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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-008

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]**

#### 1. Statutory Authority

a. Section PI 36.03 (1) (b) 1. provides that if applications are submitted to more than three nonresident school districts, all of the applications may be declared invalid by the resident school district or by any of the nonresident school districts. This invests both the resident and nonresident school districts with the discretionary authority to *not* invalidate an application.

However, s. 118.51 (3) (a) 1., Stats., specifies that applications may not be submitted to more than three nonresident school boards. It does not appear that the Department of Public Instruction (DPI) has authority to give the school districts authority to overlook this statutory provision if a school district chooses to do so.

Moreover, if the language in s. PI 36.03 (1) (b) 1. is retained, the rule does not specify any standards by which a decision not to invalidate is to be made or who in the “school district” is authorized to make such a decision.

b. Sections PI 36.03 (1) (h) and 36.04 (12) provide that if the nonresident school board does not receive parental notification of intent to attend the nonresident school by the parental notification date, the nonresident school board “may” determine that the pupil does not intend to attend school there in the following school year. In contrast, the current rule provides that the nonresident school board must determine that the pupil does not intend to attend school there in the following school year.

The proposed changes suggest that the nonresident school board may choose not to make this determination and, thus, may permit the pupil to attend under the open enrollment program even if the notification were received after the parental notification date. This would be contrary

to s. 118.51 (3) (a) 6., Stats., which requires notification on or before the first Friday following the first Monday in June. Also, this would be inconsistent with proposed s. PI 36.02 (7m) which requires notification by this date.

c. Section PI 36.03 (2) (b) provides that certain low-income parents may apply for reimbursement of costs incurred for transporting the pupil “to and from the pupil’s residence **or** a designated stop in the nonresident school district and the school the pupil will be attending.” (Emphasis added.) However, s. 118.51 (14) (b), Stats., permits such parents to apply for reimbursement of costs incurred for transporting the pupil “to and from the pupil’s residence and the school the pupil will be attending.” The rule appears to inappropriately restrict such a parent from applying for reimbursement of costs for transportation between the pupil’s residence and the designated stop in the nonresident school district.

## **2. Form, Style and Placement in Administrative Code**

a. In the analysis, under the eighth bullet point under “Clarifications and Amendments to Administrative Procedures,” “and/or” should be changed to “or.” [See s. 1.01 (9), Manual.]

b. In s. PI 36.02 (7m), “s. 118.51 (3) (a) 6” should be changed to “s. 118.51 (3) (a) 6., Stats.”.

c. In s. PI 36.02 (10m), “s. 115.001 (12).” should be changed to “s. 115.001 (12), Stats.”.

d. In s. PI 36.03 (1) (b) 1., the two references to “three” should be changed to “3”. Similarly, in s. PI 36.04 (1) (b) 2. b., “seven” should be changed to “7”. [See s. 1.01 (5), Manual.]

e. In s. PI 36.03 (1) (e) 1. a., “s. 115.777 (1).” should be changed to “s. 115.777 (1), Stats.”.

f. In the last sentence of s. PI 36.03 (3) (d), “s. 118.51 (3) (a)” should be changed to “s. 118.51 (3) (a), Stats.”.

g. Material that is being deleted should be quoted exactly and then shown as stricken-through. [See s. 1.06 (1), Manual.] In the first sentence of s. PI 36.04 (12), “~~s. 118.51 (15) (a), Stats.~~” should be changed to “~~s. 118.51 (3) (e), Stats.~~”.

h. In SECTIONS 37 and 39, the notes should specify that the forms are available at no charge. [See s. 1.09 (2), Manual.]

## **3. Conflict With or Duplication of Existing Rules**

The last sentence of s. PI 36.03 (1) (b) 2. provides that failure to indicate a resident school district on an application renders invalid all applications during that application period. This is inconsistent with s. PI 36.04 (5) (which is being renumbered s. PI 36.04 (2) (d) and amended under SECTION 24) to provide that if an application is incomplete, the nonresident school board “may” make an effort to obtain the missing information. This conflict should be reconciled.

Also, if an application is incomplete in other respects, has consideration been given to requiring that a school board create a policy on how that will be handled inasmuch as a consistent approach may help avoid discrimination?

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the analysis, the “Statutes Interpreted” provision refers to s. 121.81, Stats. However, it does not appear that this statute is interpreted.

b. In the analysis, the listing of Acts omits 2001 Wisconsin Act 16. Was this omission intentional?

c. In the last sentence of s. PI 36.03 (3) (c) and in s. PI 36.04 (13) (b), it may be useful to indicate that the pupil may continue attending the nonresident school district subject to s. 118.51 (12) (b) 2., Stats.

d. In the first sentence of s. PI 36.03 (3) (d) and in s. PI 36.04 (13) (d), it appears that enrollment in an independent (s. 118.40 (2r)) charter school also should disqualify the pupil from eligibility in open enrollment for that school term.

e. It might be useful if s. PI 36.04 (1) (b) 1. referred to acceptance and rejection criteria under s. 118.51 (5) (a) and (b), Stats.

f. Although, in general, statutory provisions should not be unnecessarily repeated, ch. PI 36 provides comprehensive regulations about the open enrollment program. Accordingly, it may be useful to include the provision in the last sentence of s. 118.51 (3) (a) 2., Stats. (from 2001 Wisconsin Act 16), specifying that even if space is not available in the open enrollment program, a school board may nevertheless accept an applicant who is already attending school in the nonresident school district or a sibling of the applicant.

Similarly, it might be useful to specify in s. PI 36.04 (9) and in s. PI 36.05 (8) that the rejection notice also must specify the reason for rejection as required by s. 118.51 (3) (a) 3., Stats. and s. 118.51 (3) (a) 4., Stats., respectively.

g. In the second sentence of s. PI 36.04 (12), it appears that the reference to “s. 118.51 (15) (a), Stats.” should be changed to “s. 118.51 (3) (a) 6., Stats.” because the subject is the parental notification form, not the application form.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the analysis under the first bullet point under “Clarifications and Amendments to Administrative Procedures,” it appears that the phrase “after being approved and” should be deleted inasmuch as s. PI 36.03 (1) (f) does not require that enrollment in the resident school district necessarily occur *after* being approved, that is, it could occur *before* being approved.

b. In s. PI 36.01 (2) (a), “beginning in the 1998-99 school year,” could be stricken-through and deleted inasmuch as it is obsolete information. Moreover, retention of the phrase confuses the issue of when the change with respect to 4-year-old kindergarten occurred.

c. In s. PI 36.02 (7m), “student” should be changed to “pupil” to be consistent with the remainder of ch. PI 36 and the education statutes.

d. In s. PI 36.03 (1) (b) 1. (intro.), it appears that “any of all” was intended to be “any or all.” However, making this change would be inconsistent with s. PI 36.03 (1) (b) 1. a., which provides that “all” of the applications may be declared invalid by the resident school district, thus, making it unclear if the resident school district may be selective about which applications it declares invalid. (Moreover, see comment 1. a., above, regarding the apparent lack of statutory authority for applications to be valid under these circumstances in any event.)

e. In s. PI 36.03 (1) (b) 1. a., it appears that “,or” should be changed to a period.

f. In s. PI 36.03 (1) (b) 1. b., “an applications” should be changed to “an application.”

g. In the second sentence of s. PI 36.03 (1) (b) 2., a comma should be inserted following “application period.” In the third sentence, “for that pupil” could be inserted following “submitted.”

h. Section PI 36.03 (3) (a) requires a parent to notify the resident and nonresident school district if a decision is made not to attend the nonresident school district in the following school year. Although there effectively is no enforcement mechanism for this provision, it might be useful to change “shall notify” to “shall promptly notify” in order to give guidance to the parent so that other pupils may be able to take advantage of the open enrollment program.

i. In the second sentence of s. PI 36.03 (3) (c), it would appear to be more accurate to change “attends” to “has applied to attend.”

j. A period should be inserted at the end of SECTION 19.

k. The first sentence of s. PI 36.04 (1) (a) refers to a school board adopting “policies and procedures.” The second sentence refers to amending “policies” under s. 118.51 (4) (b), Stats. However, s. 118.51 (4) (b), Stats., refers to revising “criteria and policies.”

Is it intended that changes in “procedures” also apply only to subsequent application periods or only “policies” as the second sentence of s. PI 36.04 (1) (a) suggests? Also, it is unclear why the first sentence of s. PI 36.04 (1) (b) (intro.) refers to adopting a “policy or a resolution,” whereas, the second sentence refers to the “policy.” Consistent use of terminology would help eliminate ambiguity in these provisions.

Also, s. PI 36.04 (1) (b) (intro.) requires a school board’s “policy” to provide for the items specified in subd. 1. and 2. Subdivision 1. requires that the school board’s “policy” include the school board’s “policies and procedures.” This repetition is confusing.

l. Section PI 36.04 (1) (b) 2. b. specifies that the school board must provide “seven days” for the parent to respond to notice that the parent’s child has been accepted off the waiting list. This is ambiguous because the rule does not specify when the seven days is counted from, such as, date of notification or date of receipt of the notification.

m. In s. PI 36.04 (4), “sub (6):” should be changed to “sub. (6).”

n. In s. PI 36.04 (9) (intro.), a comma should be inserted preceding “Stats.”

o. In the first sentence of s. PI 36.04 (16), “that” could be changed to “~~that~~ who” as it is referring to a child.

p. In s. PI 36.05 (5) (b), a period should be inserted following “1”.