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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 19-120

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### **I. Statutory Authority**

a. In s. PI 35.13 (10m), the department creates requirements for conducting employee background checks. Section 119.23 (7) (h), Stats., requires choice schools to conduct criminal background investigations of its employees and to exclude from employment any person not permitted to hold a teaching license as the result of an offense and any person who might reasonably be believed to pose a threat to the safety of others.

In its proposed rule, the department requires background checks only of employees who are directly or indirectly related to educational programming, as defined by the proposed rule, and prohibits the employment of individuals who are barred from obtaining a teaching license or individuals who have engaged in “immoral conduct”. The department should explain: (1) the authority to limit the conduct of background checks to only certain employees; and (2) its apparent determination that engaging in immoral conduct is equivalent to posing a threat to the safety of others even though the statutory definition of immoral conduct appears to have a narrower applicability than applying to a person who is reasonably believed to pose a threat to the safety of others.

b. In s. PI 35.14 (6), the department proposes reasons for which it could call a bond submitted by a school. However, the statute does not explicitly provide for such reasons. Does the department intend that the reasons for which it may call a bond are situations where financial failure is presumed by the failure to fulfill specific financial and reporting obligations? The

department could consider and explain whether it may establish reasons for calling a bond that may indicate that a school is not financially viable, other than full financial failure of the school.

## **2. Form, Style and Placement in Administrative Code**

a. In the rule analysis description of the preliminary comment period, the department notes that it held a public hearing on April 23, 2019. However, the record shows that a public hearing was held on April 23, 2018. It appears this should be corrected.

b. In the treatment clause for SECTION 23 of the proposed rule, the designation “and (Note)” should be inserted before the phrase “are created”. The rule caption’s listing of affected provisions should also be updated accordingly.

c. In s. PI 35.10 (6), the period that appears before the material that is stricken-through should be shown with a strike-through, the period that is shown after the word “department” with a strike-through should be removed, and the final period should be shown without underscoring.

d. In the treatment clause for SECTION 80 of the proposed rule, the designation “(title) and” should be inserted between “(2)” and “(intro.)”, and the word “is” should be revised to “are”. The rule caption’s listing of affected provisions should also be updated accordingly.

e. In s. PI 35.13 (4) (c) that is renumbered to par. (c) (intro.), the final colon should be underscored.

f. In s. PI 35.13 (1m) (c) 1., the abbreviation “ss.” should be revised to “s.”.

g. In s. PI 35.14 (1g) (a) 1. and (b) 1., and (7) (b) 2. (intro.) and 3., each instance of the phrase “and PI” should be revised to “and”. It is not necessary to repeat the source designation “PI” after it has been identified in a citation.

h. SECTIONS 88 AND 89 of the proposed rule should be swapped. The SECTIONS of a proposed rule should be arranged sequentially according to the numerical order of the decimal-numbered rule provision being treated. Although the proposed rule will renumber s. PI 35.14 (1) (intro.) in such a way that it will appear after the newly created sub. (1g), it comes before sub. (1g) in its current form and its treatment should, therefore, appear before the newly created provision. [s. 1.04 (1) (a), Manual.]

i. For the same reasons, SECTIONS 92 and 94, which treat s. PI 35.14 (1) (a), (b), and (c), should be moved to immediately follow the treatment of s. PI 35.14 (1) (intro.).

j. In s. PI 35.14 (8), (9), and (10), a title should be inserted for each subsection, to be consistent with the other subsections in that provision.

## **4. Adequacy of References to Related Statutes, Rules and Forms**

In s. PI 35.02 (21m), the definition for the type of expenses includes the word “primarily”, but the cross-reference to the description of expenses in s. PI 49.09 (3) uses the word “exclusively”. The terminology should be reconciled for consistency. The definition also references s. PI 49.13 (7), which does not exist in current rule. That provision is included in CHR 19-095, and the department should ensure that the provision has been promulgated and remains accurate when finalizing this proposed rule.

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. PI 35.03 (6) (intro.), the department changes the deadline by which a choice school must file an accreditation letter from January 15 to August 1. However, the proposed rule does not change the language in par. (b) stating that the letter must be filed “no earlier than the beginning of the school year”. Should this language be revised to refer to no earlier than the beginning of the *previous* school year?

b. In s. PI 35.03 (7) (a), the department should review whether it could also delete the word “Annually”, because the requirement only applies to first-time participants in the choice program and a school is only a first-time participant in the program once.

c. In s. PI 35.03 (9), the department is creating a requirement that choice schools inform the department about their intentions regarding the sharing of pupil data for accountability purposes. As drafted, first-time participants in the program must file a form with the department and continuing participants may file a form identifying changes to their plans in future school years. The department should consider whether a provision is necessary to require such a form of all schools, including continuing first-time participants, for the first school year to which the rule applies.

d. In s. PI 35.06 (6) (b) 4. b., the department’s reference to the number of hours of instruction required for first grade pupils under s. 118.165 (1) (c), Stats., is confusing given that the statute does not provide a specific number of hours required only for first grade. The reference to that statute should be re-phrased. It may also help to specify what is meant by a private school that does not offer first grade. Is the department trying to address private schools that provide only kindergarten or perhaps only preschool and kindergarten?

e. In s. PI 35.07 (2), the department could consider adding the word “also” between “The school shall” and “provide the auditor”, for clarity.

f. In s. PI 35.13 (10m) (b) (intro.), if the background checks will be conducted only for certain employees as identified in par. (c), the reference to conducting the investigation of “all” employees should be rephrased to specify that the checks shall be conducted for the employees identified in par. (c). [See, however, Comment 1. a., above.]

g. In s. PI 35.14 (7) (intro.), the comma should be removed.