



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 03-126

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 200

1. Statutory Authority

a. The board proposes in the rule to revise its regulatory oversight by requiring approval of school “programs” instead of “courses.” The analysis refers to this change as updating outdated references for clarity purposes.

However, the rule does not utilize terminology that is consistent with applicable statutes in ch. 45. That chapter refers to “course” [s. 45.54 (1) (b), Stats.] and to “course of instruction” [s. 45.54 (1) (c), Stats.], but does not use or define the term “program of instruction.” Further, the statutes expressly authorize the board to establish minimum standards for “courses of instruction” [s. 45.54 (7) (a), Stats.] and approve “courses of instruction [s. 45.54 (7) (g), Stats.], but does not confer authority to approve “programs of instruction.”

The board should carefully review the rule and make the necessary changes to assure that the rule does not conflict with the applicable statutes. If this is not possible for some reason, legislation should be developed to effect the necessary statutory changes.

b. The board proposes, in s. EAB 4.10 (10), to transfer all unexpended general operating revenues received by the board to the student protection appropriation, except that the board under the rule reserves the right to retain up to 20% for other contingencies. Since the affected appropriation is an annual program revenue account, the board lacks adequate statutory authority to make such a transfer by rule. The transfer could be effected through a budget action under s. 13.10, Stats., but it is not appropriate to make the transfer by rule.

2. Form, Style and Placement in Administrative Code

- a. In several provisions of the rule, “shall” should replace “must.” [See s. 1.01 (2), Manual.]
- b. Section EAB 4.06 (1) (a) references a form. See s. 1.09 (2), Manual, regarding including a note in the rule on how to obtain the form.
- c. In s. EAB 4.06 (1) (c), “they” should replace “it,” for consistency with the plural “requirements.” Also, in the last line, “such” and “as” should be deleted.
- d. In several provisions of the rule, a space should be left between “s.” or “ss.” and the rule or statutory citation.
- e. In s. EAB 4.06 (1) (e), the terms “said,” “therefrom” and “thereof” could be replaced by more definite terms. [See s. 1.01 (9) (c), Manual.] Also, the provision could more clearly indicate who is authorized to release the surety and what criteria will be used to evaluate the request.
- f. In s. EAB 4.06 (3) (b), “may not” should replace “shall, in no case,” and “shall, in no event,”.

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

- a. In s. EAB 4.06 (2) (d), the rule would be clearer if the reference were to a “late” fee of \$50.
- b. In s. EAB 4.06 (2) (e), it is unclear whether the fee could be collected during any year when the balance in the fund exceeds \$1 million or whether the collection is suspended for annual fees in the year after the balance exceeds the limit. Also, is there a need to provide a provision for the reimposition of a fee if the fund balance exceeds and then falls below \$1 million?
- c. The terms “penal sum” (used in s. EAB 4.06 (3) (b)) and “teach-out” (used in s. EAB 4.06 (3) (d)) should be defined or more completely described.