

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

**GENERAL INFORMATION**

Rule No.: PI 36  
Relating to: Restoring Part Time Open Enrollment Rules  
Rule Type: Emergency and permanent

**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).  
2017 Wisconsin Act 59 restored the part time open enrollment program under s. 118.52, Stats., to allow public school pupils to attend a public school in a nonresident school district to take a course offered by the nonresident school district. The part time open enrollment program will begin in the 2018-19 school year. An emergency rule is necessary in order for the Department to administer the program in the 2018-19 school year while the permanent rule completes the promulgation process.
2. A description of the objective of the proposed rule.  
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.
3. A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.  
2013 Wisconsin Act 20, the 2013-15 biennial budget, made several changes to the statutes relating to open enrollment, including eliminating the part time open enrollment program. The Department promulgated rules, Clearinghouse Rule 16-015, to eliminate Subchapter V of Chapter PI 36, which governed part time open enrollment, since it no longer had the statutory authority to implement the program. However, 2017 Wisconsin Act 59 restored the part time open enrollment program. As a result, the Department proposes to promulgate a new rule to restore Subchapter V relating to part time open enrollment. Without a rule, the Department may be prevented from efficiently implementing the program and rule and statute will not be consistent.
4. The statutory authority for the proposed rule.  
The Department is required to implement and administer the payment of state aid pursuant to s. 118.52, 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 citations omitted). The proposed rule is necessary for the Department to effectively implement and administer the part time open enrollment program under s. 118.52, Stats.

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 indeterminate.

6. A description of all of the entities that will be affected by the proposed rule.  
The proposed rule could impact public schools, parents and pupils.

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.  
N/A

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.

Contact information  
Carl Bryan  
Policy and Budget Team  
(608) 267-9127  
adminrules@dpi.wi.gov