

Report From Agency

FINAL REPORT CLEARINGHOUSE RULE 06-098 CHAPTER PI 30 HIGH COST SPECIAL EDUCATION

Analysis by the Department of Public Instruction

Statute interpreted: s. 115.881, Stats.

Statutory authority: s. 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Section 115.881, Stats., is a new grant program created under 2005 Wisconsin Act 25, that provides additional special education aid for high nonadministrative costs.

Because this is a grant program, rules need to be in place so applicants know what criteria are being used in the awarding of funds.

Court decisions directly relevant: None.

Related statute or rule: None.

Plain language analysis:

The 2005-07 biennial budget, 2005 Wisconsin Act 25, appropriated \$3,500,000 in 2006-07 for a new grant program to provide funds to a school board, board of control of a cooperative educational service agency, county children with disabilities education board, or operator of a charter school established under s. 118.40 (2r), Stats., if the applicant incurred, in the previous school year, more than \$30,000 of nonadministrative costs for providing special education and related services to a child and those costs were not eligible for reimbursement under s. 115.88, 115.93, or 118.255, 20 USC 1400 et seq., or federal Medicaid.

Eligible applicants will be required to send the department the total nonadministrative costs incurred in the education of each pupil claimed. The department will then subtract from the reported total nonadministrative cost an average per pupil cost that was reimbursed to the applicants under the federal Individuals with Disabilities Education Act, state special education categorical aid, and federal Medicaid. The department will then multiply that amount that exceeds \$30,000 by .90. If funds are insufficient, the department may prorate.

A new rule chapter will be created to specify the grant application requirements and determine aidable costs for the program.

Summary of, and comparison with, existing or proposed federal regulations: Not applicable.

Comparison with rules in adjacent states:

Illinois, Minnesota, Iowa, and Michigan do not have administrative rules regarding high cost special education grant programs.

Summary of factual data and analytical methodologies:

Children with severe disabilities often need costly nursing services and assistive technology, expenses that are currently not eligible for reimbursement under the special education categorical aid appropriation. This issue has been identified for a number of years as a priority by school districts around the state.

In her State of Education address in September 2003, the State Superintendent announced her *Keeping the Promise* initiative, designating \$1.5 million in federal Individuals with Disabilities Education Act (IDEA) discretionary funding to Wisconsin schools for services to children with severe disabilities, specifically targeting direct services to educate children with high-cost special needs. Ultimately, a total of \$2 million was set aside for 2003-04.

Aidable costs under the program include all costs (except administration) related to educating a high-cost student with special educational needs. Costs reimbursed by IDEA flow-through funds, Medicaid and special education categorical aids are deducted. Reimbursement is then calculated at 90 percent of the amount by which the total cost of providing special education and related services to an individual child exceeds \$30,000 in the prior year.

In 2003-04, the first year of operation, 115 local education agencies (109 school districts, three CCDEBs and three CESAs) were approved for reimbursement. Eligible claims under the new program totaled \$3.4 million for 2003-04. Therefore, payments were prorated at approximately 59 percent. Claims are expected to rise significantly over the next few years.

Discretionary federal IDEA funding provided a means to get this critically needed aid program started in 2003-04 and 2004-05. State funding was requested in the department's 2005-07 biennial budget request and was granted through 2005 Wisconsin Act 25 to continue the program and provide adequate reimbursement to school districts for these costs.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: Not applicable.

Anticipated costs incurred by private sector: Not applicable.

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)

Stephanie Petska, Director, Special Education, 608/266-1781, stephanie.petska@dpi.state.wi.us

Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rules submitted by December 4, 2006, to Lori Slauson at lori.slauson@dpi.state.wi.us or the Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707, will be given the same consideration as testimony presented at the hearing.

Description of any forms:

PI 1570 Claim for High Cost Special Education Program.

A public hearing to consider the proposed rule was conducted by the department on November 28, 2006 in Madison. Persons were asked to register in favor, generally in favor (except for . . .), against, generally against (except for . . .), or for information only.

Madison Hearing, November 28, 2006

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Maxwell, Dawn	Hartford Union High School	X		
Overturf, Joe	Fort Atkinson School District	X		
Womock, Betty	Kettle Moraine School District	X		

The following persons submitted written testimony: None

Summary of public comments, the agency's response to those comments, and changes made as a result of those comments:

Comments – All testimony received supported the proposed rule.
Changes – None.

Changes made as a result of oral or written testimony: None.

Changes to the analysis or the fiscal estimate: None.

Responses to Clearinghouse Report:

2. Form, Style and Placement in Administrative Code:

a. Recommendation accepted, changes made.

5. Clarity, Grammar, Punctuation and Plainness:

a. The rule is written to reflect statutory intent. If taken literally, the current statutory language would not likely allow for any reimbursements as there are no school districts that had \$30,000 of special education costs that “were not eligible” for reimbursement under state or federal aids.

The department has had a “Keeping the Promise” initiative upon which these rules have been developed. Administering the program has not been problematic.

b. Further specificity in the rule is not necessary (see the response to 5. a.).

FINAL REGULATORY FLEXIBILITY ANALYSES

Summary of Final Regulatory Flexibility Analysis:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114(1)(a), Stats.

Summary of Comments:

No comments were reported.