how to determine “peer” groups, as well as how administrators and higher educational representatives will be appointed to specific teams. Also under this subsection, it is not clear what the consequences will be if appropriate personnel are not available or what happens if the team changes during the term of the evaluation. This aspect of the rule should be carefully reviewed before final promulgation.

au. In s. PI 3.17 (4) (a) (intro.) and several other places in the rule, if a sentence begins with a preposition phrase, the phrase should be followed by a comma. Therefore, a comma should be inserted after “level.” Also see s. PI 3.29 (2) (a) 1. and 2. (intro.), (b) 1. and 2. (intro.), (c) 1. and 2. (intro.) and (d) 1. and 2. (intro.).

av. The rule appears to provide that the district administrator of a school district must serve on every initial educator team. This, if taken literally, could cause a substantial increase in the commitment to personnel supervision by these persons. The agency may wish to provide for a designee of the district administrator to hold these positions.

aw. It is not clear under s. PI 3.17 (4) (c) how appeals will be handled. This important aspect of the rule should be clarified before the rule is promulgated. Is the professional standards council constituted in a manner that would allow for these types of appeals? It is not clear under this paragraph what is meant by the term “validate.”

ax. The distinctions relating to out-of-state applicants, licenses based on equivalency and licenses based on experience are not clear. These aspects should be clarified to assure that their provisions can be administered consistently. For example, it is not clear from the rule how student teaching will be assessed or evaluated for these applicants.

ay. The agency may wish to review the requirements relating to the professional development team as set forth in s. PI 3.18 (2) to assure that the logistics of establishing and operating the development team are adequately provided for. One potential problem is the question of who will be responsible for establishing and monitoring meetings and actions of the

development team. Also, concerns may be raised regarding conflicts of interest or disagreements concerning replacement of vacancies caused by changes in status or location. Further, the agency may wish to consider how in larger school districts peer groups will be determined and how actions by that group will be managed.

az. Under s. PI 3.18 (3), the one-year license requirement is not clear. For example, is the applicant entitled to a one-year license upon application and entitled to that license if he or she meets either conditions set out in the subsection? Also, how would the rule affect an applicant who has not been regularly employed in education for four consecutive years immediately preceding application?

ba. It is not clear what is meant by “confirmed by the state superintendent” in s. PI 3.19 (4) (c). Also, these paragraph letters should be shown in parentheses for correct drafting form.

bb. In s. PI 3.20 (2), it is not clear what is meant by “actively employed in education.”

bc. The agency should carefully review the provisions of subch. VI relating to licensing continuation and conversion to assure that the subchapter addresses accurately the complicated procedures for continuing a license or converting a license. As drafted, these sections seem to be drafted in a general form without specific information relating to the requirements that must be met or the licenses that will be converted. Does the subchapter apply to all licenses or only to those specific licenses cited. Furthermore, it is not clear how evaluations will be handled and what will occur in the case of a denial of a continuation or a conversation. This aspect of the rule should be carefully reviewed before final promulgation.

bd. In subch. VII, relating to teaching categories and levels, there is a continuing problem with the uncertainty associated with the boundaries of each of the teaching categories. This is caused in large part by the use of the terms “approximate” with respect to ages and by the inclusion of a local option to further specify what constitutes the teaching category. This aspect of the rule should be carefully reviewed before final promulgation. [See comment 5. a.]

be. In s. PI 3.24 (2) and (3), “subsection” should replace “paragraph.” In sub. (2), “an” should be deleted.

bf. The term “departmentalized” used in s. PI 3.28 (2) should either be defined or further described for clarity purposes.

bg. Is the list of disabilities contained in s. PI 3.28 (3) intended to be exclusive or descriptive? Also, this subsection should be clarified to indicate what constitutes the “teaching” of pupils so identified. This may involve a review of this subsection in connection with the definition of “teaching” contained in s. PI 3.01 (59).

bh. In s. PI 3.29 (2) (b), the rule uses “mathematics *and* computer science” and “mathematics *or* computer science.” (Emphasis added.) This inconsistency is confusing and should be reviewed to assure that the intent of the department is set forth as to whether the programs are alternatives or whether they are both required.

bi. In s. PI 3.30 (2) (e), the terms “deaf *and* hard of hearing” and “deaf *or* hard of hearing” are used interchangeably. (Emphasis added.) The agency should carefully review the use of the term and assure that it is being used consistently.

bj. Under s. PI 3.30 (2) (b), (k) and (L), the terms “connections” or “making connections” are used. It is not clear what is meant by these terms.

bk. In s. PI 3.30 (2) (n) 3. a., it is not clear why human growth and development is included for speech and language pathology licenses, but not for other licenses.

bl. The requirements contained under s. PI 3.30 (2) (q) relating to the national Braille competency test and training in Braille should be carefully reviewed to assure consistency with the statutory provision contained in s. 118.19 (4m), Stats. Also, it is not clear from the rule whether a practicum or student teaching is a requirement under this paragraph.

bm. Under s. PI 3.31 (1), the reference to a master’s degree with a major in school counseling is not clear. It would be helpful here if the department were to indicate in the analysis the extent to which the proposed rule differs from existing rules with regard to the required degrees for each category. Because the rule repeals and recreates all of this section, this is not clearly discernible. Also, a further description or definition of the “institutional endorsement” would be helpful.

bn. In s. PI 3.31 (1) (a) 2. c., “subdivision paragraph” should replace “subparagraph.”

bo. The reference to a master’s degree in social work contained in s. PI 3.31 (4) may be read to preclude a master’s degree in another special area of social work such as clinical social work. This aspect of the rule should be reviewed before final promulgation. The use of specific terms where general terms could be more useful can be problematic.

bp. Under s. PI 3.32 (1), the rule proposes to allow the state superintendent to identify specific competencies for the separate license categories. This appears to be a very broad delegation of authority without a clear indication of how or what those competencies will be. The agency may wish to indicate how these competencies would be established and whether they would be subject to the rule-making process.

bq. Under s. PI 3.32 (1) (a), the term “approved specialist degree program” is not clear.

br. In s. PI 3.32 (1) (c) 1. b., the word “included” should be changed to “includes.” Also, in s. PI 3.32 (1) (c) 2., the term “wants to” should be changed to “applies to.”

bs. The subsection of the rule relating to the principal license appears particularly incomplete. Each of these categories in the administration section should be reviewed carefully to assure that, to the extent possible, the qualifications and requirements are clear.

bt. Under s. PI 3.32 (11) (e), it appears that the applicant should be able to complete the approved program in one “additional” year.



bu. Under subch. X, relating to supplementary categories, it appears that the agency has retained the current requirements for these categories. If this is the case, it would be helpful if the agency would note that in the analysis accompanying the rule.

bv. In s. PI 3.33 (3), “bilingual-bicultural” should replace “bilingual/bicultural.”

bw. The requirements under s. PI 3.33 (5) seem somewhat more specific and restrictive than other licenses. For example, it appears that approved course work might be completed at a technical college rather than only at an institution for higher education. It is not clear whether this is possible under the rule.

bx. In s. PI 3.33 (7) (c) 1. and 3., how does a Wisconsin program become “approved” and how does an independent agency become “recognized”? Can a cross-reference to rules that provide for this be included?

by. Under s. PI 3.34 (1), relating to charter schools, it is not clear how these provisions will be implemented for charter schools that are not instrumentalities of school districts. In particular, the application to the special charter schools in Milwaukee chartered by the city, university and technical college do not appear to be accounted for under these provisions.

bz. Under s. PI 3.34 (3), the requirements appear to apply not just to any teacher but to *any person* employed to interpret for pupils who are deaf or hard of hearing. These requirements appear to be fairly extensive, particularly for interpreters who may be employed on a contractual basis for a specific assignment. Although this may be a continuation of an existing license requirement, it merits some review.

ca. In s. PI 3.34 (3) (a) 4. a., “subd. 4. b.” should replace “subpar. b.” In s. PI 3.34 (3) (a) 4. b., “subd. 4. a.” should replace “subpar. a.” In s. PI 3.34 (11) (d), “paragraph” should replace “subparagraph.” In s. PI 3.34 (12) (a) (intro.), “par. (b)” should replace “sub. (b).” [See s. 1.07 (2), Manual.]

cb. Under s. PI 3.34 (10) (b), is it intended that the program be approved by both listed groups or is approval by a single group sufficient? If the latter, “or” should replace “and.”

cc. In s. PI 3.34 (12) (c), should “under sub. (13)” be inserted after “permit”?

cd. In s. PI 3.34 (14) and (15), “department of regulation and licensing,” should be deleted. In sub. (16), “physical therapists affiliated credentialing board” should replace “department of regulation and licensing, medical examining board.”

ce. In s. PI 3.34 (19) (b), “par. (a) 1. or 2.” should replace “(a) 1. or (a) 2.”

cf. A complete review should be done of subch. XII to clarify whether the actions listed will all be taken by the state superintendent or whether in some cases they may be taken by a designee of the state superintendent. The agency may wish to clarify that the state superintendent’s powers may be delegated to a specific individual or group.

cg. In s. PI 3.35 (1) (e), are certificates included? See par. (g).

ch. In s. PI 3.35 (1) (L), “To” should be deleted.

ci. In s. PI 3.35 (2) (a) 1., all of the material after the second “conduct” should be deleted since it is included in the definition of “immoral conduct.”

cj. In s. PI 3.35 (4) (a) 1., “department” should replace “Department.”

ck. In s. PI 3.35 (5) (i), “sub.” should replace “s. PI 3.35.”

cl. The agency should carefully review the initial applicability section to assure that it covers all instances and circumstances. For example, how will rules be applied between now and the time the new rules take effect? Where will a licensed teacher obtain copies of repealed, but still applicable, rules? How will institutions be handled under the existing rules? As drafted, it is not clear how these and other questions will be handled concerning licensing requirements in the interim periods.