

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AMENDING RULES**

The state superintendent of public instruction hereby amends s. PI 8.01 (2) (t) 2., relating to the identification of gifted and talented pupils.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: Section 121.02 (1) (t), Stats.

Statutory authority: Sections 118.35 (2) and 121.02 (5), Stats.

Explanation of agency authority:

Section 118.35 (2) requires the state superintendent to establish guidelines for the identification of gifted and talented pupils by rule.

Section 121.02 (5), Stats., requires the department to promulgate rules to implement and administer the 20 school district standards under s. 121.02 (1), Stats. Gifted and talented is one of those standards.

Related statute or rule: Section 118.35, Stats., programs for gifted and talented pupils.

Plain language analysis:

In *TODD PALMER V. THE STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION* (Dane County Circuit Case No. 06 C 0672), the Court instructed the department to promulgate a rule establishing guidelines for identifying gifted and talented pupils as required under s. 118.35 (2), Stats., because its current rule under s. PI 8.01 (2) (t), is not sufficient.

Therefore, the department is modifying s. PI 8.01 (2) (t) to establish more specific guidelines for the identification of gifted and talented pupils. The rule requires the school district board to identify pupils in grades kindergarten through 12 in the five areas specified in statute. Multiple measures must be used to build a pupil profile, and the identification tools must be responsive to the pupil's economic conditions, race, gender, culture, native language, developmental differences, and identified disabilities as described under Subch. V of Chapter 115, Stats. The rules give examples of multiple measures that may be used.

The rules also clarify that school boards must provide an opportunity for parents to participate in their child's identification and resultant programming.

Summary of, and comparison with, existing or proposed federal regulations: n/a.

Comparison with rules in adjacent states:

- **Illinois** – Illinois’ rules apply only to locally developed GT programs for which state funding are sought. Illinois State Code requires the use of multiple measures (3 or more); the measures must be valid for their purpose; the process must be fair and impartial; and assessment instruments must be sensitive to inclusion of underrepresented groups. Illinois also requires an appeals process. Illinois’ State Code allows any “area of aptitude” to be identified, but there is “an emphasis on” language arts and math (the top 5% locally must be identified in these two areas). The identification process must be of equal rigor in each area of aptitude but does not specify identification can be in more than one area. Finally, a procedure for notifying parents of identification results must be provided and there must be an annual report to the parents and community.
- **Iowa** – Iowa requires a school improvement plan be in place for each district. The plan must include valid and systematic procedures including multiple selection criteria and goals and performance measures. GT policies must be free from discrimination practices in the education program. Iowa does not specify areas of identification; and does not specify whether identification can be in more than one category.
- **Michigan** – No rule requirements for gifted identification criteria or programs.
- **Minnesota** – No rule requirements to identify or serve gifted students.

Summary of factual data and analytical methodologies:

The primary reference source for developing the proposed rule is the document, *Pre-K-Grade 12 Gifted Program Standards*, published by the National Association for Gifted Children (NAGC). The NAGC supports and develops policies and practices that encourage and respond to the diverse expressions of gifts and talents in children and youth from all cultures, racial and ethnic backgrounds, and socioeconomic groups. It supports and engages in research and development, staff development, advocacy, communication, and collaboration with other organizations and agencies who strive to improve the quality of education for all students. The NAGC standards were developed in 1998 and represent consensus from professionals in the field on critical practice in gifted education. In addition, the proposed rule is consistent with the state superintendent’s commitment to the children and youth of Wisconsin found in *The New Wisconsin Promise*.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: n/a.

Anticipated costs incurred by private sector: None.

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)

Chrystyna Mursky, Gifted and Talented Coordinator, (608) 267-9273, chrystyna.mursky@dpi.state.wi.us.

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

Written comments on the proposed rules received no later than September 24, 2007, were given the same consideration as testimony presented at the hearing. Comments were submitted via email to lori.slauson@dpi.state.wi.us or by writing to Lori Slauson, Administrative Rules and Federal Grants Coordinator, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707.

SECTION 1. PI 8.01 (2) (t) 2. is amended to read:

PI 8.01 (2) (t) 2. Each school district board shall establish a plan and designate a person to coordinate the gifted and talented program. Gifted and talented ~~students~~ pupils shall be identified as required in s. 118.35 (1), Stats. This identification shall ~~include multiple criteria that are appropriate for the category of gifted including intelligence, achievement~~ occur in kindergarten through grade 12 in general intellectual, specific academic, leadership, creativity, product evaluations, and nominations and visual and performing arts. A pupil may be identified as gifted or talented in one or more of the categories under s. 118.35 (1), Stats. The identification process shall result in a pupil profile based on multiple measures, including but not limited to standardized test data, nominations, rating scales or inventories, products, portfolios, and demonstrated performance. Identification tools shall be appropriate for the specific purpose for which they are being employed. The identification process and tools shall be responsive to factors such as, but not limited to, pupils' economic conditions, race, gender, culture, native language, developmental differences, and identified disabilities as described under Subch. V of Ch. 115, Stats. The school district board shall provide access, without charge for tuition, to appropriate programming for pupils identified as gifted or talented as required under ss. 118.35 (3) and 121.02 (1) (t), Stats. The school district board shall provide an opportunity for parental participation in the ~~planning of the proposed program~~ identification and resultant programming.

NOTE: A Gifted and Talented Resource Guide is available at <http://dpi.wi.gov/cal/gifted.html>.

The 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 29th day of January, 2008

Elizabeth Burmaster
State Superintendent