

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Terry C. Anderson
Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 00-044

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.]

1. Statutory Authority

a. Section 38.305, Stats., provides for a grant program for a student who enrolls in a technical college within three years of graduating from a high school in this state if certain other criteria are met. However, ss. TCS 16.02 (2) (the second s. TCS 16.02 (2)), 16.03 (4) and 16.06 provide for deferments under which an exception is made to the requirement that a student enroll within three years of high school graduation. The deferments may be based on personal hardship, as determined by the technical college district, or on entering the U.S. armed forces on active duty. There appears to be no statutory authority to create these exceptions.

Even if it were appropriate to create these exceptions, it is inappropriate for s. TCS 16.06 (4) to specify that each district must establish policies for approving deferments, other than military deferments. Under ss. 227.01 (13) and 227.10 (1), Stats., these policies should be promulgated by administrative rule, rather than being established by each district.

b. Section 38.305 (4), Stats., requires that the rules promulgated by the Wisconsin Technical College System Board include rules on refunding a grant if a student becomes ineligible for the grant. Chapter TCS 16 fails to provide rules on refunding a grant for students who become ineligible.

c. Section 38.305 (1), Stats., specifies that the board must award a grant of \$500 to a first-year student who meets the criteria specified in s. 38.305 (1) (a) to (c), Stats. The statute does not specify the use which must be made of the grant money.

In contrast, s. TCS 16.04 (1) and (2) specify that the grant is to be applied toward a student's cost of tuition and fees. It is not clear why this limitation is specified in the rules. If, for example, a student had already received a scholarship or had another source of funding that was applied toward the student's tuition and fees, is there a reason that the grant cannot be awarded outright to the student without restriction as to its use?

d. Section 38.505 (1) (c), Stats., provides that one of the eligibility criteria for a grant is maintaining a grade point average (GPA) of at least 2.0. Section TCS 16.07 (1) provides that a student who fails to maintain a 2.0 GPA may be placed on probation for a semester; however, s. TCS 16.07 (4) sets forth a process under which a student may request an exemption from probation due to personal hardship. This would appear to negate the requirement that a 2.0 GPA be maintained in all cases. There appears to be no statutory authority for this exemption.

e. Section TCS 16.08 provides that each district must establish policies and procedures for students to appeal grant eligibility, deferment approvals, probation determinations and probation exemptions. Under ss. 227.01 (13) and 227.10 (1), Stats., these policies and procedures should be promulgated by administrative rule, rather than being established by each district.

2. Form, Style and Placement in Administrative Code

a. There are two sections labeled s. TCS 16.02. This problem should be remedied, and all affected cross-references should be changed appropriately.

b. Several of the terms defined in s. TCS 16.02 are out of alphabetical order. See subs. (3), (7), (8) and (9).

c. In s. TCS 16.02 (7), "means" should replace "is."

d. Section TCS 16.02 (8), (9) and (11) are definitions which include the phrase "for purposes of TOP grant eligibility" or a slight variation of that phrase. This phrase should be eliminated in all of the definitions. It is unnecessary because all of the definitions in ch. TCS 16 relate to eligibility for a technical and occupational program (TOP) grant.

e. In s. TCS 16.02 (8), an Arabic number is used and then the number is written out and set off in parentheses, for example, "18 (eighteen)." The number should be written in Arabic numerals without parenthetical repetition of the number in text. [See s. 1.01 (5), Manual.] This problem occurs throughout the rule and should be remedied. It should be noted that the number "one" should be written out. For example, in s. TCS 16.04 (4), "1 (one)" should be changed to "one."

f. In s. TCS 16.02 (8), the phrase "shall not be counted" should be changed to "may not be counted." [See s. 1.01 (2), Manual.]

g. In s. TCS 16.02 (10) and (13), two terms are defined in each subsection. Each of the terms should be set forth in quotation marks, e.g., ““Grade point average” or “GPA” means”

h. In ss. TCS 16.03 and 16.05, each of the subunits should end with a period.

i. In s. TCS 16.04 (1), the reference to “s. TCS 16.03 (1)-(4)” should be changed to “s. TCS 16.03 (1) to (4).” [See s. 1.01 (9) (d), Manual.]

j. In s. TCS 16.04 (4), the first sentence following the colon should be labeled as par. (a).

k. In s. TCS 16.04 (4), “must receive” should be changed to “shall receive.” [See s. 1.01 (2), Manual.] Similarly, in s. TCS 16.06 (3), the two references to “must be made” should be changed to “shall be made.”

l. In s. TCS 16.06 (1), the introductory material should be redrafted as par. (a) since it does not follow the format for an (intro.). [See s. 1.03 (8), Manual.]

m. In s. TCS 16.06 (1) (a), the reference to “s. 16.03” should be changed to “s. TCS 16.03.” [See s. 1.07 (2), Manual.] Similarly, in the last sentence of s. TCS 16.06 (1) (b), the reference to “s. 16.04 (4)” should be changed to “s. TCS 16.04 (4).”

n. In ss. TCS 16.06 and 16.08, the subsection titles should be in solid capital letters and should not be underlined. [See s. 1.05 (2) (c), Manual.]

o. In s. TCS 16.06 (1) (a), (b) and (c), the paragraph titles should be italicized and should not be underlined. [See s. 1.05 (2) (d), Manual.]

p. In s. TCS 16.06 (2), the reference to “subs. (1)” should be changed to “sub. (1).” [See s. 1.07 (2), Manual.]

q. In s. TCS 16.07 (1), “will be given” should be changed to “may be given.” [See s. 1.01 (2), Manual.]

r. In s. TCS 16.07 (4), the subsection title should be eliminated since none of the other subsections in s. TCS 16.07 have titles. [See s. 1.05 (1), Manual.]

s. The effective date provision incorrectly states that the rule is an emergency rule. It also states that the rule will take effect on the date of publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats. Unless a different effective date is intended, the effective date provision should indicate that the rule will take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats. [See s. 1.02 (4), Manual.]

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

a. In s. TCS 16.02 (6), the reference to “s. 38.12 (3) (a), Stats.” should be changed to “s. 38.12 (3) (a) 1., Stats.”.

b. In s. TCS 16.02 (11), “ss. 118.33.,” should be changed to “s. 118.33, Stats.,”.

c. Section TCS 16.04 (2) specifies that if a grant applicant meets the eligibility criteria for the continuation of a TOP grant “under s. TCS 16.05 (1)” the student must receive a grant. It appears that the cross-reference to the eligibility criteria should be to s. TCS 16.05, rather than just s. TCS 16.05 (1).

d. In s. TCS 16.06 (1) (b), it appears that the reference to “ss. 16.03 or 16.05” should be changed to “s. TCS 16.04 or 16.05.” Similarly, in s. TCS 16.07 (4) (a), it appears that the reference to “ss. TCS 16.03 or 16.05” should be changed to “s. TCS 16.04 or 16.05.”

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

a. Section TCS 16.01 refers to grants to students enrolling in “technical and occupational educational programs.” However, s. 38.305, Stats., provides that the grant program applies to students enrolled in an “associate degree program or a vocational diploma program.” The statutory terms should be used in the purpose section of chapter TCS 16, especially since technical and occupational educational programs are not defined terms in chapter TCS 16.

Also, s. TCS 16.05 (2) refers to grant eligibility for a student who is enrolled in an “occupational associate degree program.” This is not a defined term. Again, s. 38.305 (1) (b), Stats., refers to eligibility for a student who is enrolled in an “associate degree program.” The rule would be less confusing and ambiguous if a term were selected and used consistently.

b. In the second sentence of s. TCS 16.02 (7), the phrase “first full month” should be changed to “first date of the first full month.” Also, it is unclear how to calculate the initial eligibility end date if the person has earned a high school equivalency diploma. It would appear to be more appropriate to rephrase this sentence using the defined term “graduated from high school.” It appears that the entire definition could be simplified by redrafting it along the following line: “(7) “Initial eligibility end date” means the last day of the 36th full month following the date on which the student graduated from high school.”

c. In s. TCS 16.02 (8), it appears that the phrase “while serving on active duty” should be changed to “while serving on active duty in the U.S. armed forces.”

d. Section TCS 16.06 (1) (intro.) incorrectly uses the term “must receive” rather than “shall receive.” [See s. 1.01 (2), Manual.] However, it appears that this phrase would be more accurate if it referred to the number of semesters in which a “student is eligible to receive a TOP grant.”

Section TCS 16.06 (1) (b) refers to the time in which a student “has to receive all of his or her TOP grants.” Again, it appears that this phrase would be more accurate if it referred to the time in which a “student is eligible to receive a TOP grant.”

e. Section TCS 16.06 (2) refers to a “high school graduate.” It is not clear if this refers to those who either received a diploma or a high school equivalency diploma. This ambiguity could be avoided by using the term defined in s. TCS 16.01 (11) (“graduated from high school”) in the sentence. For example, the sentence could begin: “A person who has graduated from high school who may otherwise”

f. Section TCS 16.07 (4) (b) provides that a request for a probation exemption “must be approved before the end of the semester” It is not appropriate to use the word “must.” [See s. 1.01 (2), Manual.] Moreover, it seems to be inappropriate to require that the request be approved. It would appear to be more appropriate to use a phrase that requires that a decision on the request be made before the end of the semester.