

Report From Agency
FINAL REPORT
CLEARINGHOUSE RULE 16-066
CHAPTER PI 49
SPECIAL NEEDS SCHOLARSHIP PROGRAM

Analysis by the Department of Public Instruction

Statutory authority: s. 115.7915 (10), Stats.

Statute interpreted: s. 115.7915, Stats.

The proposed rule seeks to make the following changes to the current administrative rules governing the Special Needs Scholarship Program:

- Specify that individuals designated by the special needs scholarship program administrator may assist in the processing of student applications.
 - Clarify the role of the special needs scholarship administrator as being the person who has the authority to process pupil applications and submit reports and forms required under s. PI 49 and s. 115.7915, Stats.
 - Specify that the Intent to Participate form must identify the special needs scholarship program administrator.
 - Modify the individualized education program (“IEP”) and services plan verification process as follows:
 - Provide clarification on what the individualized education program and services plan date requirements are for students applying under section 9134 (6q) of 2015 Act 55.
 - Add that if the resident school district did not create the IEP or services plan, the local education agency that created the IEP or services plan must complete the verification.
 - Indicate that the notification that a pupil has been accepted into the special needs scholarship program shall be sent within seven days of the school receiving the IEP from the local education agency in response to the verification request or notification from the department of if the pupil met the IEP or services plan requirement.
 - Remove references to transfer requests from the IEP/services plan verification section.
 - Specify that the school’s auditors determine that the school and parent have agreed to the services to be provided to each student.
 - Specify that the school’s auditors would verify that the statutorily required student reevaluations are completed and that students are properly identified as partial scholarship pupils.
 - Current administrative rule requires that the department net any amount owed from a school from the next special needs scholarship program payment. The revised rule specifies that if the payment is insufficient to pay the full amount owed, the school shall pay the difference within 60 days of the certification letter.
 - Clarify the financial audit submission requirements.
 - Clarify the calculation of offsetting fundraising revenue in the calculation of net eligible education expenses.
 - Clarify how students may transfer to a different participating school and that auditors shall verify the transfer requests meet the requirements.
 - Clarify that a school must be accredited for all grades that are available for special needs scholarship program pupils.
 - Specify that schools which do not meet the accreditation requirement of the program must annually, by March 1, submit the special needs scholarship program private school requirements form for review by the state superintendent.
 - Remove two administrative rule provisions because they were only applicable to 2016.
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The hearing notice was published in the November 7, 2016 edition of the Wisconsin Administrative Register. A public hearing was held on December 13, 2016.

No persons testified at the December 13, 2016 hearing. However, the following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Laura Myrah/Stephen Kopecky/Adam Boldt	Arrowhead Union High School District			X
Chris Hambuch-Boyle/Joe Luginbill/Mary Ann Hardebeck	Eau Claire Area School District			X

Summary of public comments relative to the rule and the agency’s response to those comments:

Comments on the Rule

- The written comments spoke generally to programmatic concerns related to the Special Needs Scholarship Program, acknowledging that while the Department does not have the unilateral authority to change the program as written in statute, changes that increase transparency and accountability in the program are appreciated. Specifically, school districts have requested that they be given access to review the documents that are necessary for students to participate in the program, including information on when students were denied open enrollment by a nonresident school district. It was argued that such accountability measures are necessary for any school that receives public dollars for the purpose of educating students.

Agency Response

- State law requires that student eligibility documentation be retained by the private school at which the participating student is applying. Therefore, the change is outside the scope of the Department’s rulemaking authority. The Department believes that the proposed rule clarifies the statutes and will allow the agency to administer the program in a manner that is consistent with state law.

Changes made as a result of oral or written testimony:

- No changes were made.

Changes to the analysis or the fiscal estimate:

- No changes were made.

Responses to Clearinghouse Report:

1. Statutory Authority:

- No recommendations were made.

2. Form, Style and Placement in Administrative Code:

- The recommendations were accepted.

3. Conflict With or Duplication of Existing Rules:

- No recommendations were made.

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

- Based on the comment noted, the Department determined that a reference to s. 118.165(1), Stats., is more appropriate than the prior reference to 118.165 (2), Stats.

5. Clarity, Grammar, Punctuation and Plainness:

- a. The Department did not make the change suggested because the word “received” is not referenced or used in s. PI 49.05 (5) (a).
- b. The Department added “included” before “in subd. 1.” but did not add “in the expenses” since subd. 1 only includes expenses.