

Clearinghouse Rule 06-098

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION CREATING RULES

The state superintendent of public instruction hereby proposes to create chapter PI 30, relating to grants for high cost special education.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 115.881, Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Section 115.881, Stats., is a new grant program created under 2005 Wisconsin Act 25, that provides additional special education aid for high nonadministrative costs.

Because this is a grant program, rules need to be in place so applicants know what criteria are being used in the awarding of funds.

Related statute or rule: None.

Plain language analysis:

The 2005-07 biennial budget, 2005 Wisconsin Act 25, appropriated \$3,500,000 in 2006-07 for a new grant program to provide funds to a school board, board of control of a cooperative educational service agency, county children with disabilities education board, or operator of a charter school established under s. 118.40 (2r), Stats., if the applicant incurred, in the previous school year, more than \$30,000 of nonadministrative costs for providing special education and related services to a child and those costs were not eligible for reimbursement under s. 115.88, 115.93, or 118.255, 20 USC 1400 et seq., or federal Medicaid.

Eligible applicants will be required to send the department the total nonadministrative costs incurred in the education of each pupil claimed. The department will then subtract from the reported total nonadministrative cost an average per pupil cost that was reimbursed to the applicants under the federal Individuals with Disabilities Education Act, state special education categorical aid, and federal Medicaid. The department will then multiply that amount that exceeds \$30,000 by .90. If funds are insufficient, the department may prorate.

A new rule chapter will be created to specify the grant application requirements and determine aidable costs for the program.

Summary of, and comparison with, existing or proposed federal regulations:

Not applicable.

Comparison with rules in adjacent states:

Illinois, Minnesota, Iowa, and Michigan do not have administrative rules regarding high cost special education grant programs.

Summary of factual data and analytical methodologies:

Children with severe disabilities often need costly nursing services and assistive technology, expenses that are currently not eligible for reimbursement under the special education categorical aid appropriation. This issue has been identified for a number of years as a priority by school districts around the state.

In her State of Education address in September 2003, the State Superintendent announced her *Keeping the Promise* initiative, designating \$1.5 million in federal Individuals with Disabilities Education Act (IDEA) discretionary funding to Wisconsin schools for services to children with severe disabilities, specifically targeting direct services to educate children with high-cost special needs. Ultimately, a total of \$2 million was set aside for 2003-04.

Aidable costs under the program include all costs (except administration) related to educating a high-cost student with special educational needs. Costs reimbursed by IDEA flow-through funds, Medicaid and special education categorical aids are deducted. Reimbursement is then calculated at 90 percent of the amount by which the total cost of providing special education and related services to an individual child exceeds \$30,000 in the prior year.

In 2003-04, the first year of operation, 115 local education agencies (109 school districts, three CCDEBs and three CESAs) were approved for reimbursement. Eligible claims under the new program totaled \$3.4 million for 2003-04. Therefore, payments were prorated at approximately 59 percent. Claims are expected to rise significantly over the next few years.

Discretionary federal IDEA funding provided a means to get this critically needed aid program started in 2003-04 and 2004-05. State funding was requested in the department's 2005-07 biennial budget request and was granted through 2005 Wisconsin Act 25 to continue the program and provide adequate reimbursement to school districts for these costs.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: Not applicable.

Anticipated costs incurred by private sector: Not applicable.

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)

Stephanie Petska, Director, Special Education, 608/266-1781, stephanie.petska@dpi.state.wi.us

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

The department will be publishing a hearing notice in the *Administrative Register* which will include this information.

SECTION 1. Chapter PI 30 is created to read:

Chapter PI 30

GRANTS FOR HIGH COST SPECIAL EDUCATION

PI 30.01 Purpose. This chapter establishes approval criteria for awarding additional special education aid under ss. 115.881 and 20.255 (2) (bd), Stats.

PI 30.02 Definitions. In this chapter:

(1) "CCDEB" means a county children with disabilities education board under s. 115.817, Stats.

(2) “CESA” means a cooperative educational service agency under ch. 116, Stats.

(3) “Department” means the Wisconsin department of public instruction.

(4) “Nonadministrative costs” means those costs of providing special education and related services to an individual child with disabilities pursuant to that child’s individualized education program and excludes secretarial and administrative costs, such as the salaries and fringe benefits of principals, special education directors and pupil services directors.

(5) “Related services” has the meaning defined in s. 115.76 (14), Stats.

(6) “School district” has the meaning defined in s. 115.01 (3), Stats.

PI 30.03 Eligibility. A school board, board of control of a CESA, CCDEB, or operator of a charter school established under s.118.40 (2r), Stats., may apply to the department for aid under this chapter if the applicant incurred, in the previous school year, more than \$30,000 of nonadministrative costs for providing special education and related services to a child and those costs were not eligible for reimbursement under s. 115.88, Stats., s. 115.93, Stats., or s. 118.255, Stats., 20 USC 1400 et seq., or federal Medicaid.

PI 30.04 Grants for high cost special education. (1) GENERAL INFORMATION. Under s. 115.881, Stats., the department shall, from the appropriation under s. 20.255 (2) (bd), Stats., award grants to eligible applicants that meet the requirements under this chapter to partially reimburse them for high special education costs under s. PI 30.03.

(2) GRANT APPLICATION REQUIREMENTS. To receive a grant under this chapter, annually by December 1, an eligible applicant shall report to the department, on a form developed by the department, all of the following:

(a) The number of special education pupils whose costs described under s. PI 30.03 in the previous school year exceeded \$30,000.

(b) The name of each pupil reported under par. (a).

(c) The total nonadministrative costs incurred in the education of each pupil under par. (b).

NOTE: PI 1570 Claim for High Cost Special Education Program, may be obtained by writing to the Wisconsin Department of Public Instruction, P.O. Box 7841, Madison, WI 53707-7841 or by visiting the school finance website at <http://www.dpi.wi.gov/forms/xls/f1570.xls>.

(3) CALCULATION AND AWARDING OF GRANTS. (a) The department shall calculate the aidable costs for eligible applicants by subtracting from the total nonadministrative cost under sub. (2) (c), an average per pupil cost that was reimbursed to the applicants under the federal individuals with disabilities education act under 20 USC 1400 et. seq., state special education categorical aid under s. 20.255 (2) (b), Stats., and federal Medicaid.

(b) The department shall award an amount equal to .90 multiplied by the amount calculated under par. (a) that exceeds \$30,000.

(c) If the amount of grants needed to fully fund all the eligible applicants is more than the amount available in the appropriation under s. 20.255 (2) (bd), Stats., grants shall be prorated equally among all eligible applicants.

(d) The department shall annually award funds calculated under this subsection by the third Monday in June.

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 August, 2006

Elizabeth Burmaster
State Superintendent