

# ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION ADOPTING EMERGENCY RULES

The scope statement for this rule, SS 137-18, was published in Register No. 748A1 on April 2, 2018, and approved by State Superintendent Tony Evers on April 27, 2018. 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*, 368 Wis.2d 444.

The State Superintendent of Public Instruction hereby adopts an order to create subch. V of PI 36, relating to restoring part time open enrollment rules.

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## ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

**Statute interpreted:** s. 118.52, Stats.

**Statutory authority:** s. 227.11 (2) (a) (intro.), Stats.

**Explanation of agency authority:**

The Department is required to implement and administer the payment of state aid pursuant to s. 118.52, Stats. Under s. 227.11 (2) (a) (intro.), Stats., “[e]ach 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.” See also, *Wisconsin Ass'n of State Prosecutors v. Wisconsin Employment Relations Comm'n*, 2018 WI 17, ¶ 42 (“statutory mandates are also statutory authorizations, and authorization of an act also authorizes a necessary predicate act.”)(internal citations omitted). The proposed rule is necessary for the Department to effectively implement and administer the part time open enrollment program under s. 118.52, Stats.

**Related statute or rule:** None.

**Plain language analysis:**

The proposed rule will restore Subchapter V of PI 36, relating to part time open enrollment, to conform rule with the changes under 2017 Wisconsin Act 59, the 2017-19 biennial budget.

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

**Comparison with rules in adjacent states:**

While neighboring states offer programs that are similar to public school inter-district open enrollment in Wisconsin, there does not appear to be similar programs that provide for the part time enrollment of pupils outside of their resident school district.

**Summary of factual data and analytical methodologies:**

2013 Wisconsin Act 20, the 2013-15 biennial budget, made several changes to the statutes relating to open enrollment, including eliminating the part time open enrollment program. The Department promulgated rules, Clearinghouse Rule 16-015, to eliminate Subchapter V of Chapter PI 36, which governed part time open enrollment, since it no longer had the statutory authority to implement the program. However, 2017 Wisconsin Act 59 restored the part time open enrollment program. As a result, the Department proposes to promulgate a new rule to restore Subchapter V relating to part time open enrollment. Without a rule, the Department may be prevented from efficiently implementing the program and rule and statute will not be consistent.

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

**Agency contact person: (including email and telephone)**

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

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at [adminrules@dpi.wi.gov](mailto:adminrules@dpi.wi.gov). The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

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**SECTION 1. Subchapter V of PI 36 is created to read:**

**Subchapter V – Part-Time Open Enrollment**

**PI 36.15 Definitions.** In this subchapter:

- (1) “Application” means a paper or Internet-based form developed by the department under s. 118.52 (3) (a), Stats., for the part-time open enrollment program.
- (2) “Nonresident school board” means the school board of the nonresident school district.
- (3) “Nonresident school district” means a school district, other than a pupil’s resident school district, that the pupil is attending or has applied to attend under the part-time open enrollment program.
- (4) “Parent” includes a guardian.
- (5) “Resident school board” means the school board of the resident school district.
- (6) “Resident school district” means the school district in which the pupil resides, unless the pupil attends pursuant to a whole grade sharing agreement under s. 118.50, Stats., or full-time open enrollment under s. 118.51, Stats., in which case the resident school district is the pupil’s district of attendance.
- (7) “Transportation reimbursement form” means an Internet-based form developed by the department under s. 118.52 (11), Stats., for reimbursement for the cost of transporting a pupil to and from a part-time open enrollment course.

**PI 36.16 Location of School Attendance.** In this subchapter:

- (1) Except as provided in sub. (2), attendance within a school district means the pupil physically attends a course located within the physical boundaries of the nonresident school district.
- (2) A pupil attending a course in a virtual charter school is considered to be attending a course located within the nonresident school district as specified in s. 118.40 (8) (a), Stats., regardless of the physical location of any component of the virtual charter school or of the pupil.
- (3) A pupil participating in an online course or program that is not offered through a virtual charter school is not considered to be attending a course located within the nonresident school district, unless the pupil is in physical attendance as described in sub. (1).

## **PI 36.17 Application and Notification Procedures.**

### **(1) APPLICATION.**

- (a)** Each school board shall establish a starting date for each course for purposes of s. 118.52, Stats., and each school board shall provide the course starting date and the deadline date to apply for the course to a parent or pupil upon request.
- (b)** Each school board shall provide an application to a parent or pupil upon request.
- (c)** The parent of a pupil who wishes to attend a public school under the part-time open enrollment program shall submit an application to the nonresident school board not later than 6 weeks prior to the course starting date. An application shall be considered timely only if actually received by the nonresident school district no later than 4:00 p.m. on the deadline date to apply for the course.
- (d)** A separate application shall be submitted for each pupil applying, and a separate application shall be submitted to the school board of each nonresident school district to which a pupil is applying. Any application containing false or misleading information may be denied at any time, including after the pupil's participation in part-time open enrollment has commenced.
- (e)** The application shall include written permission from the parent of the pupil if the pupil is a minor, or from the pupil if the pupil is an adult, to provide the nonresident school board those pupil records from the resident school board that are necessary to determine whether the pupil meets entrance criteria for the course.
- (f)** Upon receiving a complete application, the nonresident school board shall send a copy of the application to the resident school district within 3 working days. The nonresident school board may request any pupil records from the resident school board necessary to determine whether the pupil meets entrance criteria for the course.
- (g)** If an application is accepted by the nonresident school board and the resident school board, the parent shall provide notice in writing to the resident school board and the nonresident school board of the pupil's intent to attend the course in the nonresident school district. This notice shall be considered timely only if actually received by each school district office no later than the last weekday preceding the course starting date, excluding state holidays.

### **(2) REVIEW BY NONRESIDENT SCHOOL DISTRICT.**

- (a)** If the nonresident school board receives more applications for a course than there are spaces available in the course, the nonresident school board shall determine which pupils to accept on a random basis, using a method approved by the school board.
- (b)** If the nonresident school board adopts a policy to give preference in attendance at a course to pupils who reside in the school district pursuant to s. 118.52 (5), Stats., the policy must require applicants who apply to take courses under s. 118.145 (4) and 118.53, Stats., to apply for the course by a final deadline of no earlier than 6 weeks nor later than 1 week before the course starting date.
- (c)** The nonresident school board shall provide notice of the nonresident school board's decision as required under s. 118.52 (3) (c), Stats., to the parent no later than one week prior to the course starting date. This notice is timely if post-marked at least 3 days before the date on which the notice is required to be received by the parent.
- (d)** If the application is rejected, the nonresident school board shall do all of the following:
  - 1. Provide notice to the parent that the decision may be appealed to the department within 30 days.
  - 2. Send a copy of the application, including the notice of denial, to the resident school board.
- (e)** After the parent has notified the nonresident school district that the pupil will attend the course, or after the parent notifies the nonresident school district that the pupil will not attend the course, or if the pupil fails to attend the course, the nonresident school district shall promptly notify the resident school district.

### **(3) REVIEW BY RESIDENT SCHOOL DISTRICT.**

- (a)** The resident school board shall provide notice of the resident school board's decision as required under s. 118.52 (3) (d), Stats., to the parent no later than one week prior to the course starting date. This notice is timely if post-marked at least 3 days before the date on which the notice is required to be received by the parent.
- (b)** If the application is rejected under s. 118.52 (6), Stats., the resident school board shall do all of the following:
  - 1. Provide notice to the parent that the decision may be appealed to the department within 30 days.
  - 2. Send a copy of the denial to the nonresident school board.
- (4) APPEAL.** If the application is denied by either the resident school board or the nonresident school board, the parent may appeal the denial to the department within 30 days of receipt of the notice of denial as provided under s. PI 36.14.

**Note:** The Part-Time Public School Open Enrollment Application Form may be obtained from the Department's open enrollment website at <https://dpi.wi.gov/oe>.

## **PI 36.18 Transportation.**

- (1) Any claim under s. 118.52 (11), Stats., for reimbursement of transportation costs shall be submitted using a transportation reimbursement form by July 15 following the school year in which the transportation was provided.
- (2) The state superintendent shall use the calculation described in s. PI 36.13 (2) (a) to determine the amount of reimbursement.
- (3) If adequate funds are not available under s. 20.255 (2) (cy), Stats., to reimburse all transportation claims under this chapter and s. 118.55 (7g), Stats., the state superintendent shall prorate the available funds among only those applicants eligible for free or reduced-price lunch under 42 USC 1758 (b).
- (4) Any funds provided under s. 20.255 (2) (cy), Stats., that remain after payment has been made to reimburse claims under sub. (3) of this section and under s. 118.55 (7g), Stats., shall be prorated to reimburse claims submitted by other applicants under this paragraph and under s. 118.55 (7g), Stats., who are unable to pay for transportation.

**Note:** The Part-Time Public School Open Enrollment Transportation Reimbursement Application online form is available starting June 1 on the Department's open enrollment website at: <https://dpi.wi.gov/oe>.

**PI 36.19 Calculating cost of course.** For purposes of s. 118.52 (12), Stats., the cost of providing a course to a pupil shall be determined by first dividing the total number of hours of instruction provided to the pupil in the course by 1,137, then multiplying the result by the annual tuition rate as determined by s. 121.76 (2) (a), Stats. For purposes of determining hours of instruction for virtual charter school coursework, the total number of hours of instruction shall be 135 hours per credit.

## **SECTION 2. STATEMENT OF EMERGENCY**

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

2017 Wisconsin Act 59 restored the part time open enrollment program under s. 118.52, Stats., to allow public school pupils to attend a public school in a nonresident school district to take a course offered by the nonresident school district. The part time open enrollment program will begin in the 2018-19 school year. An emergency rule is necessary in order for the Department to administer the program in the 2018-19 school year while the permanent rule completes the promulgation process.

## **SECTION 3. 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 27<sup>th</sup> day of June, 2018



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Tony Evans, PhD  
State Superintendent