



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 16-057

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

a. Under SECTION 6, the department proposes to expand the number of students included in a school district’s summer average daily membership equivalent by including students attending a summer or interim course in a nonresident school district via open enrollment under s. 118.51, Stats. Such an expansion would allow a nonresident school district to count open enrolled students who attend a summer or interim course in its total membership for state aid and revenue limit purposes. It appears, however, that state law does not explicitly include open enrolled students in a nonresident school district’s summer average daily membership equivalent, nor does it appear to explicitly authorize the department to modify the definition of summer average daily membership equivalent.

In general, a resident school district, not a nonresident school district, must include an open enrolled student in its membership count for state aid and revenue limit purposes. [s. 121.05 (1) (a) 11., Stats.] State law specifically authorizes a nonresident school district to count open enrolled students who participate only in certain online summer or interim courses for state aid and revenue limit purposes. [ss. 121.004 (8) (b) and 121.14 (1) (a) 3., Stats.] Except for participation in specifically identified online courses, state law does not explicitly allow a nonresident school district to count open enrolled students who attend summer or interim courses for state aid and revenue limit purposes. [See *Questions and Answers About Full-Time Inter-District Public School Open Enrollment*, available on the department’s website at: <http://dpi.wi.gov/open-enrollment/resources> (stating that state law does not provide for any additional payment to a nonresident school district for open enrolled students who attend summer school) and 2016

Guidelines for Summer and Interim Session Classes Summer Membership Requirements, available on the department's website at: <http://dpi.wi.gov/sfs/children/summer-school> (stating that a school district may include nonresident students in its summer average daily membership equivalent only if they participate in certain online courses).]

State law explicitly authorizes the department to determine which summer or interim classes or laboratory periods are necessary for academic purposes and, therefore, eligible for state aid. [ss. 121.004 (8) (a) and 121.14 (1) (a), Stats.] State law does not appear to explicitly authorize the department to modify the requirements for summer average daily membership equivalent under s. 121.004 (8), Stats. The department may promulgate a rule if it considers it necessary to effectuate the purpose of the statute. [s. 227.11 (2) (a) (intro.), Stats.] If the department wishes to rely upon this general grant of authority, it should provide a clear explanation of why the proposed modification is necessary to effectuate the purpose of the statute given what appears to be a lack of explicit authorization to do so, as discussed above. Such an explanation should begin with the department's understanding of the statute's purpose.

2. Form, Style and Placement in Administrative Code

a. In the analysis of the proposed rule, how did the department conclude that a comparison with rules in adjacent states was inapplicable?

b. A specific date should be given for the deadline to submit comments on the proposed rule. [s. 1.02 (2) (a) 13., Manual.]

c. In SECTION 2, the department proposes to delete language that references a cooperative program with a CESA. Because the term "CESA" does not appear anywhere else in ch. PI 17, the department should consider repealing the definition of CESA under s. PI 17.02 (1m), Wis. Adm. Code.

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

a. In the list of statutes cited for statutory authority, the department should change "s." to "ss." so that the list reads as "ss. 121.14 (1) (a) and 227.11 (2) (a) (intro.), Stats."

b. The department should consider modifying its plain language analysis for clarity. The purpose of the plain language analysis is to provide an understandable and objective description of the effect of the rule. [s. 1.02 (2) (b), Manual.] As drafted, the analysis suggests that the department's proposed rule modifies a subsequent list of existing policies and practices, but it appears that the department intends to state that the proposed rule modifies existing policies and practices in certain ways. As an example, the language could be modified as follows: "The proposed rule modifies existing policies and practices in the following ways:"

The department should also consider modifying the subsequent bulletpoint list of modifications so that they read as understandable action statements. For example, "Alignment of existing summer and interim session courses with the regular academic curriculum" could be modified to say, "Aligns existing summer and interim session courses with the regular academic curriculum."

c. In SECTION 6, the department creates a new provision that references “students” instead of “pupils”. It appears that the terms “student” and “pupil” are both used throughout ch. PI 17. The department should consider selecting and consistently using one term throughout the chapter.

d. The department should consider revising the language created under SECTION 6 for clarity. Currently, the provision ends with “regardless of fund source”, but there is no context to explain what fund sources may be at issue and why that matters to whether a student may be included in the summer average daily membership equivalent. Based on the plain language analysis, it appears that there may be a question about whether a student should be counted if the summer or interim course that the student attends is funded in part or entirely by grant funds. The provision could be rephrased to clearly explain that all students who attend a summer or interim course that is necessary for academic purposes, regardless of the course funding source, must be included in the summer average daily membership equivalent, unless the school district receives tuition for the students.

e. In s. PI 17.05 (1) (d), school districts may charge nonresident students tuition for participation in a summer or interim course. The department should consider modifying this to include an exception for nonresident students attending via open enrollment under s. 118.51, Stats.