

ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION ADOPTING EMERGENCY RULES

The scope statement for this rule, SS 108-18, was published in Register No. 745B, on October 29, 2018, and approved by State Superintendent Tony Evers on November 26, 2018. 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*, 2016 WI 38, 368 Wis. 2d 444.

The State Superintendent of Public Instruction hereby issues an order to amend s. PI 36.04 (7), relating to changes to alternative application procedures.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 118.51, Stats.

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

Explanation of agency authority:

The Department is required to implement and administer the payment of state aid pursuant to s. 118.52, 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.

Related statute or rule: N/A

Plain language analysis:

The proposed rule clarifies Chapter PI 36 of the Wisconsin Administrative Code, specifically as it relates to alternative applications under the open enrollment program. The proposed rule allows school districts to approve alternative applications for the current school year from January to July in grades or special education services that do not have space limitations for the following school year.

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

Comparison with rules in adjacent states:

While neighboring states offer programs that are similar to public school inter-district open enrollment in Wisconsin, the Department is not aware of alternative application procedures for pupils who wish to enroll in another school district via their state's respective open enrollment program. It should be noted that while Wisconsin statutes empower school districts to establish waiting lists for students who wish to enroll in another public school via the open enrollment program, in the event that there are more applications than spaces available, each neighboring state set priorities for school districts in accepting students for open enrollment in a manner as follows:

- **Illinois:** Illinois rules and statutes are silent as it relates to procedures for accepting students for open enrollment.
- **Iowa** (Iowa Code Ann. § 282.18; Iowa Admin. Code r. 281-17.6, r. 281-17.8): Receiving districts may not deny enrollment and must give priority to requests that would facilitate a court-ordered desegregation plan or voluntary diversity plan. A student who has been suspended or expelled may not transfer to another district until the student is reinstated by the resident district.

- **Michigan** (Mich. Comp. Laws Ann. § 388.1705, § 388.1705c): Under voluntary intradistrict and interdistrict open enrollment, receiving districts must give priority to siblings of enrolled students. If the number of transfer requests exceeds capacity, the receiving district must hold a lottery and create a waiting list. A district may refuse students who have been suspended from another school within the past two years or expelled at any time.
- **Minnesota** (Minn. Stat. Ann. § 124D.03): If a district has more transfer requests than space available, the district must hold a lottery and the following student groups must receive priority: 1) siblings of currently enrolled students; 2) applications related to an approved integration and achievement plan; 3) children of school district staff; and 4) students living in municipalities meeting specific criteria. Districts may refuse enrollment for students who have been expelled for specific reasons.

Summary of factual data and analytical methodologies:

2011 Wisconsin Act 114 made changes to the statutes governing the open enrollment program, specifically by allowing an alternative application process under the program, as long as the pupil applying for open enrollment under an alternative application satisfies certain criteria. The Department has since promulgated rules, effective as of September 2014, which included procedures relating to the handling of alternative applications. Since implementation, the Department has identified points of clarification in the rule as it relates to those procedures. Currently, under s. PI 36.04 (7), school districts are prohibited from approving any alternative applications from their January board meeting to July if their school board has limited any grades or special education services for the following school year. The proposed rule will allow school districts to approve alternative applications for the current school year from January to July in grades or special education services that do not have space limitations for the following school year. As such, the proposed rule will make this section of PI 36 consistent with the provision that allows nonresident school districts to approve alternative applications for the current school year from July 1 to the 3rd Friday in September pupil count date in the grades or special education services that do not have space limitations established by the school board for the following school year. Without a rule change, the Department will be required to implement rules governing the open enrollment program as they currently exist in the rule, and school boards will continue to be required to approve alternative applications in the manner prescribed in PI 36.

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 Carl Bryan, 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.

SECTION 1. PI 34.07 is amended to read:

(7) ALTERNATIVE APPLICATIONS. A nonresident school board may not approve an alternative application submitted prior to the 3rd Friday in September if the board did not approve all applications for the pupil's grade or special education service

that were submitted in the regular application period for the same school year. A nonresident school board may not approve an alternative application submitted after the January school board meeting for a current school year if the board limited the number of spaces available in the pupil's succeeding grade or special education service for applications submitted under the regular application procedure for the following school year.

SECTION 2. STATEMENT OF EMERGENCY:

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

An emergency rule is needed in advance of school boards making open enrollment space determinations at their January 2019 meetings, as required in s. 118.41 (5) (a) 1., Stats. The emergency rules will guide procedures for school boards to approve alternative applications under the program until a permanent rule can complete the promulgation process.

SECTION 3. EFFECTIVE DATE:

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Dated this _____ day of _____, 2018

Tony Evers, PhD
State Superintendent