



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 15-038

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

In s. PI 17.04 (2), the agency proposes to modify the summer average daily membership calculation by adding a limitation of “up to 270 minutes per pupil per day”. This limitation seems contrary to the summer average daily membership calculation under s. 121.004 (8), Stats., which does not include the limitation. An agency may not promulgate a rule that conflicts with state law. [s. 227.10 (2), Stats.] Nor may an agency promulgate a rule that is more restrictive than a specific standard, requirement, or threshold that is contained in statute. [s. 227.11 (2) (a), Stats.; s. 1.02 (2m) (b) 3., Manual.]

2. Form, Style and Placement in Administrative Code

a. In the introductory clause for the proposed rule, the enumeration of provisions treated should be organized in the following order: to renumber; to amend; and to create. [s. 1.02 (1) (b), Manual.]

b. The rule summary’s listing of the place to submit comments should provide the specific date by which comments should be submitted.

c. In SECTION 4 of the proposed rule, rather than creating sub. “(1)”, the proposed rule should create sub. “(1d)”. Subdivision (1) is a pre-existing rule that is renumbered in SECTION 3 of the proposed rule. It is best to avoid reuse of a previously existing number, as reuse of numbers can cause confusion and may lead to erroneous cross-references. [s. 1.03 (5) (a), Manual.] This

should also be corrected in the introductory clause that enumerates the provisions treated by the proposed rule.

d. In the treatment clause for SECTION 8 of the proposed rule, the reference to “PI 17.04 (intro.)” should be revised to “PI 17.04 (title)”. [s. 1.05 (3), Manual.] This should also be corrected in the introductory clause that enumerates the provisions treated by the proposed rule.

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

The phrase “summer average daily membership”, as used in s. PI 17.04 (2), is a defined term under s. 121.004 (8), Stats., that includes enrollment in both summer and interim classes. The agency should include a reference to this statutory definition or consider including it as a definition with a statutory reference under s. PI 17.02.

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

a. In the plain language analysis, the first use of the word “with” should be deleted.

b. The phrase “Year-round school”, as defined under s. PI 17.02 (6), references a specific type of school. However, as used in s. PI 17.03 (1), the term suggests a method of educational instruction that is provided by a school district or a county children with disabilities education board, rather than a particular school. The term is used in the same way under s. 121.14 (1) (a) 2., Stats. The agency could reconcile this inconsistency by modifying the definition under s. PI 17.02 (6).

c. In s. PI 17.03 (2) (c), the comma inserted after “department-licensed teacher” should be placed after “and” because it is being used to offset the phrase “if all pupils have access to field trips”.

d. In s. PI 17.03 (d), there are references to both minutes and hours. One or the other should be used for clarity and consistency.

e. In s. PI 17.03 (d), the phrase “and the lesser hours are to be prorated accordingly” is grammatically inaccurate in that it suggests that time is to be prorated rather than the credit earned based on the amount of time.

f. In s. PI 17.05 (2), the word “program” should be deleted.