

Original public comments submitted on WI Apprenticeship Manual revisions

Unedited comments submitted by the public during the public comment period (June 20, 2022 through September 20, 2022) of the revision process for the Wisconsin Apprenticeship Manual

From: [Mayek, Mandy L](#)
To: [DWD MB DET Apprenticeship](#)
Subject: Apprenticeship Manual Public Comment
Date: Wednesday, June 29, 2022 11:17:48 AM

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Thanks for providing the revisions and summary. My comments/questions are below:

Page 10:

4.1.4(viii) Establish a system for the related instruction provider and employers to submit regular reports on apprentice grades, attendance, and training progress.

Could a more collaborative word than “establish” be used to recognize that this system should be jointly-developed by PRI providers and sponsors? As written, it could imply that sponsors have authority to solely dictate this. Perhaps something like, “*Collaborate with related instruction providers and employers to identify and implement a system for ensuring regular progress tracking of grades, attendance and on-the-job training.*”

Interestingly, this is worded much differently when discussing this same topic in 4.3(v), simply citing that the sponsor must “receive regular progress records...from both the employer and the training provider.” That seems a little better to me as it doesn’t dictate how, just that it needs to happen. Also, the final paragraph of page 34 (13.5) does a nice job of covering a “mutually agreed on” process. It might be useful to make the language in all sections consistent on this topic.

Page 11:

4.1.4(xii) Consider petitions for credit for prior experience and education and make recommendations to the Bureau for the award of such credit. Any party to the apprentice contract may request for prior experience and education. All credit recommendations of the local committee, approved or denied, must be made in writing, and forwarded to the assigned ATR.

Rather than “make recommendations to the Bureau **for the award...**,” could it be modified to say **for the evaluation**? As it’s written, it sort of makes it sound like the sponsor completes this evaluation and the BAS decision is based on their recommendation. On page 26 (10.3), the process is clarified better, but I think this slight language tweak might be useful.

4.1.4 (xiv.) The local committee may appoint a representative, such as an apprenticeship coordinator, who will assume responsibility and authority for certain aspects of the apprentice training program as delegated by the local committee. The local committee must specifically identify the functions delegated to the apprenticeship coordinator.

Appoint or elect? Could this be interpreted to mean that they could direct a technical college “apprenticeship coordinator” to complete functions? While I’m thinking that isn’t the intention, I think the wording could imply this.

Page 12:

4.2.2 (viii) Recommend credit for previous experience and education to the Bureau in conformity with Bureau policies and procedures

Same commentary as I listed for 4.1.4(xii).

4.2.2 (xi) Develop policies related to layoff, assignment, attendance, discipline, affirmative action and equal opportunity, etc., when necessary for the administration of the apprenticeship programs.

This all makes sense to me except for “attendance.” Not sure if this is pertaining to PRI or on-the-job,

but we wouldn't be able to impose attendance policies which would conflict with college administrative policies.

Page 27:

Non apprentices are prohibited from enrolling in apprentice technical instruction courses designated as WTCS Aid Code 50

There are instances in which BAS has allowed enrollment of non-WI apprentices in Aid Code 50 classes. This was approved with the understanding that no WI registered apprentice could/would be displaced by any other attendee. Could language be added at the end of the sentence stating "without the approval of BAS and WTCS?"

Page 30:

It is the sponsor's responsibility, in coordination with the related instruction provider, to ensure apprentices are released from work to attend their required related instruction. Failure to allow an apprentice to attend related instruction is in violation of the apprenticeship contract.

I don't understand what the related instruction provider could/would do to ensure apprentices are released from work. Wouldn't this be the sponsor and *employers'* responsibility?

Mandy Mayek

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From: [Green Acres](#)
To: [DWD MB DET Apprenticeship](#)
Subject: Public Comment on the revisions to the Wisconsin Apprenticeship Manual
Date: Wednesday, September 14, 2022 12:54:19 AM

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I really like the revisions to the manual, starting with the new organization. It was a slow process to go through the old versus the new, however I persevered and here are my observations/comments.

4.1 LOCAL APPRENTICESHIP COMMITTEES

...Boundaries may be drawn based on several factors, such as union jurisdiction, technical college districts, recruitment areas and population centers, among others.

Observation: Vague (what are the "among others")

4.2.3 In-House Committee Membership & Operations

...Joint In-House Committee Membership

....An in-house committee for a jointly managed apprenticeship program should have an equal number of members representing employers and employees.

Observation: "should" prefer "shall"

And now for my greatest concern

2.5.3 TERMS

State Committee members will serve terms of three years and may be nominated for additional terms. Memberships will be staggered to maintain continuity.

Observation: while the State has done a superb job at this for the State Committee, they have shied away from enforcing local committees from doing the same, even if it was in their inside agreements. For example;

Inside Agreement

Madison Division Wisconsin Chapter, NECA.,INC
and

IBEW Local #159

EFFECTIVE JUNE1, 2020 TO MAY31,2023

ARTICLE IV

SECTION4.02 All JATC member appointments, reappointments and acceptance of appointmentsfor a 3 year term...shall be staggered, with one(1) term from each side expiring each year.

In Madison, almost every three years, a new administration has been elected and almost always the apprenticeship committee on the labor side has been replaced. I have personally

witnessed the lack of continuity and the ensuing confusion that has been created from the State's unwillingness to enforce this single simple issue and it has created a huge disservice to the apprenticeship program as a whole...time for the State to stop this insanity by adding 2.5.3 TERMS of the Apprenticeship Manual to the Local Apprenticeship Committee section.

From: [Kolodziej, Sarah](#)
To: [DWD MB DET Apprenticeship](#)
Subject: RE: Comment Period for Apprenticeship Policy Changes
Date: Wednesday, September 14, 2022 8:38:19 AM
Attachments: [image001.png](#)
[BAS Response to Update Manual.docx](#)

**CAUTION: This email originated from outside the organization.
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Hello,
Please see attached for our comments to the recent Wisconsin Apprenticeship Manual revisions.
Thank you,
Sarah Kolodziej

**HR Generalist
Dampers & Apprenticeships**
Office: 715-692-6738 | Cell: 715-432-6090
P.O. Box 410, Schofield, WI 54476 USA



September 14, 2022

David D. Polk
Bureau of Apprenticeship Standards
Wisconsin DWD

To whom it may concern:

Greenheck Fan Corporation's Skilled Trades Committee has reviewed the updated *Wisconsin Apprenticeship Manual*. Our comments to the updates/amendments are as follows:

Edits

Chapter 9, page 24 – "19.2" should be "9.2"

Exception Requests

Section 9.2.3, and 11.4 Regarding Overtime Pay and Allowed Overtime Hours – Does this apply only when the overtime is mandatory, thus employer assigned? Greenheck Group has a voluntary overtime policy so employees can choose how often, and how much overtime they want to work depending on the areas of work where there is overtime available.

It is reasonable to assume a Greenheck sponsored apprentice could work 60+ hours, if they so choose, due to the nature of our business and operational support needs.

Section 10.2 Work Credit – Greenheck has historically allowed granting of OTJ hours in the last year of the apprenticeship (the last 1,000 hours or less) because it is at that point when an apprentice can truly be evaluated for skills, knowledge and ability to perform at a journeyman level. We have had apprentices that were granted OTJ hours in the first year to their detriment as it pertains to our business specific training and understanding of work processes. We ask that this section be amended to remove the restriction on awarding credit on the final year.

We appreciate your consideration and look forward to a response from BAS.

Sincerely,

**Greenheck Fan Corp
Skill Trades Committee**

From: [Scott Knocke](#)
To: [DWD MB DET Apprenticeship](#)
Subject: Apprenticeship Manual
Date: Monday, September 19, 2022 5:47:16 PM
Attachments: [Letter re. Apprenticeship Manual Apprenticeship Funds \(final\).pdf](#)
Importance: High

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To whom it may concern,

Attached is a comment letter regarding the Wisconsin Apprenticeship Manual (Revised). This comment letter is submitted pursuant to the 90-day public comment period. Please respond to this e-mail to confirm the DWD's receipt of this submission.

Scott Knocke

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September 19, 2022

SENT BY E-MAIL

apprenticeship@dwd.wisconsin.gov

Re: Wisconsin Apprenticeship Manual
(Revised) - Comment Letter

This letter is submitted on behalf of the sponsors and local apprenticeship committees of the registered Wisconsin apprenticeship programs identified below. Thank you for the opportunity to provide comments on the proposed revisions to the Wisconsin Apprenticeship Manual. The changes proposed are significant. Overall, the changes appear to consistently shift authority for the apprenticeship program toward the Department of Workforce Development and the Bureau of Apprenticeship Standards (collectively, DWD or the Department) and away from stakeholders, including sponsors and apprenticeship committees. However, the responsibility for the management and operation of the program remains with the local committees and sponsors.

The revised manual makes clear that DWD maintains broad authority to modify or implement new policies and practices for the program, and implies that DWD may overrule any decision of the local committees at any time and seemingly for any reason. At the same time, the revised manual withdraws the Department's willingness to provide legal assistance to local committees in several circumstances. We believe such an increase in liability exposure paired with a decrease in authority for these committees makes little sense and contradicts the legislature's intent when setting up the program.

At a high level, the shift of authority from the local committees to the Department does not appear to be supported by the statutory language that lays the foundation for the apprenticeship program. The statutes are informative when evaluating the responsibility and authority of the local committees and the DWD. Apprenticeship contracts are governed by Wis. Stat. § 106.01. The statutes explain that an apprenticeship committee is designated by a sponsor to administer an apprenticeship program. (Wis. Stat. § 106.001(2m).) The statutes grant the apprenticeship committee authority to act as an agent of the sponsor, including providing certain exclusive rights to the apprentice committee. (*See* Wis. Stat. § 106.01.) A sponsor is defined as "any employer, organization of employees, association of employers, committee, or other person operating an apprenticeship program and in whose name the apprenticeship program is approved by the department." (Wis. Stat. § 106.001(8).)

The Department's authority is also explained in Wis. Stat. § 106.01. The DWD must specify the provisions required in an apprentice contract by rule and approve each the assignment or reassignment of apprentice contracts. (Wis. Stat. §§ 106.01(1), (5m).) The DWD may also terminate apprentice contracts in certain circumstances and after certain procedures have been followed. (Wis. Stat. § 106.01(5m).) The DWD must set standards for reporting grades and attendance of apprentices. (Wis. Stat. § 106.01(6)(e).) The statutes also authorize DWD more broadly to "investigate, fix reasonable classifications, issue rules and general or special orders, and hold hearings, make findings, and render orders upon its findings as necessary to carry out the intent and purposes" of Wis. Stat. § 106.01. (Wis. Stat. § 106.01(9).) Specifically, the DWD is directed to promulgate rules to provide the provisions required in an apprenticeship contract and the procedures for approving or rescinding approval of apprenticeship programs. (Wis. Stat. § 106.01(11).)

Based on just the statutory language, the legislature created apprenticeship committees to act on behalf of a sponsor, taking the role of a sponsor in executing and implementing apprenticeship contracts. The legislature did not envision that the apprenticeship committees would act as an agent of the DWD, nor authorize DWD to determine the membership of or otherwise control the committees.

However, the DWD then promulgated rules to implement Wis. Stat. § 106.01. (*See generally* Wis. Admin. Code Chs. DWD 295-296.) In doing so, the department expanded the responsibility of the apprenticeship committees designated as local committees, but also assigned itself significantly more authority to control those committees' actions.

The DWD's rules created local apprenticeship committees, which the department defined as an apprenticeship committee that advises the department and to which the department has delegated authority to act under DWD 295.02 and 295.03. (DWD 295.001(13); 295.03.) Essentially, the DWD assigned to the local committees the responsibility for recommending standards for DWD to adopt and for ensuring that the DWD's rules and standards are being followed and met by program participants. But in its rules, DWD retained final decision-making authority.

Because DWD assigned these specific apprenticeship committees an advisory role, the Department apparently also saw fit to assign itself unilateral control over the jurisdictional area and membership of the local apprenticeship committees, despite the legislature's clear direction that apprenticeship committees act as an agent of the sponsor. (DWD 295.03).

The apprenticeship program has evolved over many years, and the multiple parties have managed to generally work cooperatively with the Department to implement and maintain a successful program. However, the manual revisions move too far in the direction of allowing the

Department to unilaterally control all aspects of the program, which was not the intent of the legislature and is not conducive to a sustainable apprenticeship program.

Accordingly, we urge the Department to revisit the changes at a high level to make sure they encourage cooperation and coordination of all parties and stakeholders. We also encourage the Department to review the proposed revisions to ensure that there is a statutory foundation for the authority the Department is exercising, and to ensure that all standards and requirements are fully supported by current law.

In addition, we are providing the following recommendations and comments on specific changes in the revised manual:

- 1. The Bureau or DWD should provide legal advice to local committees related to complaints.** The revised manual explains that the agency will no longer provide legal advice to local committees in certain instances where complaints are made against the local committee. As previously discussed, if the Department intends to exercise authority to manage the actions and decisions of the local committees, then it does not follow that the Department would not provide legal support if one of those actions or decision is challenged. The Department must clarify if and when the local committee is acting as an agent of the sponsor and when the committee is acting under the authority delegated by the Department. If the committee is acting under authority delegated to it by the Department, then the Department should provide legal assistance to the committee throughout that task.
- 2. The revised manual should clarify the State Trade Advisory Committee's role and the responsibilities delegated to such committee.** The revised manual describes the State Trade Advisory Committee's role as merely advisory to the DWD. However, the prior manual delegated certain specific authority to such committee.

Section 2.3 of the revised manual describes the role of the State Trade Advisory Committee in developing Statewide Standards and is missing key aspects that were included in the prior manual. For example, the prior manual indicated that the State Trade Advisory Committees "develop standards for the trade classifications within their industry." This language should be included in the revised manual.

Section 2.6.2 of the revised manual describes the State Trade Advisory Committee's duties. The prior manual set forth specific tasks that were delegated to this committee. These delegations, however, are not included in the revised manual. Instead, the revised manual appears to shift power from the State Trade Advisory Committee to the DWD.

3. **The revised manual should describe the purpose of the local apprenticeship committees and clarify the local committees' functions and duties.** Similar to the prior manual, the revised manual should describe the purpose of the local apprentice committees. Additionally, the revised manual should reflect the functions and duties that the DWD has delegated to the local committees. For example, the prior manual indicates that the local committees "establish local standards." The revised manual, however, states that the local committees "recommend standards . . . to the Bureau."

The revised manual also requires local committees to "specifically identify the functions delegated to the apprenticeship coordinator." This requirement is new and lacks clarity. The DWD should remove this requirement or describe the expectations with respect to this delegation.

4. **A violation of any state apprenticeship statute, rule or standard should not be a cause for removal from apprenticeship committees.** The manual authorizes the DWD to remove a person from committees for a violation of any state apprenticeship, statute, rule or standard. This cause for removal is not described in the prior manual, the statutes or regulations. Additionally, it is unclear how an individual could bear responsibility for violating a state apprenticeship, statute, rule or standard. Furthermore, the manual does not indicate the body that would be responsible for determining when such a violation has occurred. Based on the foregoing, this provision should be removed from the revised manual.
5. **The section entitled "Minor Apprentices" should be removed from the revised manual.** This new section regarding Minor Apprentices causes confusion regarding the status of high school apprentices and conflates two separate programs (*i.e.* the general apprenticeship program and the youth apprenticeship program). Including this section makes it unclear whether a high school apprentice would be considered a first-year apprentice. Additionally, when read in conjunction with section 9.2.4 of the revised manual regarding fringe benefits, it suggests that minor apprentices would need to be offered the same benefits as employees. However, apprenticeship programs generally do not offer fringe benefits to minors. For these reasons, the "Minor Apprentices" section should be deleted from the revised manual. However, if this section is not removed, the revised manual should clarify that programs are not required to admit minors, explain that youth apprenticeships are separate programs and clarify that apprenticeship programs are not required to offer fringe benefits to minor apprentices.
6. **The description of the apprentice selection procedures should be revised to allow additional procedures.** The second sentence in the section entitled "Apprentice Selection Procedures" lists the procedures that a sponsor may use to select

- apprentices. However, a sponsor should not be limited to only the procedures identified in the revised manual. Accordingly, we request that you add language indicating that these selection procedures are examples of permissible selection procedures and that sponsors may use additional procedures.
7. **The revised manual should describe the expectations of WTCS colleges.** The prior manual described actions that WTCS districts are expected to take to maintain high quality instruction for apprentices. Unless these expectations will be set forth in another document, the revised manual should incorporate these expectations so that the schools and other interested parties are aware of the obligations.
 8. **The Department should limit the labor neutrality requirement at independent training facilities to time periods when classes are in session.** The revised manual removed the language specifying that training centers must maintain labor neutrality *while classes are in session*. While we understand the Department's intent for seeking labor neutrality, there is no reason that this requirement should apply when apprentices are not in class at the training facility.
 9. **The Department should provide a basis for its new requirements for Independent Instructors.** The revised manual includes new requirements for Independent Instructors in section 11.3.2. However, the DWD does not provide a statutory foundation for these new requirements.
 10. **Section 14.4 of the revised manual should encourage sponsors to utilize materials available through the Department.** The revised manual encourages sponsors to use materials available through the DOL for anti-harassment training; however, the DWD has also provided materials for such training. The revised manual should clarify that sponsors will comply with the applicable requirements if they use materials from either the DOL or DWD.
 11. **The Department should clarify section 14.5.** The second sentence of this section appears to contain a typographical error. This sentence states that "[t]he *sponsor* must ensure and aid the *sponsor* in meeting its nondiscrimination and affirmative action obligations." The revised manual should be modified to correct this error.
 12. **The revised manual should state that the Department will assist apprenticeship programs with preparing an affirmative action plan.** The prior manual included a statement indicating that the Apprenticeship Training Representative (ATR) would assist apprenticeship programs with preparing affirmative action plans. It is our understanding that the ATR continues to hold this responsibility; however, this statement is not included in the revised manual. Please update the revised manual accordingly.

13. The revised manual should describe the Department's role in completing the Utilization Analysis and Utilization Goals. The revised manual states that the Bureau assists with conducting the availability analysis, but does not describe the Bureau's role with regard to completing the utilization analysis and utilization goals. It is our understanding that the DWD will assist with these tasks, and the revised manual should be revised accordingly.

14. The Department should remove the paragraph regarding an employers' personnel practices in section 15.6. This section suggests that the sponsor is responsible for actions of employers and states that the sponsor should rely on its "working knowledge of employers' personnel practices." However, sponsors may work with multiple employers and cannot be expected to maintain a working knowledge of all employers' practices, which could change at anytime without notice to the sponsor. In this regard, there are numerous multiemployer training programs in the state featuring dozens (and in some cases hundreds) of employers. Additionally, the last sentence of this paragraph is unclear as it appears to allow a sponsor to enter into an agreement with itself.

Finally, we encourage the Department to take a different approach to the process used to revise the manual in the future. The current revisions appear to have been largely initiated, developed, and proposed by the Department, and subsequently provided to stakeholders for review and comment. While it is understandable that certain updates may be necessary to implement changes in the law, we believe a large-scale revision such as this one should begin with stakeholder outreach and a broad discussion with those familiar with the apprenticeship program regarding which portions of the manual are working well and which portions may need revisions. Engaging stakeholders at the beginning of the process will encourage collaboration, assist with understanding the reasons for revisions, and be more likely to result in a final product with which parties and stakeholders are comfortable.

We appreciate the efforts of the Department in revising the manual, and hope to work collaboratively moving forward on finalizing and implementing the changes.

Sincerely,

MILWAUKEE AREA SHEET METAL
JOURNEYMAN AND APPRENTICESHIP
TRAINING TRUST FUND
(*Milwaukee Area Sheet Metal JAC*)

WISCONSIN FOX VALLEY AREA
SHEET METAL JOURNEYMAN AND

APPRENTICE LOCAL 18 TRAINING
TRUST FUND
(Fox Valley Area Sheet Metal JAC)

SOUTHEASTERN SHEET METAL JOINT
APPRENTICESHIP TRAINING FUND
(Southeastern WI Area Sheet Metal JAC)

SHEET METAL WORKERS LOCAL 18
AND EAST CENTRAL WISCONSIN
JOURNEYMAN AND APPRENTICE
TRAINING TRUST FUND
(East Central WI Area Sheet Metal JAC)

MADISON AREA SHEET METAL
WORKERS EDUCATIONAL TRUST FUND
(Madison Area Sheet Metal JAC)

SHEET METAL WORKERS LOCAL 18
E.L&W. TRAINING FUND
(ELW Area Sheet Metal)

LOCAL 400 PLUMBING & PIPEFITTING
EDUCATIONAL PROGRAM
*(Appleton Area Steamfitting JAC,
East Central Steamfitting JAC,
Green Bay Area Steamfitting JAC,
Appleton Area Plumbing JAC,
Fond du Lac Area Plumbing JAC,
Northeast WI Area Plumbing JAC and
Northeast WI Fabricator JAC)*

PLUMBERS & STEAMFITTERS LOCAL 434
AND MCA OF NORTHWEST WISCONSIN
TRAINING FUND
*(Central Wisconsin Area Plumbing JAC,
La Crosse Area Plumbing JAC,
La Crosse Area Steamfitting JAC,
Marshfield Area Plumbing JAC,
Eau Claire Plumbing JAC,
Eau Claire Steamfitting JAC)*

apprenticeship@dwd.wisconsin.gov
September 19, 2022
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*Tri City Steamfitters JAC,
Wausau Area Steamfitting JAC,
Wausau Area Plumbing JAC,
Western Wisconsin Plumbing JAC and
Rhinelander Plumbing JAC)*

From: [James Cook](#)
To: [DWD MB DET Apprenticeship](#)
Cc: Darren@wisneca.com; [Sean Frank \(ibew127@gmail.com\)](mailto:Sean_Frank_ibew127@gmail.com); [Beth A. Bulmer](#)
Subject: Letter RE: Apprenticeship Manual Revisions
Date: Tuesday, September 20, 2022 12:05:43 PM
Attachments: [Letter re. Apprenticeship Manual \(WI NECA-IBEW\).pdf](#)
[Letter re. Apprenticeship Manual \(WI NECA-IBEW\).docx](#)

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Please find attached, in both MS Word and pdf formats, a letter communicated by the Wisconsin NECA-IBEW Joint Apprenticeship & Training Trust Fund Committee (JATT) in regards to the revisions recently made by the DWD to the Apprenticeship Manual. If the format of the comments does not meet with the Department's protocols, please let me know a.s.a.p.

Thank you for your time and consideration.

Regards,

Jim

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608-221-3321 (phone)
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September 19, 2022

SENT BY E-MAIL

apprenticeship@dwd.wisconsin.gov

Re: Wisconsin Apprenticeship Manual (Revised)
– Comment Letter

On behalf of WI NECA-IBEW, I want to thank you for the opportunity to provide comments on the proposed revisions to the Wisconsin Apprenticeship Manual (the “Manual”). We appreciate the significant effort made by the staff at the Department of Workforce Development (“DWD”) to work with the Wisconsin Apprenticeship Advisory Council, and specifically the Policy and Standards committee of the Council, to revise the Manual.

First, we believe it is important to gain clarity on how the DWD classifies the Manual. There remains confusion on the precise purpose of the revised document, as well as how, when, and by whom future revisions to the Manual will be made. Therefore, we believe it would be helpful for the stakeholders to better understand how DWD characterizes this document.

Wisconsin law defines a rule as “a regulation, standard, statement of policy, or general order of general application that has the force of law and that is issued by an agency to implement, interpret, or make specific legislation enforced or administered by the agency or to govern the organization or procedure of the agency.” (Wis. Stat. § 227.01(13).) A guidance document is generally defined, with some inapplicable exceptions, as “any formal or official document or communication issued by an agency, including a manual, handbook, directive, or informational bulletin, that... [e]xplains the agency’s implementation of a statute or rule enforced or administered by the agency, including the current or proposed operating procedure of the agency or [p]rovides guidance or advice with respect to how the agency is likely to apply a statute or rule enforced or administered by the agency, if that guidance or advice is likely to apply to a class of persons similarly affected.” (Wis. Stat. § 227.01(3m)(a).)

While the Manual could arguably fall into either of these two categories, the agency appears to take the position that the Manual is not an administrative rule. As reflected in the meeting minutes of the Policy and Standards Committee from April 19, 2022, DWD legal staff explained that the Manual is not an administrative rule, but rather “it captures policy and practice.” In addition, as reflected in the March 10, 2022 meeting minutes of the Policy and

Standards Committee, Mr. Kasper explained that one of the primary objectives of the revisions is to align the manual with recent law changes. However, during the several meetings of the Policy & Standards Committee, DWD staff was not inclined to confirm that the Manual was a guidance document. Instead, DWD staff explained that it was a “working” document, a definition for which could not be found in statute or existing DWD rules.

Second, we believe it would be helpful to understand how and when the Manual will be revised moving forward. The process used for the current revision strayed significantly from past practice, and began with the agency proposing significant revisions prior to any input from stakeholders. At the March 10, 2022 Policy and Standards Committee meeting, Mr. Kasper acknowledged that the review process used in this instance differed significantly from the process used in 2011. He reiterated that one of the primary objectives of these revisions, which he explained at the prior Council meeting, is to align the manual with recent law changes. Therefore, following the “old process” would be “plausibly untenable.”

However, it has not been clearly explained how future Manual revisions, either major or minor, will be made and what role stakeholders will play in that process.

Finally, we are concerned about the changes related to the assistance provided by DWD to local committees related to liability for legal action and complaints. The updated Manual includes a table describing when the agency will and will not provide legal advice and representation to the local committees. While some of the Manual revisions appear to shift authority from local committees to the agency, the revisions also reduce the instances in which DWD will provide legal counsel to the local agencies. These two broad changes seem contradictory.

For example, the Manual describes local committees as “established by” the agency to “act in an advisory capacity in the operation of an apprenticeship program in the construction sector.” The Manual reserves significant authority for the agency to determine membership of the local committees and even to remove local committee members, and does not provide local committees with the ability to make decisions contrary to DWD’s advice or absent DWD oversight. In short, the manual appears to decrease the local committee’s authority to only that which is specifically delegated to it by DWD, and only allows it to act with DWD’s permission.

Moreover, the Manual also envisions the ATR being involved in final local decisions related contract complaints, encouraging apprentices and sponsors to bring matters of dispute to the ATR’s attention before a complaint is filed with DWD pursuant to DWD 295.20. However, the table then explains that the agency cannot provide legal representation to the committee if the representation relates to administrative proceeding or other litigation related to hearings under DWD 295.20. The Manual explains that it would be a conflict of interest for the agency to

provide representation to the local committee while also conducting hearings related to DWD 295.20.

We believe that DWD's refusal to assist with these certain legal matters is not justified, and should be revised. It makes little sense that the agency, through the ATR, can be involved in attempting to facilitate an agreement between the parties prior to a complaint being filed under DWD 295.20, but then must avoid providing legal advice. Moreover, if the local committee's actions are subject to the oversight of and taken on behalf of the agency, then a decision of the local committee is the same as a decision of the agency. Therefore, the agency should provide legal guidance to the local committee whenever necessary.

Though the agency claims that providing legal guidance would be a conflict of interest, this situation is not unique to DWD. There are many instances in which leadership of a state agency must evaluate the decision of subsection of the agency, and is then obligated to review, investigate, hold a hearing, and ultimately make a final determination. (*See, e.g.*, Wis. Admin. Code § ATCP 1.05 regarding complaints from a division of DATCP seeking a special order; Wis. Admin. Code § NR 20.40 regarding permits for fishing tournaments which may be reviewed through a contested case.) In fact, any action of an agency, including an action of any board, commission, committee, department or officer, is subject to a request for hearing and review pursuant to Wis. Stat. § 227.42. Presumably, the agencies for which the board, commission, committee, department or officer are acting on behalf of are not left without legal guidance during the pendency of the hearing and review. Accordingly, because the local committees are acting on behalf of DWD, and exercising authority delegated to them by the agency, the agency should continue to provide legal advice to the local committee throughout the process. If necessary, an ethical wall may be implemented to separate attorneys advising the local committee from the legal staff acting on behalf of the agency. However, refusal to provide legal assistance could severely hamper the local committees' willingness and ability to perform their duties.

In order to allow stakeholders to rely on the Manual, and to better understand the future of potential Manual revisions, WI NECA-IBEW respectfully requests that the agency (1) clearly define the type of document the Manual is intended to be; (2) provide additional information regarding the process for future revisions; and (3) agree to provide legal advice and assistance to the local committees in all instances.

Yours very truly,

BY

Sean Frank, Chairman Darren Johnson, Secretary
WI NECA-IBEW Electrical Apprenticeship & Training

From: Nakkoul, Nancy <nancy.nakkoul@wtcsystem.edu>

Sent: Thursday, September 22, 2022 10:31 AM

To: Pusch, Elizabeth A - DWD <Elizabeth.Pusch@dwd.wisconsin.gov>

Cc: Smith, Owen T - DWD <Owen.Smith@dwd.wisconsin.gov>

Subject: Another item for the next DWD-BAS Admin Manual revision - Withdrawal of instruction from one WTCS college to another, notification requirement?

CAUTION: This email originated from outside the organization.

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Hi Liz,

I'm uncertain who to send this to but figured you would direct it appropriately.

Recent discussion with a couple of the WTCS colleges brought up the question of if/when a notification date requirement applies if sponsors/committee initiates withdrawal of related instruction from one WTCS college in preference to be offered by another WTCS college. Here's an extract of what I wrote:

"...I believe you've discovered an unintentional loophole not captured nor corrected in the most recent DWD-BAS Administrative Manual revision. Strictly speaking, the current manual does imply that the notification deadline only applies to when a private entity withdraws instruction from THE (my emphasis) WTCS i.e. the implication is all WTCS colleges, not between WTCS colleges. However, as a member of the State Apprenticeship Advisory Council Policy and Standards Sub-Committee that drafted this section revision, I'm pretty certain that was not the intent of this clause. BAS definitely supports advance notifications by sponsor to any technical college impacted by a withdrawal of instruction."

I'm bringing this to BAS attention for future consideration.

Thank you,

Nancy

Nancy Nakkoul

Education Director – Apprenticeship, Construction, and Architecture

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