

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ADOPTING EMERGENCY RULES**

The scope statement for this rule, SS 039-18, was published in Register No. 748A1, on April 4, 2018, and approved by State Superintendent Tony Evers on April 27, 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 adopts an order to repeal EmR 1825; and to repeal and recreate PI 40, relating to Early College Credit program changes.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 118.55, Stats.

Statutory authority: s. 118.55 (9), Stats.

Explanation of agency authority:

Under s. 118.55 (9), Stats., the State Superintendent shall promulgate rules to implement and administer the Early College Credit program, including rules establishing criteria for determining reimbursement amounts for pupil transportation under s. 118.55 (7g), Stats.

Related statute or rule: See Clearinghouse Rule 18-077 and Emergency Rule 1825, relating to the Early College Credit Program and Changes to PI 40 as a result of 2017 Wisconsin Act 59.

Plain language analysis:

This emergency rule will replace current emergency rule provisions which were established under Emergency Rule 1825, which repeals and recreates Chapter PI 40 of the Wisconsin Administrative Code to implement the Early College Credit program. Since implementation of the initial emergency rule, the Department has identified points of clarification which were necessary to administer while the related permanent rule, Clearinghouse Rule 18-077, completes the promulgation process. Among the changes, this emergency rule defines "attended" to include courses taken by pupils in an online, blended, or in-person format, as well as the following which were promulgated under the original emergency rule:

- The dates by which pupils may notify school boards of their intent to participate in the program during a summer session (fall and spring dates are set in statute).
- Rules governing the determination of undue financial burden.
- Revises procedures related to the reimbursement of transportation costs, including eligible modes of transportation and priority of reimbursement.
- Rules governing the determination of credits, including granting of high school credits for courses taken under the program, comparability of courses offered by a high school, and notification of appeal rights.
- Procedures for reviewing appeals under the program, as determined under ch. PI 1 of the Wisconsin Administrative Code.

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

Comparison with rules in adjacent states:

- **Illinois** (23 Illinois Administrative Code 1009): The Illinois Department of Education provides for a Dual Credit program, which permits high school students to enroll in a college course for both high school and college credit. The state also permits districts to enter into joint agreements with community college districts and other school districts to provide career education or advanced vocational training of 11th and 12th grade students. The rules permit appropriate measures to assess and grant eligibility for dual credit to students and specify that the determination of whether the course is offered for concurrent high school and college credit is made at the secondary level, according to the school's policies and district practices.

- **Iowa** (Iowa Administrative Code Chapter 281-22): The Iowa Department of Education created an umbrella program called Senior Year Plus (SYP) that encompasses Concurrent Enrollment, Postsecondary Enrollment Options Program (PSEO), Advanced Placement (AP), Career Academies, Regional Academies, and Project Lead the Way. The SYP program was implemented to provide increased and more equal access to college credit and AP courses. SYP programs offer students an opportunity to enroll in college coursework and, in most cases, receive both high school and college credit simultaneously. The rules establish the criteria pupils and eligible postsecondary institutions must meet in order to participate in an SYP program.

- **Michigan** (Michigan Administrative Code Section R 388.151-388.155): The Michigan Department of Education provides for payment from a school district's foundation grant for enrollment of certain eligible high school students in postsecondary courses of education under its Postsecondary Enrollment Options program. The rules and underlying statutes establish eligibility criteria for students, institutions, and courses; requires eligible charges (tuition, mandatory course or material fees, and registration fees) to be billed to a school district; establishes enrollment and credit requirements; requires school districts to provide counseling and information to eligible students and their parents; and requires intermediate school districts to report to the Department of Education.

- **Minnesota** (Minnesota Statutes section 124D.09): The Minnesota Department of Education permits 10th, 11th, and 12th grade students to earn college credit while still in high school through enrollment in and successful completion of college-level courses through its Postsecondary Enrollment Options program. The statutes provide that college-level courses may be provided in a high school (referred to as concurrent enrollment, or "college in the high school"), a postsecondary institution, or another location according to an agreement between a public school board and the governing body of an eligible public postsecondary system or an eligible private postsecondary institution.

Summary of factual data and analytical methodologies:

2017 Wisconsin Act 59 eliminated the Youth Options program and created the Early College Credit program, which allows public and private high school pupils to enroll in an institution of higher education for the purposes of taking one or more nonsectarian courses for high school and/or postsecondary credit. Under the program, the pupil is responsible for 25 percent of the tuition if the pupil takes a course for postsecondary credit only; however, the school board must waive the pupil's financial responsibility if the Department determines that the cost would pose an undue financial burden on the pupil's family. Additionally, 2017 Wisconsin Act 59 requires the Department to reimburse certain pupils' families for transportation costs incurred as a result of participating in the Early College Credit program. The

Department therefore adopts a repeal and recreate of Chapter PI 40 so that it may implement changes in the statutes as a result of 2017 Wisconsin Act 59, including establishing a definition for undue financial burden and revising criteria for determining reimbursement amounts for pupil transportation. Unless this emergency rule is in place, parents and schools participating may have unclear guidance around program requirements and the Department may be prevented from efficiently administering the program.

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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Wisconsin Department of Public Instruction
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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. Emergency Rule 1825, which was published in the Wisconsin State Journal on October 27, 2018, is repealed.

SECTION 2. PI 40 is repealed and recreated to read:

**Chapter PI 40
EARLY COLLEGE CREDIT PROGRAM**

PI 40.01 Definitions. In this chapter:

- (1) "Attended" means courses taken by pupils in an online, blended, or in-person format.
- (2) "Governing body of a private school" has the meaning given under s. 118.55 (1) (b), Stats.
- (3) "Institution of higher education" has the meaning given under s. 118.55 (1) (bm), Stats.
- (4) "Parent" includes a guardian.
- (5) "Participating private school" has the meaning given under s. 118.55 (1) (c), Stats.

PI 40.02 Applicability. This chapter governs the early college credit program under s. 118.55, Stats., and is promulgated pursuant to s. 118.55 (9), Stats.

PI 40.03 Notification to school board or governing body of a private school. A pupil intending to enroll in an institution of higher education under s. 118.55, Stats., shall provide the notice under s. 118.55 (3) (a), Stats., by the following dates:

- (1) By February 1 if the pupil intends to enroll in the summer semester or session.
- (2) By March 1 if the pupil intends to enroll in the fall semester.
- (3) By October 1 if the pupil intends to enroll in the spring semester.

PI 40.04 Undue financial burden. The department shall determine under s. 118.55 (6) (c) 2., Stats., that paying 25 percent of the cost of a course is an undue financial burden on a pupil's family if the pupil is eligible for free or reduced price lunch under 42 USC 1758 (b) (1).

PI 40.05 Transportation reimbursement.

(1) REQUEST FORM. A parent seeking reimbursement of transportation costs under s. 118.55 (7g), Stats., shall file the request on a form provided by the department. The request shall be filed with the department by July 15 following the school year in which the transportation was provided.

(2) MODE OF TRANSPORTATION.

(a) The state superintendent may only reimburse a parent under s. 118.55 (7g), Stats., for the cost of using a private vehicle if public transportation is unavailable or using public transportation would prevent the pupil from being able to attend the institution of higher education.

(b) The state superintendent may only reimburse a parent under s. 118.55 (7g), Stats., for a mode of transportation other than public transportation and a private vehicle if all of the following apply:

1. Public transportation is unavailable or using public transportation would prevent the pupil from being able to attend the institution of higher education.
2. The pupil or the pupil's parent do not have access to a private vehicle.

(3) PRIORITY OF REIMBURSEMENT. If adequate funds are not available under s. 20.255 (2) (cy), Stats., to reimburse each eligible request for reimbursement under this section and s. 118.51 (14) (b), Stats., the state superintendent shall make reimbursements as follows:

(a) The state superintendent shall first fully reimburse each family eligible for free or reduced price lunch under 42 USC 1758 (b) (1) or, if there are insufficient funds, on a prorated basis.

(b) If there are funds remaining after fully reimbursing families under par. (a) and under s. 118.51 (14) (b), Stats., the state superintendent shall reimburse any remaining requests for reimbursement fully or, if there are insufficient funds, on a prorated basis.

Note: The Early College Credit Program Transportation Reimbursement Application online form is available on the Department's open enrollment website at: <https://dpi.wi.gov/open-enrollment>.

PI 40.06 Determination of credit.

(1) Awarding credit.

(a) A school board or governing body of a private school may deny high school credit for a postsecondary course attended under s. 118.55, Stats., if any of the following apply:

1. The postsecondary course is comparable to a course offered by the school district, as determined under sub. (2).
2. At least 80 percent of the postsecondary course covers content for which the pupil has already received high school credit.
3. The postsecondary course covers content previously offered to the pupil in a different postsecondary course under s. 118.55, Stats., and the pupil received a failing grade in that course.

(b) Except as provided under par. (a), a school board shall grant high school credit for a course attended under s. 118.55, Stats., if the postsecondary course meets any high school graduation requirement under s. 118.33, Stats., including any requirement contained in the school board's policy required under s. PI 18.05 (1), or if the course fulfills any elective requirement.

(c) Except as provided under par. (a), a governing body of a private school shall grant high school credit for a course attended under s. 118.55, Stats., if the postsecondary course meets any high school graduation requirement.

(d) A school board and governing body of a private school shall evaluate a postsecondary course for high school credit under this subsection using the same method and criteria it would to approve a course the school board or governing body of a private school offered for high school credit.

(2) COMPARABILITY. A postsecondary course is comparable to a course offered by a high school if all of the following apply to the high school course:

(a) The high school course is offered or will be offered between the date the pupil submits a notice under s. 118.55 (3) (a), Stats., and the date the pupil is expected to graduate from high school.

(b) The content of the high school course is at least 80 percent equivalent to the content of the postsecondary course. A determination under this paragraph shall be made by comparing, if available, the curriculum guide, course expectations, course goals, and the scope and sequence of the high school course to the course syllabus, if available, and course description for the postsecondary course.

(3) Notification of appeal rights.

(a) A school board's written notification under s. 118.55 (3) (b), Stats., regarding comparability of courses, satisfaction of high school graduation requirements, or the number of high school credits to be awarded shall inform the pupil of the right to appeal the school board's decision to the state superintendent within 30 days of the decision.

(b) A governing body of a private school's written notification under s. 118.55 (3) (b), Stats., regarding comparability of courses, satisfaction of high school graduation requirements, or the number of high school credits to be awarded shall inform the pupil of the right to appeal the governing body's decision to the governing body within 30 days of the decision.

PI 40.07 Appeals. The state superintendent shall review appeals made under s. 118.55 (3) (b), Stats., using the procedures under ss. PI 1.03 and 1.04 (9).

SECTION 3. 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:

2017 Wisconsin Act 59 amended s. 118.55, Stats., to create the Early College Credit Program, beginning in the 2018-19 school year. An emergency rule is necessary in order for the Department to administer the program in the 2018-19 school year while the permanent rule completes the promulgation process.

SECTION 4. 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 _____, 2019

Carolyn Stanford Taylor
State Superintendent