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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Scott Grosz**  
*Clearinghouse Director*

**Anne Sappenfield**  
*Legislative Council Director*

**Margit Kelley**  
*Clearinghouse Assistant Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 19-121

#### 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 SECTION 84 of the proposed rule, the department creates requirements for conducting employee background checks. Section 118.60 (7) (h), Stats., requires choice schools to conduct criminal background investigations of their 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. SECTION 93 of the proposed rule creates reasons for which the department may call a bond submitted by a choice school. However, the statutes do 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 77 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.

c. In s. PI 48.14 (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.

d. The order of SECTIONS 87 to 92 should be reviewed so that the SECTIONS of the proposed rule are arranged sequentially according to the numerical order of the decimal-numbered rule provision being treated. [s. 1.04 (1) (a), Manual.]

e. In s. PI 48.14 (8), (9), and (10), a title should be inserted for each subsection, to be consistent with other subsections in that provision.

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

a. The relating clause of the proposed rule states that it proposes to amend s. PI 49.19 (1) to (4). This should be changed to s. PI 48.19 (1) to (4).

b. In SECTION 6 of the proposed rule, s. PI 48.02 (22g) creates a definition for “special needs scholarship program excluded expenses” to mean eligible education expenses included as “primarily” special needs scholarship program expenses under s. PI 49.09 (3) (a) and costs included as eligible in any statements provided under s. PI 49.13 (7) incurred in that school year.

However, s. PI 49.09 (3) (a) refers to expenses “exclusively” for special needs program students. Additionally, s. PI 49.13 (7) does not currently exist in the permanent administrative code. 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 SECTION 2 of the proposed rule, s. PI 48.02 (10) should include a comma or use “or” between the mention of “modified financial audit” and “standard financial audit...”.

b. In SECTION 15 of the proposed rule, s. PI 48.03 (6) (intro.) changes the deadline by which a choice school must file an accreditation letter from January 15<sup>th</sup> to August 1<sup>st</sup>. However, the proposed rule does not change the current rule language in par. (b), stating that the letter must be filed “no earlier than the beginning of the school year”. Should this language be changed to refer to no earlier than the beginning of the *previous* school year?

c. In SECTION 15 of the proposed rule, s. PI 48.03 (7) (a) requires a choice school to “annually” file a form reporting hours of instruction, but applies immediately preceding the first school year in which a “first time participant intends to participate in the choice program.” The department should consider deleting the word “annually”.

d. In SECTION 16 of the proposed rule, the amended language in s. PI 48.03 (7) (b) contains a misspelled word. The word should be changed to “prescribed”.

e. In SECTION 23 of the proposed rule, s. PI 48.03 (9) requires a first-time choice participant to file a form regarding its intention regarding sharing of pupil data for accountability purposes. First-time participants must file a form 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.

f. In SECTION 35 of the proposed rule, language in s. PI 48.06 (6) (b) 4. b. provides that “full-day” means the number of hours of instruction “required for first grade pupils under s. 118.165 (1) (c)” for a private school that does not offer first grade. However, s. 118.165 (1) (c), Stats., creates a general private school hours requirement, and is not specific to first grade. Further, the proposed rule language appears to apply to any choice school that does not have first grade, including a high school. Is the intent to define “full-time” as the equivalent of 875 hours for choice schools that only offer kindergarten? If so, the language should be clarified.

g. In s. PI 48.13 (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 checks shall be conducted for the employees identified in par. (c). [See, however, Comment 1. a., above.]