

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AMENDING RULES**

The state superintendent of public instruction hereby amends s. PI 36.03 (1) (d) relating to the public school open enrollment program.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 118.51 (3) (a) 1., Stats.

Statutory authority: s. 227.11 (2) (a) and (b), Stats.

Explanation of agency authority:

The Department is responsible for administering the Public School Open Enrollment Program under s. 118.51, Stats. Section 118.51 (3) (a) 1., Stats., requires parents who wish to participate in the program to submit an application “on a form provided by the department . . .” Further, s. 118.51 (15), Stats., requires the department to prepare and make available to parents the application form required under sub. (3) (a) 1. The department is proposing to change the signature requirements on the application form.

Section 118.51 (9), Stats, provides that a parent may appeal an open enrollment denial within 30 days of the decision. Section PI 36.10 (2) (a) provides that the 30 days begins on the day the parent receives the notice of denial. As a result of public testimony, the department is proposing to amend the rule to provide that the 30 days begins on the day the notice is mailed or delivered to the parent, whichever occurs first. The current rule has resulted in some problems when a parent claims, sometimes months after the deadline for sending notifications of approval or denial, that the notice of denial was never received.

Chapter PI 36 contains the administrative rules for the program, including requirements pertaining to submitting an application for open enrollment.

Because the department is responsible for administering the open enrollment program and the forms required under s. 118.51, Stats., s. PI 36.03 (1) (d) and s. PI 36.10 (2) (a) are being amended pursuant to rule-making authority granted under s. 227.11 (2) (a) and (b), Stats.

Related statute or rule: None.

Plain language analysis:

Section PI 36.03 (1) (d) requires a parent to sign the open enrollment application form. If parents are divorced or legally separated, both parents are required to sign the form. This proposed rule would repeal the requirement that both parents must sign the form.

Section 118.51 (9), Stats, provides that a parent may appeal an open enrollment denial within 30 days of the decision. Section PI 36.10 (2) (a) provides that the 30 days begins on the day the parent receives the notice of denial. As a result of public testimony, the department is proposing to amend the rule to provide that the 30 days begins on the day the notice is mailed or delivered to the parent, whichever occurs first.

Summary of, and comparison with, existing or proposed federal regulations:

There are no similar existing or proposed federal regulations concerning inter-district open enrollment programs.

Comparison with rules in adjacent states:

Illinois has no open enrollment program.

Michigan has a limited open enrollment program but there is no application available for review.

Iowa and Minnesota have statewide open enrollment programs but do not require more than one signature on the application form.

Summary of factual data and analytical methodologies:

Current administrative rules require a parent to sign the open enrollment application. If parents are divorced or legally separated, both parents are required to sign the form. The Department proposes to repeal the requirement for both parents to sign the form.

This provision was intended to require parents to keep each other informed and to keep school districts out of the middle of the situation. However, it has created a hardship in cases where one parent cannot be located.

In other cases, the rule has had the opposite of the desired effect. The open enrollment period is only three weeks long and custody issues can be very complicated. Three weeks can be too short a time to have the issue resolved, especially when mediation and/or family court are involved. Requiring both signatures before the issue has been resolved reduces the child's educational options. And occasionally, school districts are drawn into the disagreement, rather than being insulated from it.

The open enrollment form is an application only. Allowing one of the parents to sign the form, even without informing the other, is not determinative of where the child must go to school. That question must be resolved in the way all major decisions are made with respect to the child. However, it keeps the open enrollment option available so that the decision to attend school under the open enrollment program can be made later in accordance with any court order about how these decisions are to be made, as long as there is compliance with any applicable open enrollment deadline.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: None.

Anticipated costs incurred by private sector: None.

Effect on small business:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person: (including email and telephone)

Mary Jo Cleaver, open enrollment consultant, at maryjo.cleaver@dpi.state.wi.us or (608) 267-9101

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

Written comments on the proposed rules received no later than August 31, 2005, will be given the same consideration as testimony presented at the hearing. Comments may be submitted via email to lori.slauson@dpi.state.wi.us or by writing to Lori Slauson, Administrative Rules and Federal Grants Coordinator, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707.

SECTION 1. PI 36.03 (1) (d) is amended to read:

PI 36.03 (1) (d) The parent shall sign the application. ~~If the pupil's parents are separated or divorced and if the parents have joint custody of the pupil, the application shall be signed either by both parents or by the parent who has been given sole power to make major decisions under s. 767.24 (6) (am), Stats.~~

SECTION 2. PI 36.10 (2) (a) is amended to read:

PI 36.10 (2) (a) The parent of a pupil whose application for open enrollment has been denied by a school board may file an appeal of this decision to the state superintendent within 30 days after ~~receiving~~ the decision is delivered to the parent or postmarked, whichever occurs first. Upon receipt of the appeal, the department shall send a copy of the appeal to the resident and nonresident school boards.

The 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 October, 2005

Elizabeth Burmaster
State Superintendent