

Clearinghouse Rule 19-069

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION REVISING PERMANENT RULES

The scope statement for this rule, SS 032-19, was published in Register No. 759B, on March 25, 2019, and approved by State Superintendent Carolyn Stanford Taylor on April 5, 2019. Pursuant to *Coyne v. Walker*, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope for this rule. *Coyne v. Walker*, 2016 WI 38, 368 Wis. 2d 444.

The State Superintendent of Public Instruction hereby proposes an order to create s. PI 8.01 (2) (u) and 13.03 (9m); to amend s. PI 1.01 (2) (d), 6.06 (4) (d) 3., 11.02 (4), 11.07 (2) (c) and (d) and (3) (c), 13.03 (10), 13.04, 13.09 (1) (intro.), (2) (title), (a) and (b), (3) (intro.) and (a), and (4) (intro.), (a) and (b), 19.05 (intro.), 27.03 (2) (c), and 37.03 (1) (a) (intro.); to repeal s. PI 11.07 (2) (b) and (3) (b), 11.37, 13.03 (1), (3) and (4), 13.09 (2) (c), (d) and (e) and (4) (c), 19.03 (3) and (Note), 37.04, and 43.01 (1); to repeal and recreate s. 11.35 (3); and to renumber and amend s. PI 43.01 (2), relating to technical changes to existing DPI rules as a result of 2017 Wisconsin Act 108 review of administrative rules.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 227.29, Stats.

Statutory authority: ss. 43.09 (2), 115.28 (5), 115.42 (4), 115.76 (5) (b), 115.92 (3), 118.045 (3), 118.30 (2) (b) 2., 118.42 (4), 121.02 (5), 121.55 (1) (b), and 227.10 (1), Stats.

Explanation of agency authority:

- PI 1 (Complaint resolution and appeals):** Pursuant to s. 115.28 (5), Stats., the state superintendent shall "examine and determine all appeals which by law are made to the state superintendent and prescribe rules of practice in respect thereto, not inconsistent with law." In addition, under s. 227.10 (1), Stats., "Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute." As such, a rule is required in order to examine and determine all appeals made to the Department.
- PI 6 (Public libraries):** Pursuant to s. 43.09 (2), Stats., the state superintendent shall, by rule, "may promulgate necessary standards for public library systems. If promulgated, such rules shall be consistent with s. 43.15 and shall be established in accordance with ch. 227."
- PI 8 (School district standards):** Pursuant to s. 121.02 (5), Stats., the state superintendent shall promulgate rules to implement and administer the underlying statutes related to school district standards.
- PI 11 (Children with disabilities):** Pursuant to s. 115.76 (5) (b), Stats., the definition of children with a disability may include a child who, by reason of his or her significant development delay, needs special education and related services, consistent with rules promulgated by the Department.
- PI 13 (Limited-English proficient pupils):** Pursuant to s. 118.30 (2) (b) 2., Stats., according to criteria established by the state superintendent by rule, "the school board, operator of the charter school under s. 118.40 (2r), governing body of the private school participating in the program under s. 118.60, or governing body of the private school participating in the program under s. 119.23 may determine not to administer an examination under this section to a limited-English speaking pupil, as defined under s. 115.955 (7), may permit the pupil to be examined in his or her native language, or may modify the format and administration of an examination for such pupils."

6. **PI 19 (Education for school age parents):** Pursuant to s. 115.92 (3), Stats., the state superintendent shall establish criteria by rule for the approval of programs for school age parents for the purpose of determining programs eligible for aid under s. 115.93, Stats.
7. **PI 27 (Commencement of school term):** Pursuant to s. 118.045 (3), Stats., the state superintendent shall promulgate rules governing procedures for school boards to request that a school term commence prior to September 1, and provide the extraordinary reasons that allow the Department to approve such requests.
8. **PI 37 (Grants for national teacher certification or master educator licensure):** Pursuant to s. 115.42 (4), Stats., the department shall promulgate rules to implement and administer grants for national teacher certification or master educator licensure, including rules that relate to the application process and the selection process for grant recipients.
9. **PI 43 (Education reform):** Pursuant to s. 118.42 (4), Stats., the state superintendent shall promulgate rules establishing criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of all public schools in the state for the purposes of the underlying statute.

Related statute or rule: s. 227.29, Stats., relating to the agency review of rules and enactments.

Plain language analysis:

This proposed rule makes technical updates to existing Department rules, which include correcting obsolete, unnecessary, and duplicative rules and rules superseded by and in conflict with state statutes, resulting from the Department's review of administrative rules as required in 2017 Wisconsin Act 108. The changes include the following:

1. **PI 1 (Complaint resolution and appeals):** A technical change is made to s. PI 1.01 (2) (d) to strike out references to s. 118.19 (5), Stats., and s. PI 34.35. The reference to s. 118.19 (5), Stats., is unnecessary, as the provision relates to individuals teaching in an alternative education program and does not affect the purpose or operation of the rule. Further, the reference to s. PI 34.35 is obsolete, since this provision no longer exists in rule (the reference to subch. XI of ch. PI 34 still applies).
2. **PI 6 (Public libraries):** A technical change is made to s. PI 6.06 (4) (d) 3., to update auditing requirements and refer to "the applicable provisions of the U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200" in order to conform the rule with changes in generally accepted accounting principles and current agency practice.
3. **PI 8 (School district standards):** The rule is superseded by changes in statute as a result of 2017 Wisconsin Act 94, which requires school districts to adopt academic standards for financial literacy and incorporating instruction in financial literacy into the curriculum in grades kindergarten to 12. Therefore, a technical change is made to conform ch. PI 8 to the changes in statute as a result of 2017 Act 94.
4. **PI 11 (Children with disabilities):** Section PI 11.02 (4) defines "division" as division for learning support: equity and advocacy. A technical change is made to recognize the current name, which is the division for learning support. Additionally, a technical change is made to eliminate s. PI 11.37, relating to study and report to the standing committees of the legislature, since this section refers to past dates and a reporting requirement which had already been met as of 2005.

Further, s. PI 11.07 governs transfer pupils with a disability whose residence has changed from an LEA in Wisconsin to another LEA in this state or another state to an LEA in this state. Parts of s. PI 11.07 (2) (b) and all of PI 11.07 (2) (c) are duplicative of 34 CFR 300.323(e), and s. PI 11.07 (2) (d) requires that the sending LEA shall transfer the pupil's transfer records to the receiving LEA within 5 working days of the notice to transfer, which is

in conflict with s. 118.125 (4), Stats., which requires the transfer to be within the next working day. Further, s. PI 11.07 (3) (b) is duplicative of 34 CFR 300.323(f), and s. PI 11.07 (3) (c) is inconsistent s. 115.78 (3) (a), Stats., and 34 CFR 300.301(c)(1). As such, a technical change is made to eliminate these duplications and conform to statutes.

Finally, s. PI 11.35 governs the determination of eligibility of children with disabilities. Section PI 11.35 (1) is duplicative of s. 115.782, Stats., and 34 CFR 300.15. Further, s. PI 11.35 (2) is duplicative of s. 115.76 (5) (a), Stats., and 34 CFR 300.8(a)(1). Finally, s. PI 11.35 (3) (a) and (c) are duplicative of s. 115.782 (2) (b) 2., Stats., and 34 CFR 300.304. A technical change is made to eliminate these duplications in rule.

- 5. PI 13 (Limited-English proficient pupils):** A technical change is made to strike out the definition for “alternate assessment” in s. PI 13.03 (1) and all references to the assessment in ch. PI 13, since the definition refers to an alternate content assessment that does not exist for students who are not yet proficient in English. Additionally, s. PI 13.03 (3) points to a definition for bilingual counselor for individuals licensed under s. PI 3.50, which is an obsolete license. A technical change is made to eliminate this definition and s. PI 13.03 (4), relating to bilingual counselor aide, since the definition references bilingual counselors.

Additionally, the rule is in conflict with changes to the statutes as a result of 2011 Wisconsin Act 32 (the 2011-13 biennial budget). 2011 Act 32 amended s. 118.30 (2) (b) 2., Stats., to allow that, according to the criteria established by the state superintendent by rule, the governing body of a private school participating in the Wisconsin Parental Choice Program may determine not to administer an examination to a Limited-English speaking pupil, may permit the pupil to be examined in his or her native language, or may modify the format and administration of an examination for such pupils. Section PI 13.09 is therefore updated to conform the rule with changes to statutes under 2011 Act 32.

- 6. PI 19 (Education for school age parents):** The requirement established in s. PI 19.03 (3) to annually submit a program plan to the Department is unnecessary as the Department does not currently collect the plans, as such a plan is no longer required in statute. A technical change is made to eliminate this requirement. Additionally, the form corresponding to the report also no longer exists so references to it under s. PI 19.05 are also removed in this rule.
- 7. PI 27 (Commencement of school term):** A technical change is made to replace the reference to youth options under s. PI 27.03 (2) with the early college credit program, since 2017 Wisconsin Act 59 (the 2017-19 biennial budget) replaced the youth options program under s. 118.55, Stats., with the early college credit program.
- 8. PI 37 (Grants for national teacher certification or master educator licensure):** Provisions in the rule chapter relating to grants for national teacher certification and master educator licensure are superseded by changes in 2017 Wisconsin Act 59, which created lifetime licenses and eliminated continuing education requirements for the purpose of renewing a license. As a result, individuals who hold a master educator license are no longer subject to renewal requirements. References to license renewal and continuing education requirements in s. PI 37.03 (1) (a) and 37.04 are repealed to conform the rule to changes in statute.
- 9. PI 43 (Education reform):** Section PI 43.01 (1) relates to the rule's applicability and is duplicative of s. 118.42, Stats., as it simply restates statutory language. A technical change is made to eliminate this language.

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

N/A

Summary of any public comments and feedback on the statement of scope for the proposed rule that the agency received at a preliminary public hearing and comment period held and a description of how and to what extent the agency took those comments into account and drafting the proposed rule:

A notice for a preliminary hearing on the scope statement for this proposed rule was submitted for publication in the March 25th, 2019 edition of the Administrative Register. The preliminary hearing was held on April 1st, 2019. No persons

submitted testimony at the March 25th preliminary hearing and no persons submitted written testimony regarding the scope statement under consideration. Therefore, no changes were made to the proposed rule as a result of public comment.

Comparison with rules in adjacent states:

- **Iowa:** [Iowa Code §17A.7\(2\)](#), relating to petition for adoption, amendment, or repeal of rules — periodic comprehensive reviews, requires that beginning July 1, 2012, over each five-year period of time, an agency shall conduct an ongoing and comprehensive review of all of the agency's rules with the goal of identifying and eliminating all rules of the agency that are outdated, redundant, inconsistent, or incompatible with statute or its own rules or those of other agencies. An agency shall commence its review by developing a plan of review in consultation with major stakeholders and constituent groups. When the agency completes the five-year review of the agency's own rules, the agency shall provide a summary of the results to the Administrative Rules Coordinator and the Administrative Rules Review Committee.
- **Illinois:** [5 ILCS 100/5-130](#), relating to the periodic review of existing rules, requires the Joint Committee of Administrative Rules to evaluate the rules of each agency every five years and shall develop a schedule for this periodic evaluation. When evaluating the rules of each agency, the Joint Committee's review shall include an examination of the following: 1) organizational, structural, and procedural reforms that affect rules or rulemaking; 2) merger, modification, establishment, or abolition of regulations; 3) eliminating or phasing out outdated, overlapping, or conflicting regulatory jurisdictions or requirements of general applicability; and 4) economic and budgetary effects. The Joint Committee shall report its findings, conclusions, and recommendations, including suggested legislation, to the General Assembly by February 1 of each year.
- **Michigan:** [MCL 24.253 Sec. 53](#), relating to annual regulatory plan; link to website of office of regulatory reinvention, requires that each agency shall prepare an annual regulatory plan that reviews the agency's rules. In completing a review of rules pursuant to the annual regulatory plan, first priority shall be given to those rules that directly affect the greatest number of businesses, groups, individuals, and those rules that have the greatest actual statewide compliance costs for businesses, groups, and individuals. The review of rules shall state the following: 1) whether there is a continued need for the rules; 2) a summary of any complaints or comments received from the public concerning the rules; 3) the complexity of complying with the rules; 4) whether the rules conflict with or duplicate similar rules or regulations adopted by the federal government or local units of government; and 5) the date of the last evaluation of the rules and the degree to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules. In completing the annual regulatory plan, the agency shall include these rules as well as the rules it expects to process in the next year, the mandatory statutory authority it has not exercised, and the rules it expects to rescind in the next year. Annual regulatory plans shall be completed and filed with the Office of Regulatory Reinvention by July 1 of each year.
- **Minnesota:** [Minn. Statutes 2018 14.05 Subd. 5](#), relating to the review and repeal of rules, requires that by December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative.

Summary of factual data and analytical methodologies:

Under 2017 Wisconsin Act 108, each state agency that has promulgated rules in the Wisconsin Administrative Code is required to submit a biennial report to the Joint Committee for Review of Administrative Rules. The report must list the rules for which the following circumstances apply: 1) the rule is deemed unauthorized; 2) the authority to promulgate has been restricted; 3) the rule is deemed obsolete or has been rendered unnecessary; 4) the rule is duplicative of, superseded by, or in conflict with another rule, a state statute, a federal statute or regulation, or a court ruling; and 5) the rule is deemed to be economically burdensome. Per 2017 Act 108, the report must also describe the agency's actions, if any, to address each of the rules listed and must include an explanation for any listed rule for which the agency has not taken any action. The proposed rules listed in this proposed rule are technical changes to rules with provisions that meet the criteria listed in

the report (note: there were no rules that were deemed unauthorized, economically burdensome, or rules whose authority to promulgate had been restricted).

The proposed rule changes are technical in nature and do not contain any substantive changes in policy. The rule changes contained in this rule order are designed to update Department rules by deleting obsolete rule provisions, duplicative language and conforming Department code with recent statutory changes. Without these rule changes, the Department will have rules that are not fully aligned with statutes. This may create confusion for persons impacted by each rule.

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)

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

As provided in s. 227.16 (2) (b), Stats., there is no requirement that a public hearing be held for this rule because the proposed rule brings an existing rule into conformity with a statute that has been changed.

SECTION 1. PI 1.01 (2) (d) is amended to read:

PI 1.01 (2) (d) Complaints, hearings, and appeals related to license revocation and reinstatement ~~under s. 118.19 (5), Stats., and s. PI 34.35,~~ which shall be resolved through the procedures specified under subch. XI of ch. PI 34.

SECTION 2. PI 6.06 (4) (d) 3. is amended to read:

PI 6.06 (4) (d) 3. ~~The applicable provisions of the U.S. office of management and budget, circular A-133, audits of states, local governments and non-profit organizations~~ provisions of the United States office of management and budget, uniform administrative requirements, cost principles, and audit requirements for federal awards under 2 CFR, part 200.

SECTION 3. PI 8.01 (2) (u) is created to read:

PI 8.01 (2) (u) *Financial literacy.* Each school district board shall comply with s. 121.02 (1) (L) 7., Stats., by adopting academic standards for financial literacy and incorporating instruction in financial literacy into the curriculum in grades kindergarten to 12.

SECTION 4. PI 11.02 (4) is amended to read:

PI 11.02 (4) "Division" means the division for learning support: ~~equity and advocacy~~, which is established under s. 15.373 (1), Stats., and which has the authority granted under s. 115.77, Stats.

SECTION 5. PI 11.07 (2) (b) is repealed.

SECTION 6. PI 11.07 (2) (c) and (d) are amended to read:

11.07 (2) (c) ~~The receiving LEA shall adopt the evaluation and the eligibility determination of the sending LEA or conduct an evaluation and eligibility determination of the transfer pupil.~~ The receiving LEA shall adopt the IEP of the sending LEA or develop a new IEP. The receiving LEA may not adopt the evaluation and eligibility determination or the IEP of the sending LEA if the evaluation and eligibility determination or the IEP do not meet state and federal requirements.

(d) When an LEA receives a transfer pupil with a disability and the LEA does not receive the pupil's records from the sending LEA, the LEA shall request in writing the pupil's records from the sending LEA. The sending LEA shall transfer the pupil's records to the receiving LEA within 5the next working days of receipt of the written notice as required under s. 118.125 (4), Stats.

SECTION 7. PI 11.07 (3) (b) is repealed.

SECTION 8. PI 11.07 (3) (c) is amended to read:

PI 11.07 (3) (c) The LEA shall adopt the evaluation and the eligibility determination of the sending public agency or conduct a new evaluation and eligibility determination of the transfer pupil. If the LEA decides not to adopt the evaluation and eligibility determination of the sending public agency, the LEA shall initiate a special education referral of the child. The LEA shall complete the evaluation and develop an IEP and the placement in accordance with the requirements of subch. V of ch. 115, Stats., within ~~90~~60 days of the date the child enrolls in the LEA. The LEA shall adopt the IEP of the sending public agency or develop a new IEP.

SECTION 9. PI 11.35 is repealed and recreated to read:

PI 11.35 Determination of eligibility. As part of an evaluation or reevaluation under s. 115.782, Stats., conducted by the IEP team in determining whether a child is or continues to be a child with a disability, the IEP team shall identify modifications, if any, that can be made in the regular education program, such as adaptation of content, methodology or delivery of instruction to meet the child's needs identified under s. 115.782 (2) (b) 2., Stats., that will allow the child to access the general education curriculum and meet the educational standards that apply to all children.

SECTION 10. PI 11.37 is repealed.

SECTION 11. PI 13.03 (1), (3), and (4) are repealed.

SECTION 12. PI 13.03 (9m) is created to read:

PI 13.03 (9m) "Private choice school" includes a private school participating in the parental choice program for eligible school districts and other school districts under s. 118.60, Stats., or a private school participating in the Milwaukee parental choice program under s. 119.23, Stats.

SECTION 13. PI 13.03 (10) is amended to read:

PI 13.03 (10) "Test" means the examination administered to pupils enrolled in the 3rd, 4th, 8th ~~and~~ 9th, 10th and 11th grades under ss. 118.30 and 121.02 (1) (r), Stats.

SECTION 14. PI 13.04 is amended to read:

PI 13.04 Applicability and purpose. This subchapter establishes identification, assessment, classification, and reporting requirements for all school districts whose pupil population includes one or more LEP pupils. This subchapter also

establishes criteria and procedures to be used by a school district, ~~and charter school,~~ and private choice school in determining whether to administer a test under s. 118.30 or 121.02 (1) (r), Stats., to an LEP pupil.

SECTION 15. PI 13.09 (1) (intro.), (2) (title), (a) and (b) are amended to read:

PI 13.09 (1) POLICIES. Each school board policy under s. PI 13.05 shall include procedures regarding the testing of LEP pupils. A charter school and a private choice school whose population includes one or more LEP pupils shall adopt a policy regarding the testing of LEP pupils. The policy under this subsection shall include all of the following assurances:

(2) TEST OR ALTERNATE ASSESSMENT ADMINISTRATION.

~~(a) A school board and charter school shall make case by case determinations as to whether an LEP pupil shall take a test or alternate assessment.~~ A school board, and charter school, and private choice school may not exempt LEP pupils from academic assessments ~~tests~~ based solely on their LEP status.

(b) A school board, ~~and charter school,~~ and private choice school shall administer a test to an LEP pupil unless a determination has been made that the results of the test, with allowable accommodations made for the pupil as needed, or as otherwise provided in statute, will not be a valid and reliable indicator of the pupil's academic knowledge and skills.

SECTION 16. PI 13.09 (2) (c), (d) and (e) are repealed.

SECTION 17. PI 13.09 (3) (intro.) and (a) and (4) (intro.), (a) and (b) are amended to read:

PI 13.09 (3) TEST ACCOMMODATIONS. A school board, ~~and charter school,~~ and private choice school that includes an LEP pupil in a test shall provide testing accommodations, if the pupil needs such accommodations. Any accommodations made shall maintain the validity of the test as determined by the department and may include, but are not limited to, one or more of the following:

~~(a) Provide~~ For tests that do not assess English language competency, provide translations in a student's native language or the assistance of a qualified translator to translate instructions or read ~~items from tests that do not assess English language competency~~ test items.

(4) TEST RESULTS. A school, ~~and charter school,~~ and private choice school that administers a test, ~~an alternate assessment or both~~ to an LEP pupil shall use or report the results as follows:

(a) The results of ~~both~~ the test ~~and alternate assessment~~ shall be used consistent with the board's policies developed under s. 118.33 (1) (f) and (6), Stats., in making instructional, promotion, and graduation decisions.

(b) The results of the test, ~~not the alternate assessment if both are given,~~ shall be reported to the department.

SECTION 18. PI 13.09 (4) (c) is repealed.

SECTION 19. PI 19.03 (3) and (Note) are repealed.

SECTION 20. PI 19.05 (intro.) is amended to read:

PI 19.05 Reimbursement. Contingent upon receipt of the ~~written report and~~ statement of receipts and disbursements under s. 115.92 (2), Stats., the state superintendent shall authorize reimbursement to the board, CESA, or fiscal agent for an agreement under s. 66.0301, Stats., for the following approved costs for school age parent programs which have been approved under s. PI 19.03 (3):

SECTION 21. PI 27.03 (2) (c) is amended to read:

PI 27.03 (2) (c) Offering specialized programming for pupils before September 1. Specialized programming allows pupils to engage in specific activities such as gifted and talented classes, remedial education, migrant programs, or the ~~youth option~~ early college credit program. In addition, new learning strategies to address a school in need of improvement under s. 115.38 (4), Stats., may be considered specialized programming. While this provision allows certain activities for targeted groups of pupils to begin before September 1, it does not allow the school board to officially begin its school term before September 1.

SECTION 22. PI 37.03 (1) (a) (intro.) is amended to read:

PI 37.03 (1) (a) Annually by June 30, a person meeting all of the following requirements may apply to the state superintendent for a grant in the amount equal to the costs of obtaining—~~or renewing~~ a national board certification or Wisconsin master educator license that are borne by the person, not to exceed \$2,000:

SECTION 23. PI 37.04 is repealed.

SECTION 24. PI 43.01 (1) is repealed.

SECTION 25. PI 43.01 (2) is renumbered PI 43.01 and amended to read:

PI 43.01 ~~Applicability and purpose~~ Purpose. Pursuant to s. 118.42, Stats., ~~This~~this chapter establishes criteria and procedures for determining whether a school or school district is in need of improvement and whether a school is among the lowest performing 5 percent of public schools in the state.

SECTION 26. EFFECTIVE DATE:

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 _____, 2019

Carolyn Stanford Taylor
State Superintendent