

Wisconsin Department of Public Instruction
**STATEMENT OF SCOPE
FOR ADMINISTRATIVE RULES**

GENERAL INFORMATION

Rule No.: PI 13

Relating to: English Learner Designations under ESSA

Rule Type:

Permanent and Emergency

NARRATIVE

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*, 368 Wis.2d 444.

1. Finding/nature of the emergency (Emergency Rule only).

The Every Student Succeeds Act of 2015 (ESSA) requires the Department to establish and submit as part of its state plan standardized entry and exit procedures for designating and serving English Learners (ELs) for SY 2018-19 and beyond. All students who may be ELs must be assessed for such status within 30 days of enrollment. ESEA requires state education agencies to establish these procedures and to determine EL designation based on English language proficiency that takes into account the different proficiency levels of ELs and aligns with academic assessments. Such procedures will require periodic reevaluation. An emergency rule change is needed to implement uniform policies on EL designation for 2018-19, and to conduct regular and ongoing evaluations and adjustments to uniform entry and exit criteria, language assessment and screening processes, program support and evaluation, and monitoring requirements related to EL designation. Without an emergency rule, the Department will be unable to comply with the ESSA requirements before a permanent rule can go into effect.

2. A description of the objective of the proposed rule.

The proposed rule amends ch. PI 13 of the DPI Administrative Code to implement designation for English Learner (EL) pupils as a result of new requirements established in ESSA.

3. A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.

On January 16, 2018, the Department received federal approval of its Consolidated State Plan to implement the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act. 20 USC 6823(b)(2) requires Wisconsin to establish uniform procedures for determining a student's EL status. ESSA also requires Department oversight of schools' effective language instruction education (LIEP) programs. EL designation impacts identification, accountability, assessment, services, accommodations, parent communication, data collection, and monitoring of potential ELs, ELs, and former ELs. With the reauthorization of ESEA, The Department must determine how to establish such procedures. No policy alternatives are available as the Department is required by statute to accept federal funds and must promulgate rules necessary to accept those funds.

Wisconsin's approved Consolidated State Plan may be viewed at the following link:
<https://dpi.wi.gov/sites/default/files/imce/esea/pdf/1%2012%2018%20WI%20Final%20ESSA%20Plan%20Submission.pdf>

4. The statutory authority for the proposed rule. Pursuant to s. 115.28 (9), Stats., the State Superintendent has a duty to accept federal funds for any function over which the State Superintendent has jurisdiction, and act as the agent for the receipt and disbursement of such funds. Under 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 citations omitted).

Federal funds appropriated for the State under the ESEA as amended by the ESSA are, in part, conditioned upon compliance with 20 USC 6823(b)(2). This section requires the Department to establish and submit as part of its state plan standardized entry and exit procedures for designating and serving EL pupils for SY 2018-19 and beyond. As such, a rule to implement ESSA-compliant designations for EL pupils is necessary for the receipt and disbursement of federal funds under the ESEA.

5. An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule. The amount of time needed for rule development by Department staff and the amount of other resources necessary are minimal.

6. A description of all of the entities that will be affected by the proposed rule. The proposed rule would impact local education agencies.

7. A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule. None.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses). The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

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