

Modifications From Agency

Clearinghouse Rule 20-082

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

The scope statement for this rule, SS 030-20, was published in Register No. 773A1, on May 4, 2020, and approved by State Superintendent Carolyn Stanford Taylor on May 20, 2020.

The State Superintendent of Public Instruction hereby proposes an order to repeal s. PI 34.061 (2) (c); to amend s. PI 34.028 (1) and (3), 34.040 (2) (intro.), and 34.060 (title) and (1); to repeal and recreate s. PI 34.028 (2) and (4); and to create s. PI 34.040 (2) (k) to (m), relating to revisions to licensing of pupil services professionals.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 115.28 (7m) and 118.19 (10), Stats.

Statutory authority: ss. 115.28 (7) (c) and (7m) and 227.11 (2) (a) (intro.), Stats.

Explanation of agency authority:

The state superintendent is authorized to promulgate rules for the certification of school nurses under s. 115.28 (7m), Stats.:

115.28 General duties. The state superintendent shall:

(7m) Certification of school nurses. Certify school nurses, make rules for the examination and certification of school nurses and file in the state superintendent's office all papers relating to school nurses certification and register each such certification.

Additionally, the department is required to implement the licensure of pupil services professionals under s. 118.19 (10), Stats. Under s. 227.11 (2) (a) (intro.), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.” See also, *Wisconsin Ass'n of State Prosecutors v. Wisconsin Employment Relations Comm'n*, 2018 WI 17, ¶ 42 (“statutory mandates are also statutory authorizations, and authorization of an act also authorizes a necessary predicate act.”) (internal quotation marks omitted). As such, a rule is required to establish criteria and procedures for the licensing of pupil services professionals under s. 118.19 (10), Stats.

Finally, under s. 115.28 (7) (c), Stats., the state superintendent has the authority to license and make rules for the examination and licensing of persons, including teachers, employed to provide publicly funded special education and related services.

Related statute or rule:

N/A

Plain language analysis:

The proposed rule amends chapter PI 34 of the Wisconsin Administrative Code with respect to clarifying and creating flexibility around licensing rules for pupil services professionals, which include school nurses, school psychologists, and

school social workers. The proposed rule also makes technical revisions under the section governing the eligibility for and renewal of tier I licenses under s. PI 34.028 which need to be made to align with this proposed rule.

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

A summary of comparable federal regulations with regard to the license types affected by this rule is as follows:

School Nurse: There are no federal regulations regarding the competency of nurses working in schools. However, the National Board for Certification of School Nurses (NBCSN) is a national credentialing center that sets the professional standard for school nursing along with the National Association of School Nurses (NASN). Both organizations set minimal preparation for a school nurse as a bachelor's degree in nursing.

School Psychologist: There are no federal regulations regarding the competency of school psychologists. However, the National Association of School Psychologists and the American Psychological Association are national credentialing entities that have set standards for professional practice.

School Social Worker: There are no federal regulations regarding the licensure of school social workers. However, the National Association of School Social Workers (NASW) recommends minimum professional standards for the competency of school social workers. NASW recommends a master's degree in social work (MSW) as the entry-level qualification for school social workers. They also recommend local education agencies ensure school social workers have an MSW degree from a program accredited by the Council on Social Work Education. However, should the local education agency employ school social workers whose highest degree is a bachelor's degree in social work (BSW), NASW recommends an MSW-level social worker should provide supervision for the BSW-level social worker.

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:

The department held a preliminary public hearing and comment period on May 12, 2020, and received comments on the statement of scope for the proposed rule. A brief summary of comments and the department's response to those comments are as follows:

- Comments in favor of the scope statement, specifically with respect to the proposed changes to rules governing the licensure of school social workers, note the significant needs around student mental health and school safety in Wisconsin. The respondents further note the disadvantages some school districts face in meeting these challenges in trying to recruit and retain school social workers because of factors such as geographic location relative to the three approved MSW programs in the state. As a result, these respondents believe these concerns could be addressed by: 1) giving attention to the geographic disparities in the distribution and availability of school social workers throughout the state, and 2) giving greater consideration to what steps are necessary to allow the certification or licensure of clinical counselors in the school setting in order to deploy additional, well-trained school social workers and counselors.

Agency Response: The department will strive to ensure clarity and efficiency in the rulemaking process for licensing school social workers. The above comments were forwarded to program staff for their consideration in rulemaking.

- Comments in favor of the scope statement, specifically with respect to the revisions to the licensure of school psychologists, speak favorably toward the proposed use of the Nationally Certified School Psychologist (NCSP) credential as a pathway to for licensure for school psychologists. They note that the NCSP credential is the highest credential in the field of school psychology due to its commitment to high levels of professionalism, ethical practice, and continuing professional development. Respondents believe this change could allow school psychologists with national credentials to more easily obtain a school psychology license in Wisconsin. Respondents argue this is a needed step in this time of increasing school mental health needs and unprecedented shortages in school psychology practitioners.

Agency Response: The comments appear to support the direction of the scope statement. The comments were forwarded to program staff for their consideration in rulemaking.

- The majority of comments against the proposed changes spoke against the proposed revisions to school social workers. They believe that in order to preserve the integrity of the profession, the requirement to have an MSW to complete the necessary practicum requirements in order to obtain a school social worker license must be maintained. They note that school social workers are often leaders in schools, in no small part due to their knowledge and involvement in the development of IEPs, 504s, PBIS, and trauma informed care, thus making them essential in supporting student mental health. As such, while the demand for more school social workers is high, they believe that eliminating such requirements in order to fill positions would harm Wisconsin students by lowering standards to getting into the profession. They argue that school social workers serve a critical role in supporting a community coping with the grief and trauma of our current COVID-19 environment and their level of skill and quality of service must not be compromised in meeting those needs.

Agency Response: The department will strive to ensure clarity and efficiency in the rulemaking process for licensing school social workers. The above comments were forwarded to program staff for their consideration in rulemaking.

- Some respondents against the proposed rule cite concerns with regard to the licensure of school counselors. They are concerned that any proposed changes to the rule would result in inadequate preparation of school counselors which could harm the integrity of the profession and become a disservice to Wisconsin students. For example, students with a bachelor's degree and are enrolled in a preparation program may not have yet gotten the appropriate level of training to work in the school environment and provide many of the mental health supports that students need.

Agency Response: The proposed changes referenced under the scope statement have been removed from the proposed rule.

Comparison with rules in adjacent states:

- **Illinois:** Illinois rules regarding the license types affected by this rule are as follows:

School Nurse: School nurse is a protected title and Department of Education has a Professional Educator License available for school nurses. The school nurse license is available but not required. Licensure requires graduate level specialty education and an internship. Illinois designates its licensed school nurses by "PEL-CSN." PEL-CSN licensure is required to participate in IEPs.

School Psychologist: In order to become licensed as a school psychologist, applicants must complete either of the following requirements: 1) obtain a master's degree or higher in psychology or educational psychology with a specialization in school psychology from a regionally accredited institution, 250 hours of practicum in a school setting or child study center, and a 1200 contact hour internship lasting a full school year under the direction of a credentialed school psychologist. The internship requirement may be waived with verification of a full year of professional school psychologist experience on a valid state-issued school psychologist credential, or an Illinois provisional school psychologist certificate, and has such additional qualifications as may be required by the State Board of Education; or 2) hold a valid NCSP credential. Applicants with a valid, comparable out-of-state license, a master's degree from an accredited institution of higher education, and a NCSP credential may also receive school psychologist licensure.

School Social Worker: Applicants for school social worker licensure must obtain a master's degree in social work and complete coursework specifically designed for performing social work in schools in order to be licensed as a school social worker. Additionally, applicants must complete an internship of at least 600 contact hours in a school setting and pass a licensure test before receiving licensure. Illinois does have reciprocity with comparable out of state licenses.

- **Iowa:** Iowa rules regarding the license types affected by this rule are as follows:

School Nurse: There is no school nurse certification requirement for school nurses.

School Psychologist: Applicants for school psychologist licensure must complete a program of graduate study that is currently approved by the National Association of School Psychologists (NASP) or the American Psychological Association, or hold the NCSP, in preparation for service as a school psychologist through one of the following options: 1) completion of a master's degree with sufficient graduate semester hours beyond a baccalaureate degree to total 60; 2) completion of a specialist's degree of at least 60 graduate semester hours with or without completion of a terminal master's degree program; or 3) completion of a doctoral degree program of at least 60 graduate semester hours with or without completion of a terminal master's degree program or specialist's degree program. A nonrenewable license may be issued to an individual who must complete an internship or thesis as an aspect of an approved program leading to the school psychologist endorsement.

School Social Worker: Applicants for school social worker licensure must obtain a master's degree in social work and complete a practicum program in order to receive endorsement as a school social worker. Iowa has a school social work endorsement and a statement of recognition as options for licensure. For the school social work endorsement, applicants must complete a minimum of twenty hours of course work related to assessment, intervention, resource coordination, and education and a practicum in a school setting. For the statement of recognition, a license through the state licensing board is also necessary.

- **Michigan:** Michigan rules regarding the license types affected by this rule are as follows:

School Nurse: School nurse is a protected title in Michigan and the Department of Education authorizes the title.

School Psychologist: Applicants for preliminary school psychologist certification must meet the following requirements: 1) complete a graduate degree in an approved school psychology certification program of no less than 45 semester credit hours; 2) complete a supervised internship of a minimum of 600 clock hours in school psychology; and 3) possess a valid out-of-state school psychologist certificate or license if the school psychologist program was completed in another state. Individuals that hold a valid or expired preliminary school psychologist certificate and complete a state-approved specialist-level degree or the equivalent (no less than 60 semester credit hours) in school psychology with a 1200 clock-hour internship from an educator preparation institution are eligible for receiving the full school psychologist certificate. Michigan also accepts the NCSP credential for certification of out-of-state applicants and for renewal of certification.

School Social Worker: Applicants for school social worker licensure must obtain a master's degree in social work from a graduate school of social work program and complete a social work practicum of at least 500 supervised hours in order to receive licensure as a school social worker. Temporary approval shall be granted to a school social worker for the initial year of service. For full approval, a school social worker must also have documentation from employing districts of satisfactory completion of 1 year of service.

- **Minnesota:** Minnesota rules regarding the license types affected by this rule are as follows:

School Nurse: Districts with 1,000 students or more are required to hire at least one full time licensed school nurse. Schools under 1,000 have no similar requirements. In Minnesota, a license to work as a school nurse is obtained through the Professional Education Licensing and Standards Board. In order to be eligible for that license, registered nurses need to have a public health nursing certificate from the Board of Nursing in addition to their RN license. Applicants are eligible for the public health nursing certificate through public health coursework in the classroom and clinical settings in a bachelor of nursing (BSN) program. All Minnesota BSN programs offer the public health coursework but many out of state transfers have not had the clinical portion. School nurses who obtain the school nurse license use the credentials of "LSN" to indicate this licensure.

School Psychologist: Applicants for school psychologist licensure must graduate from a NASP-approved program or hold the NCSP credential in order to receive licensure. Individuals are eligible for temporary school psychologist licensure if they hold a master's degree in school psychology or have completed two years of graduate

school training. This license is granted on a temporary basis for up to two years and may be renewed up to three times. Graduates from non-NASP approved programs and interns may be eligible for this license.

School Social Worker: Applicants for school social worker licensure must provide evidence of completing a program accredited by the Council on Social Work Education and evidence of holding current Minnesota Board of Social Work licensure. An MSW is not required, nor is specific school social work coursework or practicum.

Summary of factual data and analytical methodologies:

The proposed rule will address the revisions below with respect to the licensing of pupil services professionals.

- **School Nurse:** A school nurse license under s. PI 34.060 is not required for an individual to be a school nurse if the individual has a registered nurse license issued by the Department of Safety and Professional Services. A school nurse license issued under s. PI 34.060 is an optional license. Under the proposed rule, applicants who seek this optional license must complete a school nurse practicum in an approved preparation program and receive an institutional endorsement as a condition for licensure under ch. PI 34. The department proposes to allow national certification as an alternative pathway to licensure under ch. PI 34 while bestowing the title and credentials of Licensed School Nurse (LSN) to any registered nurse who is issued the school nurse license under ch. PI 34. The National Board for Certification of School Nurses confirms competency in the specialty and those reaching this certification use the credential NCSN. The department also proposes technical changes to ch. PI 34 which will further align this rule to statute and agency practice. Without a rule change, the department would be required to implement rule and statute as they currently exist and applicants would only be able to obtain school nurse licensure under ch. PI 34 through existing pathways.
- **School Psychologist:** A license issued under s. PI 34.061 authorizes an individual to work as a school psychologist. The National Association of School Psychologists accredits school psychology preparation programs, including all preparation programs for school psychologists in Wisconsin. However, 33 states use the Nationally Certified School Psychologist (NCSP) credential as a pathway for school psychologist licensure and nine states allow maintenance of the NCSP for license renewal. The department proposes amending its rules around the licensure of school psychologists in order to recruit and retain high quality school psychologists. The department proposes clarifying its rule to accept NCSP accreditation from individuals who are certified as school psychologists from other states as a pathway to licensure as a school psychologist in Wisconsin. Without a rule change, the department would be required to implement ch. PI 34 as the rules currently exist and applicants would be required to obtain licensure as a school psychologist through existing pathways.
- **School Social Worker:** A license issued under s. PI 34.062 authorizes an individual to work as a school social worker. Under the current rule, applicants must in part complete the requirements of an approved preparation program and hold an MSW. The department proposes to create an additional pathway for applicants seeking licensure as a school social worker. Under the proposed rule, a clinically trained social worker may obtain tier II licensure if the applicant holds a master's degree in social work, has at least one year of successful experience in Wisconsin schools while holding a tier I school social worker license, and has successfully completed training in developmental psychopathology, assessment of children, child abuse and neglect, working with children and families, equity and conflict resolution, and children with disabilities. Without a rule change, the department would be required to implement ch. PI 34 as the rules currently exist and applicants would be required to obtain licensure as a school social worker under existing rule.

Finally, the department has identified technical revisions under the section governing the eligibility for and renewal of tier I licenses under s. PI 34.028 which need to be made to align with this proposed rule. These changes do not substantively change the content of the section. Without these changes, the department would be unable to implement the other provisions of this rule as proposed.

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)

Carl Bryan
Administrative Rules Coordinator
Wisconsin Department of Public Instruction
adminrules@dpi.wi.gov
(608) 266-3275

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

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at adminrules@dpi.wi.gov. The department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

RULE TEXT

SECTION 1. PI 34.028 (1) is amended to read:

PI 34.028(1) AUTHORIZATION. A license issued under this section authorizes the license holder to teach in the grade level and subject area of the license or work as a ~~pupil services professional in the grade level and subject area of the license~~ school social worker, school psychologist, or a school counselor.

SECTION 2. PI 34.028 (2) is repealed and recreated to read:

PI 34.028 (2) ELIGIBILITY. The state superintendent may issue a tier I license to an applicant who does not meet all of the requirements for a tier II, III, or IV license if the applicant meets one of the following:

(a) *Approved program.* The applicant has not met all of the requirements for a tier II license but has completed all of the coursework at an approved program or a program approved in another state leading to licensure in a school setting. The following degree requirements must be satisfied:

1. For a teaching license, the applicant must hold a bachelor's degree.
2. For a school social worker or school counselor license, the applicant must hold a master's degree.
3. For a school psychologist, the applicant must hold a master's degree or higher.

(b) *Intern.* If the license is not for special education, the applicant is assigned to a school by an educator preparation program and all of the following occur:

1. The educator preparation program recommends the applicant for licensure.
2. The applicant is enrolled as a senior at a baccalaureate program or is enrolled in a post-baccalaureate program.
3. The applicant will be supervised by an individual who is fully licensed in the specific license area of the internship or residency program.

(c) *School district need.* The applicant is hired to meet a school district need and meets all of the following requirements:

1. The applicant holds the following degree:
 - a. For a teaching license, the applicant must hold a bachelor's degree or higher from an accredited college or university.
 - b. For a school social worker or school counselor license, the applicant must either hold a master's degree in the area of licensure or a bachelor's degree or higher from an institution and verification of enrollment in an approved program leading to the license for the assignment.

- c. For a school psychologist license, the applicant must hold a master's degree in the area of licensure and verify enrollment in an approved program leading to the school psychologist license.
2. The applicant's employing school district conducted a search for a fully licensed candidate and no fully licensed candidates were acceptable for the assignment.
3. The district administrator of the employing school district submitted a written request to the state superintendent on behalf of the applicant on a form provided by the department.
- (d) *Speech-language pathologist*. Notwithstanding par. (a), for a tier I license in speech-language pathology, the applicant holds a master's degree and a valid speech-language pathologist license issued by the department of safety and professional services.
- (e) *Clinically-trained social worker*. Notwithstanding par. (a), for a tier I license as a clinically-trained social worker, the applicant holds a master's degree in social work and a valid social work certificate or license issued by the social worker section of the marriage and family therapy, professional counseling, and social work examining board.

SECTION 3. PI 34.028 (3) is amended to read:

PI 34.028 (3) DURATION. A license issued under this section ~~is~~may be valid for 1 year.

SECTION 4. PI 34.028 (4) is repealed and recreated to read:

- (4) RENEWAL. (a) Subject to s. PI 34.039, a license issued under sub. (2) (a) or (c) may be renewed if the district administrator of the employing school district requests renewal and one of the following occurs during the term of the license:
1. The license holder under sub. (2) (c) is enrolled in an approved program and successfully completed at least 6 semester credits or the equivalent in the program.
 2. The license holder under sub. (2) (a) or (c) who completed all of the coursework or its equivalent in the approved program attempted to complete all of the tests required for licensure.
 3. If the license holder under sub. (2) (a) or (c) does not meet the requirements under subd. 1. or 2., the district administrator of the employing school district submits to the state superintendent a written plan that demonstrates, by clear and convincing evidence, that the license holder will complete all of the licensure requirements.
- (b) A license under sub. (2) (d) may be renewed if the applicant continues to meet the requirements under sub. (2) (d) and has not yet become eligible for tier II licensure under s. PI 34.040.
- (c) A license under sub. (2) (e) may be renewed if the applicant continues to meet the requirements under sub. (2) (e) and has not yet become eligible for tier II licensure under s. PI 34.040.

SECTION 5. PI 34.040 (2) (intro.) is amended to read:

PI 34.040 (2) ELIGIBILITY. The state superintendent may issue a tier II license under this section to an ~~application~~applicant who meets one of the following:

SECTION 6. PI 34.040 (2) (k) to (m) are created to read:

PI 34.040 (2) (k) *Clinically-trained social worker*. The applicant meets all of the following:

1. Holds a master's degree in social work.
2. Has fulfilled the duties as a school social worker for at least one year in a Wisconsin school while holding a license issued under s. PI 34.028.
3. Has successfully completed training in all of the following:
 - a. Developmental psychopathology.
 - b. Assessment of children.
 - c. Child abuse and neglect.
 - d. Working with children and families.
 - e. School social work practice.
 - f. Children with disabilities.
4. Has met the requirements under s. 118.19 (8) and (9), Stats.

(L) *Licensed school nurse*. The applicant for licensed school nurse holds valid national certification as a school nurse by the National Board for Certification of School Nurses.

(m) School psychologist. The applicant for school psychologist holds a valid credential as a Nationally Certified School Psychologist.

SECTION 7. PI 34.060 (title) and (1) are amended to read:

PI 34.060 ~~School~~Licensed school nurse.

PI 34.060 (1) AUTHORIZATION. A license issued under this section authorizes an individual to work as a licensed school nurse and use the title Licensed School Nurse and credentials LSN. A license issued under this section is not required for an individual to be a school nurse if the individual has a ~~nursing~~registered nurse license issued by the board of nursing.

SECTION 8. PI 34.061 (2) (c) is repealed.

SECTION 9. 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 _____, 2021

Carolyn Stanford Taylor
State Superintendent