

Clearinghouse Rule 22-005

ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION ADOPTING PERMANENT RULES

The scope statement for this rule, SS 103-21, was published in Register No. 791A4, on November 22, 2021, and approved by State Superintendent Jill K. Underly on December 9, 2021.

The State Superintendent of Public Instruction hereby adopts an order to repeal s. PI 34.047 (3) (m) and (4); to amend s. PI 34.040 (2) (j) 3., 34.047 (1) (intro.), 34.064, and 34.076 (2) (a) 7.; and to create s. PI 34.0475, relating to grade ranges for school administrators and speech-language pathologists.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: ss. 115.28 (7) (a) and (c), 115.76 (14) (a) 1., 118.19 (11) and (18), and 118.193 (3), Stats.

Statutory authority: ss. 115.28 (7) (a) and (c), 115.76 (14) (a) 1., 118.19 (11) and (18), 118.193 (3), and 227.11 (2) (a) (intro.), Stats.

Explanation of agency authority:

Under s. 115.28 (7) (a), Stats., the state superintendent is authorized to make rules establishing standards of attainment and procedures for licensing of educators in the state, including administrators:

115.28 General duties. The state superintendent shall:

(7) Licensing of teachers.

(a) License all teachers for the public schools of the state; make rules establishing standards of attainment and procedures for the examination and licensing of teachers within the limits prescribed in ss. 118.19 (2) and (3), 118.191, 118.1915, 118.192, 118.193, 118.194, 118.195, and 118.197; prescribe by rule standards, requirements, and procedures for the approval of teacher preparatory programs leading to licensure, including a requirement that, beginning on July 1, 2012, and annually thereafter, each teacher preparatory program located in this state shall submit to the department a list of individuals who have completed the program and who have been recommended by the program for licensure under this subsection, together with each individual's date of program completion, from each term or semester of the program's most recently completed academic year; file in the state superintendent's office all papers relating to state teachers' licenses; and register each such license.

Additionally, under s. 115.28 (7) (c), Stats., the state superintendent has the authority to license and make rules for the examination and licensing of persons, including teachers, employed to provide publicly funded special education and related services, including speech-language pathology services as provided under s. 115.76 (14) (a) 1., Stats.

Further, under s. 118.19 (11), Stats., the department may promulgate rules establishing requirements for licensure as a school principal. A school principal license shall authorize the individual to serve as a school principal for any grade level.

Finally, under s. 118.19 (18) and s. 118.193 (3), the department may issue school administrator licenses. 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 licensing of school administrators under s. 118.19 (18) and s. 118.193 (3), Stats.

Related statute or rule:

N/A

Plain language analysis:

The objective of the proposed rule is to make clarifications to the grade ranges in which school administrators and speech-language pathologists are permitted to work in a Wisconsin school.

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

Under Individuals with Disabilities Education Act, 20 U.S.C. s. 1412 (a) (1) (A) and 34 C.F.R. s. 300.101, public schools are required to serve students beginning at age three.

Further, section 300.34 (a) of the Individuals with Disabilities Education Act regulations governs speech-language pathology services with respect to educating a child who has a speech or language impairment. Under 34 C.F.R. s. 300.34 (c) (15), speech-language pathology services include the identification of children with speech or language impairments, diagnosis and appraisal of specific speech or language impairments, referral for medical or other professional attention necessary for the habilitation of speech or language impairments, provision of speech and language services for the habilitation or prevention of communicative impairments and counseling and guidance of parents, children, and teachers regarding speech and language impairments. However, because education in the United States is typically governed by each state and local government, the Act permits states to choose how speech-language pathologists are licensed to provide services to children with an individualized education plan.

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 December 3, 2021 and did not receive any comments on the statement of scope for the proposed rule.

Comparison with rules in adjacent states:

Pursuant to the Individuals with Disabilities Education Act, public schools in Wisconsin and all adjacent states are required to serve students beginning at age three.

Summary of factual data and analytical methodologies:

Chapter PI 34 of the Wisconsin Administrative Code contains the rules governing the licensure of school personnel, including school administrators, that are required to supervise and evaluate professional staff in kindergarten through grade 12. When ch. PI 34 was revised in August 2018, administrator licenses were written in error as K-12 licenses. Kindergarten is defined in ch. PI 34 as kindergarten for four and five-year-olds. Under federal law, public schools are required to serve students beginning at age three under the Individuals with Disabilities Education Act. School administrators serve all grades and may also, under state statutes, oversee early childhood or preschool programs. Further, preparation programs currently prepare administrators to serve all grade levels. The proposed rule would clarify licensed administrators are authorized to oversee students or children being served as part of the school's operations. Without a rule, the department would be required to implement ch. PI 34 as the rules currently exist, which could create confusion for applicants and licensees.

Additionally, ch. PI 34 of the Wisconsin Administrative Code also contains the rules governing the licensure of individuals who are authorized by the department to teach as a speech-language pathologist by holding one of the following: 1) a tier I, 1-year renewable license with stipulations; 2) a tier II, 3-year renewable license for individuals who are clinically trained; or 3) a tier II, 3-year renewable license for individuals who complete an approved educator preparation program. Speech-language pathologists are currently licensed under ch. PI 34 as a K-12 license. However, while kindergarten is defined in

rule to include four and five-year-old kindergarten, speech-language pathologists are required to serve three-year-olds under the Individuals with Disabilities Education Act if required for evaluation or provision of services. Further, existing provisions in rule that govern the licensure of individuals to obtain a license in speech-language pathology were not updated to recognize the pathway for clinically trained individuals to receive this license, which was promulgated on September 1, 2021 under Clearinghouse Rule 20-070. The proposed rule would clarify that speech-language pathologist licensees may teach students in any grade and clarifies the means in which individuals could receive a license in speech-language pathology in accordance with existing rule. Without a rule, the department would be required to implement ch. PI 34 as the rules currently exist, and confusion would exist around the ability of speech-language pathologists to serve three-year-olds or obtain licensure under the current rule.

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:

Comments should be submitted to Erin Fath, 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.

RULE TEXT

SECTION 1. PI 34.040 (2) (j) 3. is amended to read:

PI 34.040 (2) (j) 3. Has fulfilled the duties as a speech-language pathologist for at least one year in a Wisconsin school while holding a license issued under s. PI 34.028 (2) ~~(e)~~(d).

SECTION 2. PI 34.047 (1) (intro.) is amended to read:

PI 34.047 (1) ELIGIBILITY. ~~Except as provided in sub. (4), the~~The state superintendent may issue a kindergarten through grade 12 license under this section if the applicant meets all of the following requirements:

SECTION 3. PI 34.047 (3) (m) and (4) are repealed.

SECTION 4. PI 34.0475 is created to read:

PI 34.0475 Speech-language pathology.

(1) AUTHORIZATION. A license under this section authorizes an individual to teach as a speech-language pathologist in any grade.

(2) ELIGIBILITY. The state superintendent may issue a license to teach as a speech-language pathologist under this section if the applicant does one of the following:

(a) The applicant meets all of the following requirements:

1. The applicant completed an approved program in speech-language pathology.

2. The applicant successfully met the assessment requirements as described in s. PI 34.021 (1) (c) and (d).

(b) The applicant meets the requirements in s. PI 34.028 (2) (d).

(c) The applicant meets the requirements in s. PI 34.040 (2) (j).

SECTION 5. PI 34.064 is amended to read:

PI 34.064 Applicability. The state superintendent shall assign a license area under this subchapter to each administrative license issued under subch. VIII. A license under ss. PI 34.066 to 34.071 is required to supervise and evaluate professional staff in ~~kindergarten~~prekindergarten through grade 12.

SECTION 6. PI 34.076 (2) (a) 7. is amended to read:

PI 34.076 (2) (a) 7. Speech-language pathology under s. ~~PI 34.047 (3) (m) or (4)~~PI 34.0475.

SECTION 7. 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.