

Clearinghouse Rule 17-053

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION REVISING PERMANENT RULES

The scope statement for this rule, SS 039-17, was published in Register No. 737A3, on May 15, 2017, and approved by State Superintendent Tony Evers on May 25, 2017. 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*, 368 Wis.2d 444.

The State Superintendent of Public Instruction hereby proposes to repeal ss. PI 18.05 (5), PI 20.01 (5) and (7), and PI 27.03 (3) (b) 1. and (5) (a); to renumber and amend ss. PI 27.03 (3) (b) 2.; to amend ch. PI 12 (title), ss. PI 12.01 (1) (intro.), (b), and (c), (2), (3), (4), (6) and (7), PI 18.05 (1) (intro.) and (3), PI 20.02, PI 20.03 (1), (2), and (Note), PI 20.04 (title), (1) (intro.) and (2), and PI 27.03 (1) and (3); and to create ss. PI 12.001, and PI 20.01 (3m) and (5); relating to technical corrections to rules governing the Wisconsin Education Services Program for the Deaf and Hard of Hearing and Wisconsin Center for the Blind and Visually Impaired, high school graduation standards, disposition of funds, and commencement of school term.

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: ss. 115.28 (30), 115.52 (2) and (6), 115.525 (2) and (6), 118.045 (3), and 118.33 (2) and (4), Stats.

Statutory authority: ss. 115.52 (2) and (6), 115.525 (2) and (6), 118.33 (2) and (4), and 227.11 (2) (a) (intro.), Stats.

Explanation of agency authority:

- **PI 12:** Under ss. 115.52 (6) and 115.525 (6), Stats., the Superintendent of Public Instruction may lease space at each of the programs' facilities that is not required by the program to any person if the State Superintendent determines that the use will not be inconsistent with the operation of the program. Under ss. 115.52 (2) and 115.525 (2), Stats., the Superintendent of Public Instruction is authorized by statute to appoint a director of the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, as well as a director of the Wisconsin Center for the Blind and Visually Impaired.

Further, under s. 227.11 (2) (a) (intro.), Stats., "Each 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." As such, a rule is required to effectively administer the criteria for the leasing of space in the facilities owned by the Wisconsin Educational Services Program for the Deaf and Hard of Hearing and the Wisconsin Center for the Blind and Visually Impaired as permitted under s. 115.52 (6) and 115.525 (6), Stats., and to appoint directors to the programs under ss. 115.52 (2) and 115.525 (2), Stats.

- **PI 18:** The Superintendent of Public Instruction has statutory authority to establish course requirements as criteria for graduation from high school, and procedures for reviewing and certifying compliance with those course requirements, under ss. 118.33 (2) and (4), Stats.
- **PI 20:** Under s. 227.11 (2) (a) (intro.), Stats., "Each 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." As such, a rule is required to effectively administer procedures for the handling of monies received by the Department in conjunction with gifts received for the benefit of students at the Wisconsin Educational Services Program for the Deaf and

Hard of Hearing and the Wisconsin Center for the Blind and Visually Impaired under s. 115.52 and 115.525, Stats., and for career and technical student organizations under s. 115.28 (30), Stats.

- **PI 27:** The Superintendent of Public Instruction has statutory authority to promulgate rules governing procedures for school boards to request that a school term commence prior to September 1, and provide the extraordinary reasons that allow the Department to approve such requests under s. 118.045 (3), Stats.

Related statute or rule: N/A

Plain language analysis:

As a result of the Assembly Education Committee's Red Tape Review of administrative rules, the Department issues the following rule changes:

- **PI 12:** The proposed rule makes technical changes to various terms used throughout PI 12 to align the rule with terminology provided in statute.
- **PI 18:** The proposed rule is a technical change that removes past dates and redundancies from rules governing submission of high school graduation standards under PI 18 of the Wisconsin Administrative Code.
- **PI 20:** The proposed rule makes technical changes to various terms used throughout PI 20 to align the rule with terminology provided in statute and in current practice.
- **PI 27:** The proposed rule is a technical change that removes past dates from rules governing the commencement of the school term under PI 27 of the Wisconsin Administrative Code.

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

Comparison with rules in adjacent states:

- **Educational Services Program for the Deaf and Hard of Hearing/Center for the Blind and Visually Impaired (PI 12):** Information concerning similar programs for pupils who are deaf and hard of hearing or visually impaired is found under:
 - Illinois: Illinois School Code 105 ILCS 5/14-11.02 authorizes the State Board of Education to develop and operate or contract for the operation of a service center for persons who are deaf-blind;
 - Iowa: Iowa Administrative Code 681.15.1-681.15.10 and 681.16.1-681.16.9 authorizes creation of the Iowa Braille and Sight Saving School and the Iowa School for the Deaf;
 - Michigan: Michigan Statutes Sections 393.51-393.69 and 393.101-393.111 authorizes creation of the Michigan School for the Deaf and the Michigan School for the Blind; and
 - Minnesota: Minnesota Statutes Section 125A.61-125A.73 authorize the Minnesota State Academy for the Deaf and the Minnesota State Academy for the Blind.
- **Graduation Requirements (PI 18):** Information concerning graduation requirements is found under:
 - Illinois: Illinois School Code 105 ILCS 5/27-22 provides that each pupil must complete four years of language arts, two years of writing intensive courses, three years of mathematics, two years of science, two years of social studies, and one year chosen from music, art, foreign language, or vocational education;
 - Iowa: Iowa Administrative Code 281.12.5(5) provides that each pupil must six units of English-language arts, five units of social studies, six units of mathematics, five units of science, one unit of health, one unit of physical education, three units of fine arts, four units of foreign language, and twelve units of vocational education;
 - Michigan: Michigan School Code Section 380.1278a provides that each pupil must complete at least four credits in English language arts, four credits in mathematics, three credits in social science, three credits of science, one credit in visual arts, performing arts or applied arts, one credit in a subject that includes both health and physical education, and two credits of foreign language; and

- Minnesota: Minnesota Statutes Section 120B.024 provides that each pupil must complete four credits of language arts, three credits of mathematics, an algebra I credit by the end of 8th grade, three credits of science, three and one-half credits of social studies, one credit of the arts, and a minimum of seven elective credits.
- **Disposition of Funds (PI 20):** Information concerning disposition of funds is as follows:
 - Illinois: Illinois School Code 105 ILCS 5/2-3.36 provides that the State Board of Education may accept and expend gifts, grants or legacies from any source for educational purposes if such purposes have been authorized in advance by resolution of the General Assembly;
 - Iowa: Iowa Code 256.9.7 provides that the Director of the Department of Education may accept grants and gifts on behalf of the Department;
 - Michigan: Michigan Statutes Section 388.1008 provides that the State Board of Education may take by gift, grant from federal or other sources, devise, bequest, or in any other lawful manner, property, money, pledges or promises to pay money for the purpose of carrying any of its powers and may, with the approval of the Legislature, use the same for the purposes for which they were donated; and
 - Minnesota: Minnesota Statutes Section 127A.08.5 provides that the Commissioner of Education may receive grants and gifts administered by agencies of the state and other government or nongovernment sources and expend such funds for the purpose for which it is granted.
- **Commencement of School Term (PI 27):** Information concerning the commencement of the school term is as follows:
 - Illinois: Illinois School Code 105 ILCS 5/10-19 provides that the commencement of the school term is to be prepared by local school boards;
 - Iowa: Iowa Code 279.10.1 provides that the commencement of the school term is not to begin before August 23, with certain exceptions;
 - Michigan: Michigan Statutes Section 380.1284B provides that the commencement of the school term is not to begin before Labor Day, with certain exceptions; and
 - Minnesota: Minnesota Statutes Section 120A.40 provides that the commencement of the school term is not to begin before Labor Day, with certain exceptions.

Summary of factual data and analytical methodologies:

PI 12: PI 12 was promulgated to provide criteria for the leasing of space in the facilities owned by the Wisconsin Educational Services Program for the Deaf and Hard of Hearing and the Wisconsin Center for the Blind and Visually Impaired, as permitted under ss. 115.52 (6) and 115.525 (6), Stats. Current statutes make use of the term “Wisconsin Educational Services Program for the Deaf and Hard of Hearing,” while current rule uses the abbreviated term “Wisconsin School for the Deaf.” Additionally, the rule makes use of the term “school” in reference to the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, which does not completely reflect its capacity as a “program” or “center” as provided in statute. Finally, ss. 115.52 (2) and 115.525 (2), Stats. provide that the individuals appointed by the State Superintendent serve as “directors” of both this program and the Wisconsin Center for the Blind and Visually Impaired, while current rule uses the term “superintendent” of each respective program. The proposed technical change aligns the terms provided in rule with the terms provided in statute. Without a rule change, the Department will continue to administer the rule as it exists in PI 12.

PI 18: PI 18 was promulgated to establish course requirements to meet Wisconsin graduation standards including procedures by which school boards will submit reports describing the board’s policies on high school graduation standards to the Department. Further, PI 18 establishes procedures by which those policies are certified by the board and reviewed by the State Superintendent, and by which equivalent policies are approved by the State Superintendent. PI 18 provides that by September 1, 1986, each board operating a high school shall submit to the State Superintendent, on forms provided by the Department, a report describing the board's high school graduation policies governing diplomas which shall be granted subsequent to September 1, 1988. Additionally, the rule makes redundant references to the review and approval of each high school graduation policy to ensure compliance with statutes and rule. The proposed technical change eliminates past dates and clarify the language governing the review and approval of high school graduation standards. Without a rule change, the Department will continue to administer the rule as it exists under PI 18.

PI 20: PI 20 was promulgated to determine how money should be handled and expended by the Department in conjunction with student activities and gifts received for the benefit of students at the Wisconsin Educational Services Program for the Deaf and Hard of Hearing, the Wisconsin Center for the Blind and Visually Impaired, and career and technical student organizations in the state. Current statutes make use of the term “Wisconsin Educational Services Program for the Deaf and Hard of Hearing,” while current rule uses the abbreviated term “Wisconsin School for the Deaf.” Further, the rule makes references to “public school vocational youth organizations,” which is an outdated term and should be replaced with “career and technical student organizations.” The terms for various career and technical student organizations are also defined and referred to in rule, which are also outdated and should be changed. The proposed technical change aligns the terms provided in rule with the terms provided in statute and in current practice. Without a rule change, the Department will continue to administer the rule as it exists under PI 20.

PI 27: PI 27 was promulgated to establish procedures for school boards to use in requesting that a school term commence prior to September 1, and also establishes criteria used for the Department in determining whether an extraordinary reason exists for granting such a request. Section PI 27.03 (1) provides that, beginning in the 2002-03 school year, no public school may commence a school term prior to September 1, and s. PI 27.03 (3) (a) provides that a school board may commence a school term prior to September 1, 2002, if it submits a written request to the Department and such a request is granted. Finally, s. PI 27.03 (5) (a) provides, as a reason for the Department to grant a school board’s request that a school term commence prior to September 1, that school calendars for the 2002-03 or 2003-04 school year were ratified prior to September 1, 2001. This provision applies to union high school districts and the school districts operating only elementary grades whose territory is included in the union high school district when one of these districts has a ratified calendar for the 2002-03 or 2003-04 school year. The proposed technical change eliminates past dates which are no longer relevant to the implementation of the rule. Without a rule change, the Department will continue to administer the rule as it exists in PI 27.

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)

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

As provided in s. 227.16 (2) (b), there is no requirement that a public hearing be held for this rule because the proposed rule brings an existing rule into conformity with a statute that has been changed.

SECTION 1. Chapter PI 12 (title) is amended to read:

Chapter PI 12
WISCONSIN SCHOOL EDUCATIONAL SERVICES PROGRAM FOR THE DEAF AND HARD OF HEARING AND
WISCONSIN CENTER FOR THE BLIND AND VISUALLY IMPAIRED

SECTION 2. PI 12.001 is created to read:

PI 12.001 Definitions. In this chapter:

(1) "Center" has the meaning given in s. 115.525 (1), Stats.

(2) "Program" has the meaning given in s. 115.52 (1), Stats.

SECTION 3. PI 12.01 (1) (intro.), (b), and (c), (2), (3), (4), (6), and (7) are amended to read:

PI 12.01 (1) The department of public instruction, as managing authority of the Wisconsin ~~school~~educational services program for the deaf and hard of hearing and the Wisconsin center for the blind and visually impaired buildings and facilities, may permit the same to be used by any governmental body or official, or any non-profit, fraternal, religious, or veterans' organization for the purpose of governmental business, public meetings for the free discussion of public questions, or for activities of a broad public purpose, if such use:

(b) Does not unduly burden the department of public instruction, the Wisconsin ~~school~~educational services program for the deaf and hard of hearing, or the Wisconsin center for the blind and visually impaired;

(c) Is not a hazard to the safety of the students of the ~~2-schools~~program or center, or the public, or state employees; nor detrimental to the buildings or facilities,

(2) The applicant for such use shall make a written request on a specified form to the ~~superintendent~~director of the respective ~~school~~program or center at least one week in advance of the anticipated utilization of the building or facility. In the event of a conflict of requests by 2 or more organizations, the respective ~~superintendent~~director of each ~~school~~the program or center shall have full discretion.

(3) The applicant for such use shall be liable to the state for any injury done to its property, and for any expense arising out of such use, and for such sum as the department of public instruction, the Wisconsin ~~school~~educational services program for the deaf and hard of hearing, or the Wisconsin center for the blind and visually impaired may charge for such use as provided in s. 16.845, Stats.

(4) The applicant may charge an admission fee only if approved by the department of public instruction, the Wisconsin ~~school~~educational services program for the deaf and hard of hearing, or the Wisconsin center for the blind and visually impaired, pursuant to any conditions as imposed by the department.

(6) The utilization of department of public instruction buildings and facilities at the Wisconsin ~~school~~educational services program for the deaf and hard of hearing and the Wisconsin center for the blind and visually impaired by an organization shall not imply endorsement, approval, or approbation by the state of Wisconsin or the department of public instruction, the Wisconsin ~~school~~educational services program for the deaf and hard of hearing, or the Wisconsin center for the blind and visually impaired, nor the extension of special privilege. Likewise, the refusal by the department of public instruction, the Wisconsin ~~school~~educational services program for the deaf and hard of hearing, or the Wisconsin center for the blind and visually impaired to permit use of a building or facility shall not be interpreted as disapproval or censure of any organization, but shall be for reasons as set forth in sub. (1) (a) through (e).

(7) The granting of permission to use a building or facility by the department of public instruction, the Wisconsin ~~school~~educational services program for the deaf and hard of hearing, or the Wisconsin center for the blind and visually impaired does not obligate said department or school to furnish the applicant any service or utilities, or render any support with personnel, equipment, or supplies. The department of public instruction, the Wisconsin ~~school~~educational services program for the deaf and hard of hearing, or the Wisconsin center for the blind and visually impaired may furnish such assistance, and may charge for any expense arising out of use of a building or facility. The department of public instruction, the Wisconsin ~~school~~educational services program for the deaf and hard of hearing, and the Wisconsin center for the blind and visually impaired reserve the right to inspect any equipment or apparatus brought in for a public meeting, event, or activity; and to limit or prohibit the use of such items which might affect the safety or the normal operation of the building or facility.

SECTION 4. PI 18.05 (1) (intro.) and (3) are amended to read:

PI 18.05 (1) ~~By September 1, 1986, each~~ Each board operating a high school shall submit to the state superintendent, on forms provided by the department, a report describing the board's high school graduation policies governing diplomas ~~which that shall be granted subsequent to September 1, 1988.~~ Such policies shall include all of the following:

(3) The board shall certify to the state superintendent that its high school graduation policy is in compliance with the requirements under s. 118.33 (1), Stats., and this chapter; or the board shall request approval of its high school graduation policy under sub. (5) as equivalent to the requirements under s. 118.33 (1), Stats. The state superintendent shall approve any board's high school graduation policy that is equivalent to the requirements under s. 118.33 (1), Stats.

SECTION 5. PI 18.05 (5) is repealed.

SECTION 6. PI 20.01 (5) and (7) are repealed.

SECTION 7. PI 20.01 (3m) and (4m) are created to read:

PI 20.01 (3m) "FCCLA" means family, careers, and community leaders of America.

(4m) "HOSA" means health occupations students of America.

SECTION 8. PI 20.02, 20.03 (1), (2), and (Note), 20.04 (title), (1) (intro.) and (2) are amended to read:

PI 20.02 Applicability and purpose. This chapter establishes procedures as authorized under s. 20.907 (5), Stats., for the handling of monies received and expended by the department in conjunction with student activities and gifts received for the benefit of students at the Wisconsin ~~school~~educational services program for the deaf and ~~hard of hearing-impaired~~, the Wisconsin center for the blind and visually impaired, and statewide ~~public school vocational youth~~career and technical student organizations including, but not limited to, DECA, FBLA, FCCLA, FFA, ~~FHA-HERO~~HOSA, and ~~VICA~~SkillsUSA.

PI 20.03 (1) The state superintendent may receive and expend funds incident to carrying out the activities of statewide ~~public school vocational youth~~career and technical student organizations including, but not limited to, DECA, FBLA, FCCLA, FFA, ~~FHA-HERO~~HOSA, and ~~VICA~~SkillsUSA.

(2) A separate checking account or accounts for funds described in sub. (1) shall be established by the director of the ~~bureau for vocational education~~career and technical education team in a public depository as defined under s. 34.01 (5), Stats., with accrued interest added to the account.

Note: The state superintendent's authority to administer the activities of ~~vocational youth organizations~~career and technical student organizations is derived from the ~~Vocational~~Carl D. Perkins Career and Technical Education Act at 20 USC 2341 (a)-(13)20 USC 2344(c)(4) and ~~under the federal regulations at 34 CFR 400.513.~~

PI 20.04 Wisconsin ~~school~~educational services program for the deaf and hard of hearing; Wisconsin center for the blind and visually impaired.

(1) The ~~superintendents~~directors of the Wisconsin ~~school~~educational services program for the deaf and hard of hearing and the Wisconsin center for the blind and visually impaired may receive and expend funds incident to the following activities:

(2) A separate checking account or accounts for funds described in sub. (1) shall be established by ~~each residential school superintendent~~the directors of the Wisconsin educational services program for the deaf and hard of hearing and the Wisconsin center for the blind and visually impaired in a public depository as defined under s. 34.01 (5), Stats., with accrued interest added to the account.

SECTION 9. PI 27.03 (1) and (3) (a) are amended to read:

PI 27.03 (1) Except as specified under subs. (2) and (3), ~~beginning in the 2002-2003 school year,~~ no public school may commence a school term until September 1.

...

(3) (a) A school board may commence a school term prior to September 1, 2002, if it submits a written request to the department under sub. (4) asking for an earlier school start date, and such request is granted by the department. The request shall be submitted ~~at the earliest possible time~~ annually by January 1 prior to the beginning of the school term.

SECTION 10. PI 27.03 (3) (b) 1. is repealed.

SECTION 11. PI 27.03 (3) (b) 2. is renumbered PI 27.03 (3) (b) and amended to read:

PI 27.03 (3) (b) If an extraordinary event occurs after the January 1 deadline, the school board shall submit the written request under ~~this paragraph~~ par. (a) at the earliest possible time prior to the beginning of the school term.

SECTION 12. PI 27.03 (5) (a) is repealed.

SECTION 13. EFFECTIVE DATE:

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

Dated this ____ day of _____, 2017

Tony Evers, PhD
State Superintendent