

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

The scope statement for this rule, SS 019-20, was published in Register No. 772A2, on April 13, 2020, and approved by State Superintendent Carolyn Stanford Taylor on April 24, 2020.

The State Superintendent of Public Instruction hereby adopts an order to amend s. PI 17.03 (2) (d), relating to expanding virtual summer and interim session courses.

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**ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION**

**Statute interpreted:** s. 121.14, Stats.

**Statutory authority:** s. 121.14 (1) (a), Stats.

**Explanation of agency authority:**

The department is given rulemaking authority to establish criteria for summer and interim session classes under s. 121.14 (1) (a), Stats.:

**121.14 State aid for summer classes and interim session classes.**

**(1)**

**(a)** State aid shall be paid to each district or county children with disabilities education board for all of the following:

1. Subject to par. (b), those academic summer classes or laboratory periods that are for necessary academic purposes, as defined by the state superintendent by rule.

**Related statute or rule:** N/A

**Plain language analysis:**

The objective of the emergency rule is to expand the grade levels in which school districts and county children with disabilities education boards may receive state aid in providing virtual instruction during summer and interim session courses, as necessitated by the COVID-19 emergency.

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

N/A

**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 April 23, 2020, and received comments on the statement of scope for the proposed rule. A brief summary of comments and the Department's response to those comments are as follows:

- The respondents in favor of the emergency rule note the extensive amount of work that schools have been undertaking in trying to meet social, emotional, and academic needs of students through distance learning during the COVID-19 emergency. They believe that the emergency rule would go a long way in extending options to school districts seeking to offer summer learning opportunities for students in all grade levels. The emergency rule provides a safe and effective means to address learning loss and achievement gaps due to school closures, maintain

continuity in educational programming, and prepare students for when the next school year begins. This would be extremely helpful especially for school districts in the state that are experiencing higher concentrations of COVID-19 infections.

**Agency Response:** The Department agrees and forwarded these comments to program staff for consideration during the rulemaking process.

- A few respondents in favor of the emergency rule request consideration for expanding the emergency rule to permit school districts to receive state aid by providing virtual instruction for enrichment and credit-bearing courses, in addition to instruction that is necessary for academic purposes, during the summer and interim session. Amending the rule to include enrichment courses would provide additional supports for school districts trying to meet the social and emotional needs of students and their families.

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

- Some respondents request similar flexibility for school districts seeking to provide virtual instruction all year round in the event that a second wave of COVID-19 infections takes place.

**Agency Response:** The rule under consideration only permits school districts and county children with disabilities education boards to receive state aid for virtual instruction for additional grades for the period of time established for emergency rules by law. However, school districts are permitted under ch. PI 8 to schedule hours of direct instruction to include instructional programming offered through innovative instructional designs that apply to the entire school or grade level, which includes instructional programming aligned to school district standards and offered in a virtual setting.

- One respondent requested consideration for providing similar funding flexibilities for school districts that run a food service program for students and families in the summer.

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

- One respondent requested that this funding flexibility be extended to charter schools in addition to school districts and county children with disabilities education boards.

**Agency Response:** State statutes only permit state aid to be paid to school districts and county children with disabilities education board for those academic summer classes or laboratory periods that are for necessary academic purposes. Therefore, the request is outside the scope of the proposed rule.

- One respondent opposed to the emergency rule indicated opposition for the following reasons: 1) employing school boards may see the expansion of virtual learning in a summer school session as a method of requiring school employees to work beyond the 2019-20 school year potentially without additional compensation; 2) the scope statement appears to be in conflict with the waiver of instructional hours many districts have received or are currently pursuing; and 3) whether it's during the regular school year or in summer school, virtual learning is unproven and not equal to the full school experience students receive in their school building.

**Agency Response:** The emergency rule provides school boards with the flexibility to provide continuity of instruction during the COVID-19 emergency declaration. No changes are needed.

- One respondent opposed to the emergency rule voiced concerns about the continuation of distance learning into the summer and interim session if it is given to students that need more in-person support, such as children with ADHD and dyslexia. They argue that it is already difficult for students learning remotely during the emergency without regular IEP help.

**Agency Response:** The comment above is outside the scope of the emergency rule and does not inhibit school boards from implementing provisions of state or federal special education law or ensuring access to summer school opportunities. No changes are needed.

**Comparison with rules in adjacent states:**

Due to the national emergency declaration, it is not possible to determine whether adjacent states have implemented comparable rules relating to virtual instruction during the upcoming summer session at this time.

**Summary of factual data and analytical methodologies:**

PI 17 of the Wisconsin Administrative Code establishes criteria for summer and interim session classes receiving state aid, as authorized under s. 121.14, Stats. Pursuant to s. 121.14, Stats., a school district or county children with disabilities education board may count pupils for aid membership for those academic summer classes or laboratory periods that are necessary for academic purposes. Summer and interim session classes necessary for academic purposes include: 1) music programs, lessons, sectionals or clinics, if taught by a department-licensed teacher; 2) swimming instruction programs, if taught or directed by a department-licensed teacher at the site of the instruction; 3) instructional minutes, per pupil, per day, including field trips if accompanied by a department-licensed teacher and if all pupils have equal access to the field trips, regardless of their ability to pay; and 4) online classes offered to high school pupils and pupils in grades 7 and 8 that meet the requirements of s. 121.004 (8) (b), Stats., and s. PI 36.11 (1) and in which at least 8,100 minutes of direct instruction are required to earn one credit (to be prorated accordingly if fewer minutes of direct instruction are provided).

The department proposes to expand options for school districts and county children with disabilities education boards for which they may be able to receive state aid by providing virtual instruction during summer classes or laboratory periods. The emergency rule will amend PI 17 to include online virtual instruction taught to any grade level during summer classes or laboratory periods that are necessary for academic purposes. Without an emergency rule, students and schools will have fewer options in making up missed instruction due to COVID-19 and the department will be required to implement PI 17 as the rules currently exist.

**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](mailto: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](mailto: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.

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**SECTION 1. PI 17.03 (2) (d) is amended to read:**

**PI 17.03 (2) (d)** Online classes offered to ~~high school pupils and pupils in grades 7 and 8~~ that meet the requirements of s. 121.004 (8) (b) 1. and 2., Stats., and s. ~~PI 36.11 (1) and in which at least 8,100 minutes of direct instruction are required to earn one credit. If fewer minutes of direct instruction are provided the credit shall be prorated accordingly~~ if taught by a teacher licensed by the department or authorized to teach under s. 118.19 (1b) or (1c), Stats.

**SECTION 2. STATEMENT 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:

Emergency Order #1, which was published effective on March 18, 2020, ordered the closure of all public and private Wisconsin schools for the purposes of pupil instruction and extracurricular activities in order to suppress and control the spread of the infectious coronavirus disease (“COVID-19”). The proposed rule under this statement of scope will provide options for school districts and county children with disabilities education boards by allowing them to provide virtual instruction during summer and interim sessions in the event that school closures prevent students from meeting all academic requirements during the regular school year. However, a permanent rule will not be completed in time before the end of the school year. An emergency rule is therefore needed to ensure that schools may be able to use summer and interim sessions to provide virtual instruction as a means of making up instruction that was lost due to the emergency declaration.

**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 \_\_\_\_ day of \_\_\_\_\_, 2020

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Carolyn Stanford Taylor  
State Superintendent