

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

**GENERAL INFORMATION**

Rule No.: PI 36

Relating to: Changes to alternative application procedures

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*, 2016 WI 38, 368 Wis. 2d 444.

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

An emergency rule is needed in advance of school boards making open enrollment space determinations at their January 2019 meetings, as required in s. 118.41 (5) (a) 1., Stats. The emergency rules will guide procedures for school boards to approve alternative applications under the program until a permanent rule can complete the promulgation process.

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

The objective of the proposed rule is to clarify PI 36 of the Wisconsin Administrative Code, specifically as it relates to alternative applications under the open enrollment program. The proposed rule will allow school districts to approve alternative applications for the current school year from January to July in grades or special education services that do not have space limitations for the following school year.

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

2011 Wisconsin Act 114 made changes to the statutes governing the open enrollment program, specifically by allowing an alternative application process under the program, as long as the pupil applying for open enrollment under an alternative application satisfies certain criteria. The Department has since promulgated rules, effective as of September 2014, which included procedures relating to the handling of alternative applications. Since implementation, the Department has identified points of clarification in the rule as it relates to those procedures. Currently, under s. PI 36.04 (7), school districts are prohibited from approving any alternative applications from their January board meeting to July if their school board has limited any grades or special education services for the following school year. The Department proposes a change that will allow school districts to approve alternative applications for the current school year from January to July in grades or special education services that do not have space limitations for the following school year. As such, the proposed change will make this section of the rule consistent with the provision that allows nonresident school districts to approve alternative applications for the current school year from July 1 to the 3rd Friday in September pupil count date in the grades or

special education services that do not have space limitations established by the school board for the following school year. Without a rule change, the Department will be required to implement rules governing the open enrollment program as they currently exist in PI 36, and school boards will continue to be required to approve alternative applications in the manner prescribed in PI 36.

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 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.

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

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