

Report From Agency
FINAL REPORT
CLEARINGHOUSE RULE 08-052
CHAPTER PI 30
STATE SPECIAL EDUCATION AID FOR CERTAIN PUPIL SERVICES PERSONNEL

Analysis by the Department of Public Instruction

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

Statute interpreted: 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 reimbursement as special education categorical aid.

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 special education categorical aid. 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 as special education categorical aid 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. Emergency rules were promulgated by the department effective May 30, 2008, 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.

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 published this information in a hearing notice in the *Administrative Register*.

A public hearing to consider emergency and proposed permanent rules was conducted by the department on July 14, 2008, in Madison. Persons were asked to register in favor, generally in favor (except for . . .), against, generally against (except for . . .), or for information only.

Madison Hearing, July 14, 2008

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Eric Hartwig	Marathon County CDEB		X	
James Tenuta	Wis. State Reading Assoc.			X
Fred Wollenburg	CESA 5	X		

The following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Laura McCormick	Wis. School Psychologists Assoc.	X		

Summary of public comments relative to the rule, the agency’s response to those comments, and changes made as a result of those comments:

Comments – The representative of the Wisconsin School Psychologists Association supports the proposed changes, believes the 84 percent of the average amount of work time school psychologists spend providing special education services to be accurate, and agrees the workload of school districts currently reporting the number of full-time equivalency (FTE) of each eligible pupil services position will be reduced by implementing the rule.

Comments – Both of the individuals that testified at the public hearing supported the establishment of percentages for reimbursement of the specified pupil services positions. Both individuals agreed that the rules would significantly reduce the current paperwork burden of schools having to report pupil service positions by FTE. However, the representative of the Marathon County CDEB suggested that school psychologists working at a CCDEB provide services only to children with disabilities and should receive 100 percent reimbursement. Similarly, the representative from CESA 5 suggested that several school psychologists working in small school districts by job description spend 100 percent of their time with children with disabilities and should receive 100 percent reimbursement.

Discussion – As required under s. 115.88 (1m) (b), Stats., the department 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. There is an exception to every “average” that is established as some school psychologists will be paid more than the actual time they spend with children with disabilities and some will be paid less. The vast majority of administrators support the percentages established in the rule. Therefore, no changes will be made.

Changes – None.

Changes made as a result of oral or written testimony: None.

Changes to the analysis or the fiscal estimate:

In the “Explanation of agency authority” and the “Plain language analysis,” the phrase “as special education categorical aid” has been added to clarify the type of reimbursement that will be made.

Responses to Clearinghouse Report:

2. Form, Style and Placement in Administrative Code:

- a. Recommendation accepted, changes made.
- b. Recommendation accepted, changes made.
- c. Recommendation accepted, changes made.
- d. Recommendation accepted, changes made.

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

- a. Recommendation accepted, changes made.
- b. Recommendations accepted, changes made.
- c. Recommendation accepted. Section PI 30.07 (1) now cross-references sub. (2).

5. Clarity, Grammar, Punctuation and Plainness:

- a. Recommendation accepted. “STATE” has been deleted from the title to subch. III, ch. PI 30.
- b. It should be clear that in order to receive special education aid, the county, CESA, school district or charter school must “maintain” or “operate” a special education program. Therefore, no changes will be made.

The phrase, “in accordance with law” has been changed to “in accordance with applicable state and federal law” as the law with respect to a county, CESA, or school district is different than the law relating to a (2r) charter school.

c. Recommendation accepted. The last sentence of s. PI 30.07 (1) has been re-written for clarity.

d. Section PI 30.07 (3) has been re-written for clarity.

FINAL REGULATORY FLEXIBILITY ANALYSES

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114(1)(a), Stats.

Summary of Comments:

No comments were reported.