

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ADOPTING EMERGENCY RULES**

The scope statement for this rule, SS 127-19, was published in Register No. 768A4, on December 23, 2019, and approved by State Superintendent Carolyn Stanford Taylor on January 6, 2020.

The State Superintendent of Public Instruction hereby adopts an order to create s. PI 34.021 (1) (f), relating to emergency changes to PI 34 as a result of 2019 Wisconsin Act 44.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 115.28 (7) (a) and (c), Stats.

Statutory authority: s. 115.28 (7) (a) and (c), Stats.

Explanation of agency authority:

The state superintendent has authority to make rules establishing standards of attainment and procedures for the examination and licensing of teachers generally under s. 115.28 (7) (a), Stats.:

115.28 General duties. The state superintendent shall:

(7) Licensing of teachers.

(a) License all teachers for the public schools of the state; make rules establishing standards of attainment and procedures for the examination and licensing of teachers within the limits prescribed in ss. 118.19 (2) and (3), 118.191, 118.192, 118.193, 118.194, and 118.195; prescribe by rule standards, requirements, and procedures for the approval of teacher preparatory programs leading to licensure, including a requirement that, beginning on July 1, 2012, and annually thereafter, each teacher preparatory program located in this state shall submit to the department a list of individuals who have completed the program and who have been recommended by the program for licensure under this subsection, together with each individual's date of program completion, from each term or semester of the program's most recently completed academic year; file in the state superintendent's office all papers relating to state teachers' licenses; and register each such license.

Additionally, the state superintendent has the authority to license and make rules for the examination and licensing of persons employed to provide publicly funded special education and related services under s. 115.28 (7) (c), Stats.:

115.28 General duties. The state superintendent shall:

(7) Licensing of teachers.

(c) Subject to s. 118.19 (4m), license and make rules for the examination and licensing of persons, including teachers, employed to provide publicly funded special education and related services, as those terms are defined in s. 115.76 (14) and (15).

Related statute or rule:

Clearinghouse Rule 20-005, relating to changes to PI 34 as a result of 2019 Wisconsin Act 44.

Plain language analysis:

This emergency rule seeks to implement provisions under Clearinghouse Rule 20-005, which is pending at the filing of this rule. The emergency rule makes changes to ch. PI 34 to conform the rule to changes in statute as a result of 2019 Wisconsin Act 44, including rules around what constitutes satisfactory completion of a course of study that a special education teacher may complete as an alternative to the Foundations of Reading Test (FORT), as necessitated by the coronavirus disease ("COVID-19") emergency.

Summary of, and comparison with, existing or proposed federal regulations:

Section 300.156 of the Individuals with Disabilities Education Act requires state education agencies to establish and maintain qualifications to ensure that special education personnel are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. However, because education in the United States is typically governed by each state and local government, the Act does not address how states administer the licensure of special education teachers.

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 January 3, 2020, and received comments on the statement of scope for this rule. A brief summary of comments and the department's response to those comments are as follows:

- Some respondents requested consideration for changes to the rule which do not lower the bar or create ambiguity for special education teachers seeking alternatives to the FORT exam as a pathway to licensure. They believe the rules should be specific about the parameters of study, including content, assessment, and expert coaching that would take place in lieu of the FORT and that the rules should be uniform across the state regardless of the institution that designs or delivers the course of study. Further, they advocate for a course of study modeled on programs with demonstrated success in teaching foundational knowledge and skills and developed in consultation with higher education who have created courses based on reading science. They further believe that since the FORT and the course of study will be alternative ways of ensuring compliance with federal law requiring special education teachers to be highly qualified, an individual successfully completing the course of study needs to be prepared to demonstrate the same knowledge and skills to the same depth as that of a teacher earning a passing score on the FORT.

Agency Response: The comments were forwarded to program staff for their consideration.

- One respondent questioned the utility of requiring a set cut score on the FORT as a part of teacher certification in Wisconsin. Although the FORT and other educator performance assessments serve a purpose in teacher preparation, the addition of such assessments have created additional anxiety and financial burdens on students working toward teacher certification. The respondent requested relaxing the requirements around standardized testing and permit school districts to find candidates with scores according to their own needs without the state necessarily imposing a required cut score as a condition for teacher licensure.

Agency Response: The request is outside the scope of the proposed rule. However, the comments were forwarded to program staff for their consideration.

Comparison with rules in adjacent states:

No states adjacent to Wisconsin currently require the Foundations of Reading Test as a condition for obtaining teacher licensure.

Summary of factual data and analytical methodologies:

2019 Wisconsin Act 44 creates an alternative to the requirement that a candidate for special education licensure must achieve a passing score to pass the FORT. Under the Act, a person may instead complete a course of study that satisfies the following requirements: 1) the course of study provides rigorous instruction in the teaching of phonemic awareness,

phonics, vocabulary, reading comprehension and fluency; 2) a student in the course receives feedback and coaching from an individual who is an expert of reading instruction; and 3) a student in the course of study demonstrates competence in phonetic awareness, phonics, vocabulary, reading comprehension, and fluency by providing a portfolio of work. The department must waive the requirement to pass the FORT if a candidate for special education licensure demonstrates to the satisfaction of the agency that he or she successfully completed such a course of study.

Clearinghouse Rule 20-005, relating to changes to PI 34 as a result of 2019 Wisconsin Act 44, was submitted to the chief clerks of the legislature for referral to the appropriate standing committees for review and is currently pending at the time of the filing of this emergency rule. Clearinghouse Rule 20-005 seeks to conform ch. PI 34 of the Wisconsin Administrative Code to the changes in statute as a result of 2019 Act 44, which includes rules around what constitutes satisfactory completion of a course of study that a special education teacher may complete as an alternative to the FORT.

The proposed permanent rule provides two options for candidates for special education licensure to demonstrate knowledge of reading, either by earning a passing score on the FORT or satisfactory completion of a course of study. Since the filing of the permanent rule, COVID-19 has resulted in the closing of testing centers and teacher candidates are unable to take the FORT. The option to assess reading by completing a course of study is therefore needed prior to June 30 in order for teaching candidates to meet state and federal law requirements to obtain special education licensure. The permanent rule will not be in effect before that time. The promulgation of emergency rules will ensure that the issuance of teaching licenses remains consistent with the changes in statute as a result of 2019 Act 44, while the associated permanent rule completes the promulgation process, as well as provide certainty for candidates for special education licensure during the COVID-19 emergency. Absent a rule change, the department would be required to implement PI 34 as the rules currently exist, and candidates for special education licensure would not have any options to obtain their license.

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.

SECTION 1. PI 34.021 (1) (f) is created to read:

PI 34.021 (1) (f) Reading. For candidates for special education licensure, the assessment of reading shall be demonstrated by the student meeting one of the following requirements:

1. Earning a passing score on the examination required under s. 118.19 (14) (a), Stats.
2. Completing a course of study under s. 118.19 (14) (b), Stats., that includes the following:
 - a. Instruction in the teaching of phonemic awareness, phonics, vocabulary, reading comprehension, and fluency.
 - b. Feedback and coaching from an expert of reading instruction. In this subdivision, an expert of reading instruction is an individual employed by a school district or an approved program with a master's degree or higher in reading, literacy, curriculum and instruction with a concentration in literacy, or special education with a concentration in literacy, or an individual who holds a reading specialist license under s. PI 34.070.
 - c. A portfolio of work that demonstrates competence in phonemic awareness, phonics, vocabulary, reading comprehension, and fluency.

SECTION 2. FINDING OF EMERGENCY

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

2019 Wisconsin Act 44 made changes to the statutes governing the issuance of teaching licenses. The department is required by statute to promulgate rules in order to administer the licensure of all educators in the state and provide an alternative to the requirement that a candidate special education licensure must achieve a passing score to pass the FORT. Many testing centers that would otherwise administer the FORT have closed due to COVID-19. Unless the rule is modified to reflect changes in the statute as a result of 2019 Act 44, the department may be prevented from efficiently issuing teaching licenses and candidates for special education licensure would not have an option to obtain their license. The promulgation of emergency rules will ensure that the issuance of teaching licenses remains consistent with the changes in statute as a result of 2019 Act 44, while the associated permanent rule completes the promulgation process, as well as provide certainty for candidates for special education licensure during the COVID-19 emergency.

SECTION 3. EFFECTIVE DATE:

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Dated this 28th day of May, 2020



Carolyn Stanford Taylor
State Superintendent