

Wisconsin Department of Public Instruction
**STATEMENT OF SCOPE
FOR ADMINISTRATIVE RULES**

GENERAL INFORMATION

Rule No.: PI 30

Relating to: Clarifying high cost special education aid

Rule type: Permanent and Emergency

NARRATIVE

1. Finding/nature of the emergency (Emergency Rule only).

Eligible agencies that provide special education and related services to a child require clarity with regard to submitting claims for funding under the high cost special education aid program. Claims are based on costs incurred in the previous school year and agencies will need to be aware of the information required to submit claims and the standards used by the Department to evaluate those claims. As such, an emergency rule is needed for the Department for implementation of the high cost special education aid program in the 2019-20 school year.

2. A description of the objective of the proposed rule.

The proposed rule seeks to provide clarity in determining costs for providing special education related services to a child for the purpose of receiving high cost special education aid. The areas in need of clarification are as follows: 1) determining nonadministrative costs for providing special education and related services to a child, distinct from such costs for other children; 2) determining how equipment and other capital costs are considered in the context of “the previous school year” as given in s. 115.881 (1), Stats.; 3) clarifying what is meant by “federal medicaid,” as given in s. 115.881 (1), Stats., for the purpose of determining claims under the program; and 4) determining how the \$30,000 threshold for special education costs is evaluated against the other funding sources listed in statute.

3. A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.

The high cost special education aid program provides partial reimbursement of certain special education costs for school districts, CESAs, CCDEBs, and operators of independent charter schools. Applicants are eligible for additional aid 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 the state special education and school age parents aid program, the federal Individual with Disabilities Education Act, or “federal medicaid.”

The funding available and number of claims submitted by eligible agencies has increased since the program was originally enacted and questions have arisen about eligible costs under s. 115.881, Stats., or PI 30. As such, a rule is needed to clarify statutory provisions governing the high cost special education aid program for the purposes of eligible agencies applying for and receiving the aid. Without a rule change, the Department will be required to administer PI 30 as it currently exists in rule, and eligible agencies may be faced with further ambiguity around administration of the program.

4. The statutory authority for the proposed rule.

The Department is required to implement and administer the payment of state aid pursuant to s. 115.881, Stats. Under s. 227.11 (2) (a) (intro.), Stats., “[e]ach 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.” See also, *Wisconsin Ass'n of State Prosecutors v. Wisconsin Employment Relations Comm'n*, 2018 WI 17, ¶ 42 (“statutory mandates are also statutory authorizations, and authorization of an act also authorizes a necessary predicate act.”) (internal quotation marks omitted). As such, a rule is required to administer criteria the high cost special education aid program under s. 115.881, Stats.

5. An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

The amount of time needed for rule development by Department staff and the amount of other resources necessary are minimal and could be absorbed by the Department.

6. A description of all of the entities that will be affected by the proposed rule.

The proposed rule could impact public schools and other eligible agencies that receive additional special education funding under s. 115.881, Stats.

7. A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses).

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

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