

Clearinghouse Rule 21-082

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

The scope statement for this rule, SS 073-21, was published in Register No. 788B, on August 30, 2021, and approved by State Superintendent Jill Underly on September 14, 2021.

The State Superintendent of Public Instruction hereby proposes an order to repeal s. PI 36.04 (3) (f); to amend s. PI 36.04 (3) (d) and (e), 36.06 (1) (b), and 36.13 (4); and to create s. PI 36.09 (5), relating to general updates to open enrollment procedures.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 118.51, Stats.

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

Explanation of agency authority:

The department is required to implement and administer the payment of state aid pursuant to s. 118.51, 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, the proposed rule is necessary for the Department to effectively implement and administer the open enrollment program under s. 118.51, Stats.

Related statute or rule:

N/A

Plain language analysis:

The objective of the proposed rule is to make the following updates that are necessary for improving the administration of ch. PI 36 of the Wisconsin Administrative Code:

- 1) Clarifying s. PI 36.04 (3) (d) and (e) to specify that, in cases where it would ordinarily be required to guarantee approval of a student’s open enrollment application, the nonresident school district is not required to do so if the special education services that student requires are not available in the nonresident school district.
- 2) Clarifying s. PI 36.06 (1) (b) to specify that a parent is prohibited from submitting multiple applications to the same nonresident school district for the same school year if their initial application has been denied.
- 3) Conforming s. PI 36.06 (1) (b) to recent changes in statute under 2021 Wisconsin Act 19 and specifying that applications to virtual charter schools do not count toward the 3 nonresident school district maximum.
- 4) Creating s. PI 36.09 (5) to specify that school attendance enforcement responsibility goes back to the resident school district after a pupil’s open enrollment is terminated.
- 5) Clarifying s. PI 36.13 (4) to specify that open enrollment transportation reimbursement claims submitted after July 15 of the school year in which transportation was provided will not be paid.

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:

The Department held a preliminary public hearing and comment period on September 10, 2021 and did not receive any comments on the statement of scope for the proposed rule.

Comparison with rules in adjacent states:

- **Illinois:** Illinois rules and statutes are silent as it relates to procedures for transferring pupils via interdistrict open enrollment.
- **Iowa:** Under Iowa Admin. Code r. 281-17.3, on or before March 1 of the school year preceding the school year for which open enrollment is requested, a parent or guardian shall formally notify both the district of residence and the receiving district of the request for open enrollment. The request for open enrollment shall be made on forms provided by the department of education. Failure by the parent to send the form to the resident district and receiving district by the deadline may cause the application to be considered untimely. The parent or guardian is required to indicate on the form if the request is for a pupil requiring special education, as provided by Iowa Code chapter 256B. The forms for open enrollment application are available from each public school district and area education agency and from the state department of education. Further, under Iowa Admin. Code r. 281-17.10, open enrollment options shall be made available for pupils at no instructional cost to their parents or guardians. Open enrollment pupils shall be considered enrolled resident pupils in the resident district and shall be included in the certified enrollment count of that district for the purposes of generating school foundation aid.
- **Michigan:** Michigan rules are silent as it relates to procedures for transferring pupils via interdistrict open enrollment. However, Mich. Comp. Laws Ann. § 388.1705 is the statute governing the procedures for counting nonresident pupils in membership and applications for enrollment by nonresident pupils.
- **Minnesota:** Minnesota rules are silent as it relates to procedures for transferring pupils via interdistrict open enrollment. However, Minn. Stat. § 124D.03 is the statute governing the enrollment options program which enables any pupil to attend a school or program in a district in which the pupil does not reside.

Summary of factual data and analytical methodologies:

The open enrollment program permits K-12 students to attend a public school in a school district other than the district in which they reside (“nonresident school district”). Before a student may open enroll into a nonresident school district, the student must apply to the district the student wishes to attend. The department promulgated ch. PI 36 of the Wisconsin Administrative Code to implement this program and the last major update to the chapter was in September 2014. Since then, the department has identified a number of revisions which are necessary to clarify existing rule and improve the rule’s implementation of the open enrollment program. These revisions include minor updates which do the following: specifying that a student’s open enrollment application does not need to be guaranteed approval if special education services are not available in the nonresident school district; specifying that a parent is prohibited from submitting multiple applications to the same nonresident school district for the same school year if their initial application has been denied; specifying that school attendance enforcement responsibility goes back to the resident school district after a pupil’s open enrollment is terminated; and specifying that open enrollment transportation reimbursement claims submitted after July 15 will not be paid.

Further, current law prohibits a student from applying to more than three nonresident school districts in a single school year. 2021 Wisconsin Act 19 provides an exception to the statutes and specifies that applications to attend a virtual charter school in a nonresident school district are not counted toward the three-application limit. As such, a student may apply to up to three nonresident school districts for the purpose of attending a traditional school, but to an unlimited number of nonresident school districts for the purpose of attending a virtual charter school. Therefore, the proposed rule also conforms ch. PI 36 to these changes in statute to specify that applications to virtual charter schools do not count toward the 3 nonresident school district maximum.

Without these rule changes, the Department will be required to implement rules governing the open enrollment program as they currently exist in PI 36; however, portions of rule will be in conflict with statute.

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. Section PI 36.04 (3) (d) and (e) are amended to read:

PI 36.04 (3) (d) ~~Except as provided under par. (f), if~~ the nonresident school board guarantees approval to currently-attending pupils, the nonresident school board shall guarantee approval to all currently-attending pupils unless the pupil is a child with a disability and the pupil's special education or related services are not available in the nonresident district.

(e) ~~Except as provided under par. (f), if~~ the nonresident school board guarantees approval to siblings of currently-attending pupils, the nonresident school board shall guarantee approval to all siblings of currently-attending pupils unless the sibling is a child with a disability and the sibling's special education or related services are not available in the nonresident district.

SECTION 2. Section PI 36.04 (3) (f) is repealed.

SECTION 3. Section PI 36.06 (1) (b) is amended to read:

PI 36.06 (1) (b) The parent shall submit a separate application to the board of each nonresident school district to which the pupil is applying. The parent may submit applications, including alternative applications, to no more than 3 nonresident school boards for any pupil in any school year. The parent is prohibited from submitting more than one application for any pupil to the same nonresident school board for the same school year if the parent's initial application has been denied.

Pursuant to s. 118.51 (3) (a) 1d. and 118.51 (3m) (a), Stats., applications to virtual charter schools do not count toward the three nonresident school board limit under this paragraph.

SECTION 4. Section PI 36.09 (5) is created to read:

PI 36.09 (5) RESPONSIBILITY FOR SCHOOL ATTENDANCE ENFORCEMENT AFTER TERMINATION. Upon the termination of a pupil's open enrollment, the responsibility for school attendance enforcement under s. 118.16, Stats., returns to the resident school district.

SECTION 5. Section PI 36.13 (4) is amended to read:

PI 36.13 (4) ~~Payment may be made for claims~~ Claims submitted after July 15 ~~if funds remain in the appropriation will not be paid.~~

SECTION 6. 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

Jill K. Underly, PhD
State Superintendent