

Clearinghouse Rule 08-052**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ADOPTING EMERGENCY RULES**

The state superintendent of public instruction hereby renumbers PI 30.03 and 30.04; amends ch. PI 30 (title) and PI 30.01; and creates subch. I (title) of ch. PI 30, PI 30.02 (7), subch. II (title) of ch. PI 30, PI 30.03, and subch. III of ch. PI 30, relating to state special education aid for certain pupil services personnel.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 115.88 (1m) (b), Stats.

Statutory authority: s. 115.88 (1m) (b), Stats.

Explanation of agency authority:

Section 115.88 (1m) (b), Stats., directs the department to promulgate rules establishing the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that are eligible for state aid reimbursement.

The proposed rules specify these determinations.

Related statute or rule: s. 115.88 (1m), Stats.

Plain language analysis:

Currently, the salaries and benefits of school nurses, social workers, psychologists, and counselors who work with special education are among the costs eligible for reimbursement through special education aid. Districts have been required to report full-time equivalency for the identified positions to determine reimbursement.

2007 Wisconsin Act 221 gives the department the authority to determine the percentage of work time that each of the personnel categories spends providing services to children with disabilities and promulgate rules establishing the percentage of the salaries that these personnel categories may be certified as costs eligible for reimbursement. As required by the Act, the department has established the average percentage of work time that each category spends providing services to children with disabilities by reviewing past data collected from eligible entities. In doing so, the department has determined that the percentage of the salaries that may be certified as costs eligible for reimbursement are as follows:

- School nurses; 29 percent.
- School social workers; 59 percent.
- School psychologists; 84 percent.
- School counselors; 10 percent.

If funds are insufficient, the reimbursement shall be prorated.

The rules specify these salary reimbursement percentages for pupil services personnel and should reduce the workload involved by eligible entities by no longer requiring detailed full-time equivalency information to be reported for reimbursement.

The rule first applies to state aid distributed in the 2008-09 school year.

Summary of, and comparison with, existing or proposed federal regulations: None.

Comparison with rules in adjacent states:

Illinois, Iowa, Michigan and Minnesota do not have administrative rules relating to the payment of salaries of licensed school nurses, social workers, psychologists, and counselors.

Summary of factual data and analytical methodologies:

In the 2005-07 biennial budget, DPI requested and the Legislature and Governor approved adding licensed school nurses and licensed school guidance counselors as eligible categories for cost reimbursement under special education categorical aid. At that time it had come to DPI's attention that several school districts had hired a school psychologist rather than a school counselor simply because the psychologist was eligible for partial reimbursement by special education categorical aid whereas the counselor was not. Further, students with disabilities were receiving services from school nurses, contributing to the high cost of special education, but such services were not reimbursable with categorical aid. Adding the school nurses and school guidance counselors was proposed to help ensure special education categorical aid was not being abused.

Prior to 1999, the state statute regarding special education categorical aid provided that school psychologists' and school social workers' eligible costs would be reimbursed at 51%, and special education teachers and other staff at 63%. This difference reflected the fact that teachers were spending their entire FTE instructing students with disabilities. Pupil services staff were generally serving all students, including students with disabilities. In 1999, the Governor removed the percentages because the state had not reimbursed at these rates since 1985. Since the percentages were removed, DPI staff considered whether to: (1) use the same rate of reimbursement for all positions, (2) require districts to report FTE for the identified positions to determine reimbursement, or (3) determine a standardized reimbursement rate for each profession. The second alternative, requiring districts to report FTE, was selected. Since that time, however, districts' reports of eligible special education costs have been quite varied. In fact, there is significant concern that some districts are submitting inaccurate claims. Due to this concern, DPI staff and some school districts are far from satisfied regarding the current practices of reporting eligible costs.

Under 2007 Wisconsin Act 221, DPI would establish an "eligible costs" rate that is standard for each profession (the third alternative that was considered in 1999) (x% of nurses' salary and fringe are eligible, y% of counselors' salary and fringe are eligible, z% of social workers' salary and fringe are eligible, etc.) instead of having districts report actual FTE for each professional. Reviews of the Fall Staffing Report and Special Education Aid claims indicate that the rates vary significantly among professions. For some professions, rates may vary significantly within professions. DPI would, therefore, use average percentage of work times.

The Wisconsin Council of Administrators of Special Services (WCASS), and the other members of the School Administrators Alliance (SAA) supported the Act via 2007 Assembly Bill 906. Those include WASDA, AWSA and WASBO.

Under the new law and proposed rule, implementing this reimbursement will become easier for school districts and other eligible entities. Eligible entities will simply report the number of eligible pupil services personnel to receive reimbursement (based on the percentage determined by the department by rule) rather than report the full-time equivalency of each eligible pupil services personnel position.

Note: Current claims are prorated at 28%, and without a substantial increase in the special education categorical aid appropriation, such prorating will continue.

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: N/A.

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, stephanie.petska@dpi.wi.gov, 608/266-1781.

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

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

SECTION 1. Chapter PI 30 (title) is amended to read:

Chapter PI 30
SPECIAL EDUCATION AID

SECTION 2. Subchapter I (title) of Chapter PI 30 is created to read:

SUBCHAPTER I – GENERAL PROVISIONS

NOTE TO REVISOR: Subchapter I (title) to be inserted in front of s. PI 30.01.

SECTION 3. PI 30.01 is amended to read:

PI 30.01 Purpose. This chapter establishes approval criteria for awarding additional special education aid under ss. ~~115.881 and 20.255 (2) (bd)~~ Ch. 115, Stats.

SECTION 4. PI 30.02 (7) is created to read:

PI 30.02 (7) “State superintendent” means the superintendent of public instruction for the state of Wisconsin.

SECTION 5. Subchapter II (title) of Chapter PI 30 is created to read:

SUBCHAPTER II – GRANTS FOR HIGH COST SPECIAL EDUCATION

NOTE TO REVISOR: Subchapter II (title) to be inserted in front of s. PI 30.03.

SECTION 6. PI 30.03 and 30.04 are renumbered PI 30.04 and PI 30.05.

SECTION 7. PI 30.03 is created to read:

PI 30.03 Purpose. This subchapter establishes approval criteria for awarding additional special education aid under ss. 115.881 and 20.255 (2) (bd), Stats.

SECTION 8. Subchapter III of Chapter PI 30 is created to read:

SUBCHAPTER III – STATE SPECIAL EDUCATION AID
FOR THE SALARIES OF CERTAIN PUPIL SERVICES PERSONNEL

PI 30.06 Purpose. This subchapter establishes the percentage of the salaries of certain pupil services personnel that may be certified under s. 115.88 (1m) (a) and (am), Stats., as costs eligible for reimbursement pursuant to s. 115.88 (1m) (b), Stats.

PI 30.07 Percentage of salaries for reimbursement. (1) Under s. 115.88 (1m) (a) and (am), Stats., the state superintendent shall certify to the department of administration in favor of each county, cooperative educational service agency, school district, and charter school maintaining a special education program, if he or she is satisfied that the special education program has been maintained during the preceding school year in accordance with law, for costs eligible for reimbursement. These costs include the salaries of personnel enumerated in s. 115.88 (1) and (1m) (b), Stats.

(2) The percentage of the salaries that may be certified as costs eligible for reimbursement for pupil services personnel under s. 115.88 (1m) (b), Stats., are as follows:

- (a) School nurses; 29 percent.
- (b) School social workers; 59 percent.
- (c) School psychologists; 84 percent.
- (d) School counselors; 10 percent.

(3) If the funds appropriated under s. 20.255 (2), Stats., are insufficient, the reimbursement under sub. (2) shall be prorated.

SECTION 9. Cross-reference changes. In the sections of the rule listed in Column A, the cross-references shown in Column B are changed to the cross-references in Column C.

Column A Rule Sections	Column B Old Cross-References	Column C New Cross-References
s. PI 30.05 (1) as renumbered	s. PI 30.03	s. PI 30.04
s. PI 30.05 (2) (a) as renumbered	s. PI 30.03	s. PI 30.04

FINDING OF EMERGENCY

The Department of Public Instruction finds that an emergency exists and that the adoption of an emergency rule is necessary for the immediate preservation of the public welfare. The facts constituting the emergency are as follows:

The new provisions under 2007 Wisconsin Act 221 modifying the percentage of the salaries of licensed school nurses, licensed school social workers, licensed school psychologists, and licensed school counselors that are eligible for state aid reimbursement first applies to state aid distributed in the 2008-09 school year. In order to establish instructions this spring as to how school districts are to account for these pupil services staff on special education claim forms, rules must be in place as soon as possible.

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 May, 2008

Elizabeth Burmaster
State Superintendent