

PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION REVISING PERMANENT RULES

The scope statement for this rule, SS 067-15, was published in Register No. 716A2 on August 10, 2015 and approved by State Superintendent Tony Evers on August 24, 2015, and modifies SS 115-13, which was published in Register No. 693, on September 14, 2013, and approved by State Superintendent Tony Evers on September 24, 2013. 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*, 2015 WI App 21, 361 Wis. 2d 255.

The State Superintendent of Public Instruction hereby proposes an order to amend PI 11.24 (1), PI 18.04 (1) (c), and PI 18.05 (1) (a) and (b); and to repeal and recreate PI 18.03; relating to changes needed as a result of 2011 Wisconsin Act 105.

The rules are being adopted under s. 227.16 (2) (b), Stats., which provides that rulemaking does not need to be preceded by notice and public hearing if the proposed rule brings an existing rule into conformity with a statute that has been changed.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: ss. 115.88 (1) and 118.33 (1) (e), Stats.

Statutory authority: Subchapter V of ch. 115 and s. 227.11 (2) (a) (intro.), Stats. (PI 11); and s. 118.33 (2), Stats. (PI 18)

Explanation of agency authority:

Under s. 227.11 (2) (a) (intro.), Stats., "Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation." As such, PI 11 is required to effectively implement and provide transparency to the programs involving children with disabilities under Subchapter V of ch. 115, Stats.

PI 18 has statutory authority under s. 118.33 (2), Stats.

118.33 High school graduation standards; criteria for promotion.

(2) The state superintendent shall:

(c) Establish course requirements under sub. (1) (a) and approve any school board's high school graduation standards policy that is equivalent to the requirements under sub. (1).

(m) Adopt policies to accommodate pupils with exceptional educational interests, needs or requirements, not limited to children with disabilities, as defined under s. 115.76 (5).

...

(4)

(a) The state superintendent shall establish procedures for school boards to certify to the state superintendent whether they are in compliance with the requirements under sub. (1) and the rules promulgated under sub. (2).

(b) The state superintendent may periodically review school district high school graduation standards and shall notify any school board not in compliance with the requirements under sub. (1) or the rules promulgated under sub. (2), identifying the changes necessary.

Related statute or rule: None.

Plain language analysis:

2011 Wisconsin Act 105 makes various changes for school districts to include changes to both special education services and high school graduation requirements. Among these changes, the Act expands the number of services for which a

school board may contract with private or public agencies for the purpose of serving children with disabilities, thereby repealing the previous law limitation to only special physical or occupational therapy services for children with disabilities. Additionally, the Act permits a school board to allow a pupils who participates in sports or in another organized physical activity to complete an additional 0.5 credit in English, social studies, mathematics, science or health education in lieu of 0.5 credit of physical education. As a result, this proposed rule change will align PI 11 and 18 with the statutory changes made as a result of 2011 Wisconsin Act 105. By repealing the limitation on the state superintendent's authority to approve only special physical or occupational therapy services for children with disabilities from the rule, as well as repealing and recreating high school credit requirements in lieu of changes to the underlying statutes, this technical change will align PI rule chapters with statutes.

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

Comparison with rules in adjacent states: Some adjacent states have adopted similar rules and statutes relating to waiving the physical education requirement for graduation in lieu of varying exceptions. They are as follows:

- Illinois School Code authorizes a school board to excuse pupils enrolled in grades 11 and 12 from engaging in physical education courses if those pupils are engaged in an ongoing interscholastic athletic program.
- Iowa Administrative Code excuses a twelfth-grade pupil from its physical education requirements if the pupil is engaged in a supervised athletic program which requires as least as much time of participation per week as a physical education course.
- Michigan School Code requires either at least one credit in a subject that includes both health and physical education, or at least one half credit in both health and approved participation in extracurricular athletics or other extracurricular activities involving physical activity.
- Minnesota Statutes appears to be silent on physical education standards with respect to graduation requirements and requires each school district to establish their own requirements for health and physical education, based on standards developed by the National Association for Sport and Physical Education.

Information on broader graduation requirements can be accessed at the following locations:

<http://ilga.gov/legislation/ilcs/fulltext.asp?DocName=010500050K27-22> (Illinois School Code 105 ILCS 5/27-22);

<https://www.legis.iowa.gov/docs/ACO/rule/281.12.5.pdf> (Iowa Administrative Code 281.12.5(5));

[http://www.legislature.mi.gov/\(S\(bvvo4tgsncsz25brdeqqepar\)\)/mileg.aspx?page=getobject&objectname=mcl-380-1278a](http://www.legislature.mi.gov/(S(bvvo4tgsncsz25brdeqqepar))/mileg.aspx?page=getobject&objectname=mcl-380-1278a)

(Michigan School Code Section 380.1278a); <https://www.revisor.leg.state.mn.us/statutes/?id=120B.024> (Minnesota Statutes Section 120B.024)

Summary of factual data and analytical methodologies: N/A.

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 economic impact on small businesses, as defined in s. 227.114 (1), Stats.

Agency contact person: (including email and telephone)

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Place where comments are to be submitted and deadline for submission:

As provided in s. 227.16 (2) (b), Stats., there is no requirement that a public hearing be held for this rule because the proposed rule brings an existing rule into conformity with a statute that has been changed.

SECTION 1. PI 11.24 (1) is amended to read:

(1) LEGISLATIVE INTENT. Subchapter V of ch. 115, Stats., gives an LEA the authority to establish physical therapy and occupational therapy services. ~~The authority contained in s. 115.88, Stats., is limited to approving special physical or occupational therapy services for children with disabilities.~~

SECTION 2. PI 18.03 is repealed and recreated to read:

PI 18.03 High school graduation standards.

(1) The English credits required under s. 118.33 (1) (a), Stats., shall incorporate instruction that reflects the integrated nature of the English language arts, including written communication, oral communication, grammar and usage of the English language, and literature.

(2) The social studies credits required under s. 118.33 (1) (a), Stats., shall incorporate instruction that reflects the integrated nature of social studies, including civics, state and local government, economics, geography, history, and the behavioral sciences.

(3) The mathematics credits required under s. 118.33 (1) (a), Stats., shall incorporate instruction in the mathematical practices and processes associated with algebra, functions, geometry, number and quantity, probability and statistics, and modeling.

(4) The science credits required under s. 118.33 (1) (a), Stats., shall incorporate instruction in both scientific content and practice.

(5) The physical education credits required under s. 118.33 (1) (a), Stats., shall incorporate instruction on a variety of motor skills and movement patterns, concept knowledge, health-related fitness, responsible personal and social behavior, and the value of physical activity.

(6) The health credits required under s. 118.33 (1) (a), Stats., shall incorporate instruction on core concepts and skill practice related to analyzing influences, accessing information, interpersonal communication, decision making, goal setting, self-management, and advocacy.

SECTION 3. PI 18.04 (1) (c) is amended to read:

(c) State how the education program will address each of the requirements in s. 118.33, Stats., and s. PI 18.03-~~(4)~~.

SECTION 4. PI 18.05 (1) (a) is amended to read:

(a) The courses the board has approved as meeting the course requirements outlined in s. PI 18.03-~~(4)~~ including the course descriptions.

SECTION 5. PI 18.05 (1) (b) is amended to read:

(b) The number of clock hours of instruction required to earn one credit in the courses the board has approved as meeting the course requirements outlined in s. PI 18.03-~~(4)~~.

SECTION 6. 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 _____, 2016

Tony Evers, PhD
State Superintendent