Report From Agency

FINAL REPORT
CLEARINGHOUSE RULE 18-048
CHAPTER PI 36
PUBLIC SCHOOL INTER-DISTRICT OPEN ENROLLMENT

Analysis by the Department of Public Instruction

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

Statute interpreted: s. 118.52, Stats.

The proposed rule will restore Subchapter V of PI 36, relating to part time open enrollment, to conform rule with the changes under 2017 Wisconsin Act 59, the 2017-19 biennial budget.

The hearing notice was published in the July 16, 2018 edition of the Wisconsin Administrative Register. A public hearing was held on August 9, 2018.

No persons provided testimony at the August 9, 2018 hearing on this rule. However, the following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Dan Rossmiller	Wisconsin Association of School Boards			X

Summary of public comments relative to the rule and the agency's response (bolded) to those comments:

- The respondent offered the following comments regarding the proposed rule:
    - The proposed permanent rule expressly accounts for the department's interpretation regarding how part-time open enrollment applies to full-time open enrollment students, but the rule does not account for the department's interpretation regarding how part-time open enrollment applies to tuition waiver students as allowed under s. 121.84, Stats. The department should consider including provisions in the part-time open enrollment rule that address the different, but arguably similar, situations. Mentioning one without mentioning the other creates confusion in a manner similar to the manner in which s. 118.52, Stats., creates confusion by addressing whole grade sharing as a specific and express exception without mentioning either full-time open enrollment students or tuition waiver students as intended exceptions to the statutory definition of "resident school district."

      The department accepts this change and will include additional year tuition waiver students to the rule's definition for resident school district. Current year tuition waiver students cannot be added to this definition because there is no funding change that takes place on behalf of those students under such an agreement. Further, funding for those students does not mirror how students are funded under the open enrollment program, whereby the student's tuition is funded by the resident

district to the nonresident district and the resident district is able to count the student for general aid purposes like additional year tuition waivers do.

- The respondent argues that the rules for course admission preferences for resident students under s. PI 36.17 (2) (b) is ambiguous and could be interpreted to mean that if a private-school student or home-school student applies to take a course under s. 118.145 (4) or 118.53, Stats., (as applicable) and if the application arrives after the final deadline mentioned in the rule, then not only is the resident student applicant ineligible for any course admission preference, but the school district must also deny permission to take the course altogether, and could result in school districts unnecessarily denying course requests from resident private school students and home-school students. The respondent recommends that the rule be revised to state that "if the nonresident school board adopts a policy to give preference in attendance at a course to pupils who reside in the school district pursuant to s. 118.52 (5), Stats., the policy must require resident applicants who apply to take courses under s. 118.145 (4) and s. 118.53, Stats., to apply for the course by a final deadline of no earlier than 6 weeks nor later than 1 week before the course starting date in order to receive such preference ahead of an applicant for the course under s. 118.52, Stats. This provision does not prohibit a school board from approving applications for a course that are received under s. 118.145 (4) or 118.53, Stats., after such final deadline, provided that the school board did not deny any applications for the same course that were submitted under s. 118.52, Stats., due to lack of available space."

  The change is accepted and will be incorporated into the rule.

- Much like the department has indicated its interpretation that full-time open enrollment students may participate in part-time open enrollment, the respondent believes it would be useful to clarify in the rules that a preference for the admission of resident students to a course may (or must) be applied all students who regularly attend the nonresident school district as full-time students—including specifically nonresident students who attend the school under full-time open enrollment or under a tuition waiver. Such an allowance is appropriate and arguably required such as under s. 118.51 (13), Stats., but it may nonetheless be helpful to expressly identify the allowable scope of the preference.

  This suggested change conflicts with statute, per s. 118.52 (5), Stats., and thus exceeds rulemaking authority.

- The respondent notes that the rule is redundant with respect to notice requirements under s. PI 36.17 (2) (e). under s. 118.52 (3) (e), Stats., and s. PI 36.17 (1) (g), "If an application is accepted by the nonresident school board and the resident school board, the parent shall provide notice in writing to the resident school board and the nonresident school board of the pupil's intent to attend the course in the nonresident school district." Because the parent will already be providing the confirming notice of intent to both the resident school board and the nonresident school board, requiring the nonresident school board to forward the same notice to the resident district a second time is unnecessary. In addition, because the parent's obligation is based on a statutory obligation, it makes sense to modify s. PI 36.17 (2) (e) rather than s. PI 36.17 (1) (g) to state that "after the parent has notified the nonresident school district that the pupil will attend the course, or after the parent notifies the nonresident school district that the pupil will not attend the course, or if the pupil fails to attend the course after being accepted and providing notice of intent to attend the course, the nonresident school district shall promptly notify the resident school district."

  The change is accepted and will be incorporated into the rule.

- The respondent notes that the random selection procedures under s. PI 36.17 (2) (a), particularly in that the nonresident school board shall determine which pupils to accept on a random basis "using a method approved by the school board," creates confusion for school districts because school boards do not know

if the phrase means that the board must expressly cover the method of selection in a written policy or by adopting a specific resolution that specifies or approves one or more methods of selection. However, in practice, choosing a particular method of random selection is a detail of regulatory implementation that the actual school board should not need to be involved in. As such, the respondent believes the phrase "using a method approved by the school board" should be deleted to avoid potential confusion.

Section 36.17 (2) (a) of the proposed rule is the same as the current rule requirement that a school board must implement a random selection policy for pupils applying to participate in the full-time open enrollment program. Further, the rule does not prohibit school district administrators from carrying out such policies. Therefore, the change will not be accepted.

- Finally, the respondent argues that the rules for part-time open enrollment should expressly confirm a school district's authority to establish reasonable dates on which they will begin to accept part-time open enrollment applications for an upcoming term/semester/session. This is an issue on which the relevant statutes are silent, but it stands to reason that school districts are not required to receive, and hold for processing, course applications that are received many months (or even years) before the relevant course would begin.

  Granting a school district authority to establish dates for which it may accept part-time open enrollment applications exceeds the department's statutory authority to promulgate rules for the program and is therefore outside the scope of the rule.

Changes to the analysis or the fiscal estimate:

- No changes were made.

Responses to Clearinghouse Report:

2. Form, Style and Placement in Administrative Code:

The changes are accepted.

5. Clarity, Grammar, Punctuation and Plainness:

The changes are accepted.