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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 08-052

#### 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 January 2005.]**

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

a. The title of ch. PI 30 should be shown as amended, not as it will appear in final form, that is, it should be shown with strike-throughs and underscores as: “~~GRANTS FOR HIGH COST SPECIAL EDUCATION AID.~~” [See s. 1.05 (3) (b), Manual.]

b. In s. PI 30.01, “Ch. 115” should be changed to “ch. 115”.

c. The titles to ss. PI 30.03, 30.06, and 30.07 should be shown in bold print. [See s. 1.05 (2) (b), Manual.]

d. An initial applicability provision should be included after the text of the proposed rule indicating that it first applies to state aid distributed in the 2008-09 school year. [See s. 1.02 (3m), Manual.]

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

a. In s. PI 30.07 (1), the reference to “charter school” should be changed to “operator of a charter school established under s. 118.40 (2r), Stats.” Otherwise, it inaccurately suggests that all charter schools are directly paid special education categorical aid. (See s. 115.88 (1m) (a) and (am), Stats.)

b. Section PI 30.07 (1) refers to certifying for costs eligible for reimbursement. However, it would be more appropriate to refer to costs eligible for reimbursement from the appropriation under s. 20.255 (2) (b), Stats. (That is the language used in s. 115.88 (1m) (a) and

(am), Stats.) Alternatively, the reference could be to reimbursement as special education categorical aid.

On a related note, in the “Explanation of agency authority” provision in the analysis, it would be helpful to change “eligible for state aid reimbursement” to “eligible for reimbursement as special education categorical aid.” Otherwise, it appears that the excess is not eligible to be considered as a cost in determining general school aids.

A similar comment applies to the phrase “costs eligible for reimbursement” in the first and last sentences of the second paragraph of the “Plain language analysis.”

c. Section PI 30.07 (1) refers to certifying costs eligible for reimbursement and indicates that the costs include the salaries of personnel enumerated in s. 115.88 (1) and (1m) (b), Stats. However, s. PI 30.07 (2) provides an exception in that only a percentage of those salaries for the four enumerated categories of pupil services personnel may be certified for reimbursement for special education categorical aid. This exception in s. PI 30.07 (2) should be cross-referenced in s. PI 30.07 (1) or else the subsections could be combined.

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

a. In the title to subch. III, ch. PI 30, it appears that the word “STATE” is superfluous.

b. In the first sentence of s. PI 30.07 (1), the phrase “maintaining a special education program” could be read as modifying all four items in the series or as modifying only the last item. This ambiguity should be eliminated.

In clarifying this ambiguity, it should be noted that s. 115.88 (1m) (am), Stats., refers to the operator of a charter school established under s. 118.40 (2r) ((2r) charter school) using different terminology than the “maintained” language in s. 115.88 (1m) (a), Stats., which refers to a county, cooperative educational service agency (CESA), and school district. With respect to (2r) charter schools, the statutory reference is to operating, rather than maintaining, a special education program. It may be useful to use the language from the statutes to avoid ambiguity on this point.

Also, s. PI 30.07 (1) refers to the state superintendent being satisfied that the special education program was maintained during the preceding school year “in accordance with law.” This is the phrase used in s. 115.88 (1m) (a), Stats., referring to a county, CESA, or school district. However, the finding required in s. 115.88 (1m) (am), Stats., with respect to the operator of a (2r) charter school is that the operator “is complying with 20 USC 1400 to 1491o.” Unless the phrases are considered to be synonymous, the language in the statutes should be used to differentiate these.

c. The first sentence of s. PI 30.07 (1) provides that “the state superintendent shall certify . . . *for* costs eligible for reimbursement.” (Emphasis added.) This is confusing as it omits reference to what is being certified, that is, a percentage of certain salaries.

d. Section PI 30.07 (3) is ambiguous as it indicates that if the funds appropriated under s. 20.255 (2), Stats., are insufficient, the reimbursement under s. PI 30.07 (2) (certain percentages of enumerated pupil services personnel categories) must be prorated. This does not make it clear if the salaries for these four categories of pupil services personnel are prorated separately (on a collective basis) or if the same proration applicable to reimbursement under s. 20.255 (2) (b), Stats., also applies to special education categorical aid for those four categories of pupil services personnel.