



GENERAL INFORMATION		
Rule No. PI 36	Relating to General updates to open enrollment procedures	Rule Type Permanent

SIGNATURE		
State Superintendent Review <input type="checkbox"/> Approved. <i>Begin Drafting Rule</i> <input type="checkbox"/> Disapproved. <i>Reason for Disapproval</i>	State Superintendent Signature ➤	Date Signed Mo./Day/Yr.

NARRATIVE

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

N/A

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

The objective of the proposed rule is to make the following updates that are necessary for improving the administration of ch. PI 36 of the Wisconsin Administrative Code:

- 1) Clarifying s. PI 36.04 (3) (f) to specify that a student’s open enrollment application does not need to be guaranteed approval only if special education services are not available in the nonresident school district.
- 2) Clarifying s. PI 36.06 (1) to specify that a parent is prohibited from submitting multiple applications to the same nonresident school district for the same school year if their initial application has been denied.
- 3) Conforming s. PI 36.06 (1) (b) to recent changes in statute under 2021 Wisconsin Act 19 and specifying that applications to virtual charter schools are exempt from the 3 nonresident school district maximum.
- 4) Clarifying s. PI 36.09 to specify that compulsory school attendance responsibility goes back to the resident school district after a pupil is withdrawn from open enrollment.
- 5) Clarifying s. PI 36.13 (4) to specify that open enrollment transportation reimbursement claims submitted after July 15 of the school year in which transportation was provided will not be paid.

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

The open enrollment program permits K-12 students to attend a public school in a school district other than the district in which they reside (“nonresident school district”). Before a student may open enroll into a nonresident school district, the student must apply to the district the student wishes to attend. The department promulgated ch. PI 36 of the Wisconsin Administrative Code to implement this program and the last major update to the chapter was in September 2014. Since then, the department has identified a number of revisions which are necessary to clarify existing rule and improve the rule’s implementation of the open enrollment program. These revisions include minor updates which do the following: specifying that a student’s open enrollment application does not need to be guaranteed approval only if special education services are not available in the nonresident school district; specifying that a parent is prohibited from submitting multiple

applications to the same nonresident school district for the same school year if their initial application has been denied; specifying that compulsory school attendance responsibility goes back to the resident school district after a pupil is withdrawn from open enrollment; and specifying that open enrollment transportation reimbursement claims submitted after July 15 of the school year in which transportation was provided will not be paid.

Further, current law prohibits a student from applying to more than three nonresident school districts in a single school year. 2021 Wisconsin Act 19 provides an exception to the statutes and specifies that applications to attend a virtual charter school in a nonresident school district are not counted toward the three-application limit. As such, a student may apply to up to three nonresident school districts for the purpose of attending a traditional school, but to an unlimited number of nonresident school districts for the purpose of attending a virtual charter school. Among the proposed changes described in this statement of scope, the proposed rule will conform ch. PI 36 to these changes in statute to specify that applications to virtual charter schools are exempt from the 3 nonresident school district maximum.

Without these rule changes, the Department will be required to implement rules governing the open enrollment program as they currently exist in PI 36; however, portions of rule will be in conflict with statute.

4. The statutory authority for the proposed rule.

The department is required to implement and administer the payment of state aid pursuant to s. 118.51, 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, the proposed rule is necessary for the Department to effectively implement and administer the open enrollment program under s. 118.51, 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 indeterminate.

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

The proposed rule could impact public schools, parents and pupils.

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
