



GENERAL INFORMATION		
Rule No. PI 36	Relating to Financial statements for special education services under open enrollment	Rule Type Permanent and Emergency

SIGNATURE		
State Superintendent Review <input type="checkbox"/> Approved. <i>Begin Drafting Rule</i> <input type="checkbox"/> Disapproved. <i>Reason for Disapproval</i>	State Superintendent Signature ➤	Date Signed Mo./Day/Yr.

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).

The financial statement is to be made available to nonresident districts at the end of the 2018-19 school year, in order to impact open enrollment transfer payments for the 2019-20 school year. Thus, the Department requires an emergency rule to comply with this timeline.

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

The objective of the emergency and proposed permanent rule under this statement of scope will describe the eligible special education costs that may be reported on the financial statement, as well as provide timelines for the submission of the financial statement to the department.

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

2017 Wisconsin Act 59 (the 2017-19 biennial budget) made several changes related to open enrollment. Starting in the 2019-20 school year, for pupils who are open enrolled for the second or subsequent year, the open enrollment payment could be either the per pupil payment amount under the indexing method or the actual costs to the nonresident district, up to \$30,000, if the non resident school district had submitted to the Department a financial statement indicating the actual cost to the school district of providing a free and appropriate education to the pupil in the previous school year. Under these changes, districts that wish to use the actual cost option must submit a financial statement to the Department by the end of the 2018-19 school year. As such, a rule is needed to specify components of the open enrollment financial statement that nonresident districts can use to submit their information. 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 may be faced with unclear guidance around the financial reporting requirements for special education services under the open enrollment program.

4. The statutory authority for the proposed rule.

The Department is required to implement and administer the payment of state aid pursuant to s. 118.51, 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.

NARRATIVE (cont'd)

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.
