WASB
WISCONSIN ASSOCIATION OF SCHOOL BOARDS

"Leadership in Public School Governance"

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Dear Mr. Bryan:

The Wisconsin Association of School Boards, Inc. (WASB) offers the following comments on the proposed revisions to Chapter PI 36 that would govern the part-time open enrollment program, as reflected in Clearinghouse Rule CR 18-009.

I. Application periods/deadlines for preference-eligible applications that are submitted under proposed section PI 36.16(2)(b)

Section PI 36.16(2)(b) of the Department's proposed regulations provides as follows:

> The nonresident school board may give preference in attendance at a course to residents of the school district who apply to take courses under s. 118.145 (4) and 118.53, Stats. by adopting a policy pursuant to s. 118.52 (5), Stats. If the nonresident *[school board]* adopts such a policy, the policy must require applicants under s. 118.145 (4) and 118.53, Stats., to apply for the course **by a date no earlier than 6 weeks nor later than 1 week before the course starting date.**

We believe that the emphasized portion of this provision is ambiguous. There are at least two ways to interpret the provision, and because one of the possible interpretations would be quite problematic, we believe the provision should be clarified.

First, focusing particularly on the words "by a date" the provision could be interpreted to mean that a school district may not establish a final deadline for the submission of course applications under ss. 118.145 (4) and 118.53, Stats., that is earlier than 6 weeks before the course stating date.[1] If that is the case, the provision is not problematic, but it should be clarified to read as follows:

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[1] *Section 118.145, Stats, requires a school board to allow a private school or tribal school pupils who meet the standards for admission to high school to take up to 2 courses during each school semester in their school district of residence if the resident school board determines there is sufficient space available in the classroom.*

Section 118.53, Stats., requires a school board to allow a pupil enrolled in a home-based private educational program, who has met the applicable standards for admission to attend up to 2 courses at a public school in the district during each school semester if the school board determines that there is sufficient space in the classroom.

"… If the nonresident [school board] adopts such a policy, the policy must establish a final deadline for the submission of any preference-eligible applications under s. 118.145 (4) and 118.53, Stats., and such final deadline shall be no earlier than 6 weeks nor later than 1 week before the course starting date."

Second, proposed section PI 36.16(2)(b) could instead be interpreted to establish a narrow, 5-week window for the submission of preference-eligible resident applications under ss. 118.145 (4) and 118.53, Stats. If that is the intent, we see the provision as problematic. The implications of such an interpretation would include the following:

- If a private school student who is a resident of the district came to the district office or mailed an application letter in May, June, or early July to express interest in taking a course that starts in the first week of September, the school district would have to refuse the attempted application (as opposed to, for example, simply accepting the application and waiting to process it at a later point).

- The school district would have to wait to notify all of their part-time open enrollment applicants of acceptance or rejection until the very last day permitted by statute.

We do not see any need to mandate a narrow, 5-week window for the proper submission of course applications by resident students under s. 118.145 (4) and 118.53. This is particularly true for a window that opens and closes so close to the course starting date.

More specifically, we can think of no reason to mandate a limited application period that begins only when the part-time open enrollment application deadline has passed. Why, for example, should a district be prohibited from receiving applications under s. 118.145 (4) and 118.53 prior to the 6th week before the course start date—during the same period of time that the district would be receiving applications under s. 118.52?

Mandating a final, back-end deadline of no later than 1 week before the course starting date would have the undesirable consequence of making the school district wait to notify part-time open enrollment applicants until the last possible day allowed by law. In reality, most school districts would likely prefer to be able to give applicants more than just one week of notice (when possible), and some students and parents would likely prefer to know their status somewhat earlier than the last possible date allowed by law. (Many private schools, for example—because they are not subject to s. 118.045, Stats.—commence their school term in mid-August.) Yet, the language of the proposed rule could place the district in the position of having to wait until the last possible day, just in case any additional preference-eligible applications were received under ss. 118.145 (4) and/or 118.53. If there has to be a single, mandated application deadline by which a student must apply in order to receive the "resident" preference (and, to be clear, we do not think that there needs to be one), many school districts would likely prefer that it be the same date 6-weeks prior to the course starting date that applies to applicants under s. 118.52.

We believe that the creation of an artificially narrow application window so close to the course starting date would place burdens on and be disadvantageous to students, parents, and school administrators. As a possible alternative to proposed Section PI 36.16(2)(b), consider either the language previously proposed, above, or the following:

> The nonresident school board may give preference in attendance at a course to residents of the school district who apply to take courses under s. 118.145 (4) and 118.53, Stats. by adopting a policy pursuant to s. 118.52 (5), Stats. If the nonresident school board adopts such a policy, the policy shall establish a specific application period or, at a minimum, a specific application deadline for applicants under s. 118.145

(4) and 118.53, Stats., to apply for the course and receive the preference. *[The earliest date such applicants under s. 118.145 (4) and 118.53, Stats., may be permitted to apply for a course may be no earlier than the earliest date that a pupil is permitted to apply to take the same course under s. 118.52.[2]]* Further, a school district may not rescind a notification of acceptance into a course that has been issued to an applicant under s. 118.52 based on receiving an application under s. 118.145 (4) or 118.53, Stats., after the date the notice of acceptance was issued to the applicant under s. 118.52.

II. Application period start-dates for submitting part-time open enrollment applications.

Section 118.52 of the state statutes establishes a final deadline for the submission of a course application under the part-time open enrollment program, but neither the statute nor the proposed regulations speak to any *start date* for an application period. Having no defined front-end date for the submission of applications under s. 118.52 could create unnecessary administrative complications. A school district should not have to accept and manage part-time open enrollment applications that arrive many, many months before a course start date. So long as a school district establishes a specific start date for the application period in its written policy, it is reasonable for the regulations to expressly authorize such policy provisions.

We suggest that the rules should expressly authorize school districts to establish a start-date for the submission/receipt of part-time open enrollment applications, perhaps within certain defined parameters. For example, the rules could provide that any starting date for such an application period that is established within a school district policy or procedure shall be no later than the later of (1) the date that the course starting date is established; or (2) at least 12 weeks prior to the course starting date.[3] Such an approach would expressly allow school districts to open a reasonable application "window" that closes on the statutory deadline. Without such express authority, school districts do not have a definitive answer as to whether they have authority to establish a reasonable *start date* for an application period.

III. Equitable payments for full-time open enrollment students participating in part-time open enrollment.

We note that the proposed rules (via the definition of "resident school district" in section PI 36.15(6)) accommodate the Department's view that full-time open enrollment students may also simultaneously participate in part-time open enrollment. This appears to include allowing a full-time open enrollment student to apply via part-time open enrollment to take classes in his/her actual resident school district. While we believe this position

[2] The italicized sentence in the proposal above is likely unnecessary unless the department concludes there is some overriding equitable issue with establishing identical beginning points for the respective application periods. See also the discussion, below, of start-dates for the part-time open enrollment application period.

[3] The 12 weeks is intended as an example and placeholder. The larger point is that, keeping in mind the statutory final deadline and the time period during which school districts can typically finalize course schedules for an upcoming semester or summer school period, the rules could probably establish a minimally-reasonable application window that school districts could choose to exceed if it is practical for them to do so.

differs from guidance that the department had previously issued under the prior iteration of the part-time open enrollment program (i.e., prior to course options), we are not taking a position on that question of statutory interpretation, except to note that the change in the department's interpretation does not appear to be related to any change in the pertinent statutory language (which remains essentially identical).

However, we think it is worth assessing whether the "cost of providing a course," as defined in proposed section PI 36.18, yields a sufficiently equitable result when it is applied to a full-time open enrollment pupil who takes classes outside of his/her district of attendance under s. 118.52. When viewed as a percentage of the total funding that is attributable to the pupil in the "payor" district, it appears to be the case that the proposed cost formula for part-time open enrollment courses will differentially impact a school district in which a pupil actually resides as compared to a nonresident district that is serving as the school district of attendance (i.e. for a full-time open enrollment pupil, which, as noted, under the proposed rule would be considered to be the "resident district). Whether the differences are material and sufficiently equitable in the various possible scenarios are the policy questions raised by the proposed formula

We note a couple of points in regard to this issue. First, it strikes us that due to differing cost structures, the impact of this proposed rule will likely vary according to whether the pupil full-time open enrolls into a geographically neighboring district or into a virtual charter school in a geographically remote district.

In addition, under the interpretation that appears to be preferred under the proposed rule, we think it is particularly likely that students who, for example, have full-time open enrolled into a virtual charter school in a non-resident district may decide to avail themselves of the opportunity to take courses such as, say, music or physical education in their district of residence as it will be far more convenient for them to do so. We suggest you may want to reexamine how this will work on a practical level and whether this will produce an equitable result.

IV. Physical attendance requirements.

Despite the nearly parallel statutory language that can be found in section 118.51(2) and section 118.52(2), the proposed rules do not appear to address whether there is a physical attendance requirement that applies to courses taken through the part-time open enrollment program. That is, does a pupil need to be in physical attendance in the nonresident school district when taking a course through part-time open enrollment? Except for participation in officially-designated virtual charter schools, we believe the department requires pupils who are participating in full-time open enrollment to be in physical attendance in the nonresident school district. We believe it would be helpful for the department to identify its intent with respect to the administration of the part-time open enrollment program regarding any physical attendance requirements.

The Wisconsin Association of School Boards (WASB) thanks the Department for considering the above input on the proposed part-time open enrollment rules.