

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

The scope statement for this rule, SS 146-20, was published in Register No. 779A1, on November 2, 2020, and approved by State Superintendent Carolyn Stanford Taylor on November 17, 2020.

The State Superintendent of Public Instruction hereby adopts an order to repeal s. PI 5.035 (1) (b) 2.; and to consolidate, renumber, and amend s. PI 5.035 (1) (b) and 1., relating to age waivers for general educational development tests.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 115.29 (4), Stats.

Statutory authority: s. 115.29 (4) (a), Stats.

Explanation of agency authority:

Under s. 115.29 (4) (a), Stats., the state superintendent may establish the standards by which high school graduation equivalency is determined, which may include a general educational development certificate of high school equivalency issued by an agency of the U.S. government:

(4) High school graduation equivalency.

(a) Grant a declaration of equivalency of high school graduation to an individual if the individual has successfully completed the civics test required under s. 118.33 (1m) (a) and if, in the state superintendent's judgment, the individual has presented satisfactory evidence of having completed a recognized high school course of study or its equivalent. The state superintendent may establish the standards by which high school graduation equivalency is determined. Such standards may consist of evidence of high school courses completed in high schools recognized by the proper authorities as accredited, results of examinations given by or at the request of the state superintendent, successful completion of correspondence study courses given by acceptable correspondence study schools, a general educational development certificate of high school equivalency issued by an agency of the U.S. government, course credits received in schools meeting the approval of the state superintendent, or other standards established by the state superintendent.

Related statute or rule:

N/A

Plain language analysis:

The proposed rule seeks to clarify the means in which the minimum age requirement may be waived for persons seeking a certificate of educational development by passing the general educational development (GED) test.

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

There are no comparable existing or proposed federal regulations intended to address the activities regulated by this emergency rule.

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 November 13, 2020, and did not receive any comments on the statement of scope for the proposed rule.

Comparison with rules in adjacent states:

Illinois: According to the Illinois Community College Board, an individual is eligible to take the GED test given they are 18 years of age or older, do not have a high school diploma or high school equivalency credential and is not currently enrolled in a secondary school, and is a resident of the state of Illinois. If an individual is 17 years old and has been enrolled in a public, private, or a home school setting in the last 12 months, they must present a withdrawal letter from the last school enrolled in before taking the GED tests. Withdrawal letters must be on school letterhead and signed by a school official, must include the candidate's full name and date of birth, and must include the formal withdrawal date or last date of attendance.

Iowa: Iowa does not currently offer the GED test.

Michigan: According to the Michigan Department of Health and Human Services, an individual who is at least 16 years of age and has been out of a regular school program for one calendar year are eligible to take the GED test. An individual under 18 years old but at least 16 years old who has not been out of school one calendar year must also meet one of the following: 1) qualifies for an under 18 age waiver to take the GED tests; 2) is enrolled in the Michigan Youth Challenge Program; 3) or is home schooled and the home school facility is registered with the Michigan Department of Education. However, an individual proves to a school district official, a parent or guardian, and a GED chief examiner that it is in the individual's best interest to take the test before the one year waiting requirement, the individual may be able to take it early.

Minnesota: According to the Minnesota Department of Education, an individual is eligible to take the GED test if they are 19 years old, do not already have a recognized and documented high school diploma, and are not currently enrolled in high school. However, if the individual is 17 or 18 years old and is not currently enrolled in high school, the individual may apply for an age waiver before testing.

Summary of factual data and analytical methodologies:

Chapter PI 5 of the Wisconsin Administrative Code contains the current standards by which high school equivalency may be determined in order to provide a credential to adults who did not graduate from high school, which includes the granting of a certificate of general educational development to persons who obtain passing scores on the GED test. Under the current rule, no person may take the GED test unless the person is at least 18 years and 6 months of age or the class with which the person entered grade 9 has graduated from high school with the exception of persons at least 17 years of age who: 1) are incarcerated in a correctional institution and has written recommendation of the person responsible of the educational program in the correctional institution; 2) the person is enrolled in a federal job corps center program and has the written recommendation to take the general educational development test from the person responsible for the educational program in the job corps center; and 3) the person provides written verification that he or she was excused from regular school attendance, is enrolled in an approved high school equivalency program, and has written permission to take the test from his or her parent or legal guardian. Also under the rule, a person at least 17 years of age who begins taking the GED test may take the final test no sooner than three weeks prior to the end of the semester in which the person turns 18 years of age or three weeks prior to the graduation date of the class in which the person entered grade 9.

Since the rules were written, the COVID-19 pandemic has rendered portions of PI 5 restrictive as it relates to persons taking the GED test. Many schools that serve affected students are requesting waivers from the minimum age requirements under the rule and cite concerns such as the closing of testing centers, longer wait lists, and disengaged students due to the wait times. This emergency rule will provide clarity in the way age waivers may be given to students seeking a high school credential by allowing individuals to take the GED test when they are ready and not have to wait until the end of the semester in which the individual turns 18 years of age. The emergency rule would ensure that students do not disengage while they are waiting to take the test under current age requirements. Without a rule change, the department will be required to implement ch. PI 5 as it is currently written and the minimum age requirement for pupils taking the GED test may not be waived.

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
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(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 5.035 (1) (b) and 1. are consolidated, renumbered PI 5.035 (1) (b), and amended to read:

PI 5.035 (1) (b) A person who meets the requirements under s. PI 5.03 (1) and (4) and who is at least 17 years of age may begin taking the general educational development tests except that the person may not take the final test ~~until~~unless he or she is ~~eligible as specified under subd. 2. and only if the person~~ is continuously enrolled and attending a program under a contracted arrangement between the local high school of residence and a TCS district or a community-based organization which leads to a high school equivalency diploma and meets the requirements under s. 118.15 (1) (c) 2., Stats.

SECTION 2. PI 5.035 (1) (b) 2. is repealed.

SECTION 3. 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:

Due to the novel coronavirus (“COVID-19”) pandemic, there is an increased concern about the number of students who are credit deficient or may become credit deficient and the demand for credit recovery. The COVID-19 pandemic also has left test centers and adult basic education programs that contract with school districts in an unpredictable situation due to testing centers allowing fewer students to test or closing altogether. This has resulted in wait lists and has created a challenge for students who were using general educational development (GED) tests to meet high school requirements. As such, the department is proposing an emergency rule that waives the minimum age requirement for taking the GED test and allows students to take the test when they are ready. An age waiver would allow students to complete the test and allow other students to move into the program.

SECTION 4. 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

Carolyn Stanford Taylor
State Superintendent