

Report From Agency
FINAL REPORT
CLEARINGHOUSE RULE 19-095
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.

This proposed rule amends ch. PI 49 of the Wisconsin Administrative Code in order to conform Department rules governing the Special Needs Scholarship Program to changes in statute as a result of 2017 Wisconsin Acts 36 and 59 and other changes. This proposed rule also includes items that will assist schools, auditors and the Department in the administration and implementation of the program since the original rule was promulgated.

The hearing notice was published in the July 22nd edition of the Wisconsin Administrative Register. A public hearing was held on August 12th.

No persons testified at the August 12th hearing. However, the following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Jim Bender / Lucas Vebber	School Choice Wisconsin Action / Wisconsin Institute for Law & Liberty		X	

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

The respondents asserted that the rule contains misinterpretations of statute which need to be corrected. The respondents cite the Department's interpretation of actual cost under s. 115.7915 (4c), Stats., and argue it is applied in a restrictive way that does not meet legislative intent, is inconsistent with the way the Department calculates the cost of educating students in other choice programs like the Milwaukee Parental Choice Program, and therefore imposes an undue hardship upon schools participating in the Special Needs Scholarship Program.

Agency response: The proposed rule's interpretation of actual cost under s. 115.7915 (4c), Stats., is consistent with the statutory requirements. Statutory language specifies the school may recover actual costs incurred to implement a child's individualized educational program or services plan, and only those costs incurred for that child during that school year, not general eligible education expenses. Actual costs to implement a child's individualized educational program or services plan are those costs that exist in addition to general eligible education expenses, which exist for all children. A comparison between the Private School Choice Programs and the Special Needs Scholarship Program is not applicable as statutory payment provisions differ for each program.

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:

- The Department modified s. PI 49.03 (4) to clarify that a determination that an employee has a valid license issued by the Department may be used by the school to complete a background check. Background checks are required prior to the issuance of a Department license or the renewal of a Department license.

2. Form, Style and Placement in Administrative Code:

- a. The Department did not accept this recommendation. The due date specified under s. PI 49.03 (6) is specified in statute so it cannot be changed by administrative rule.
- b. This recommendation was accepted by the Department.
- c. This recommendation was accepted by the Department.
- d. This recommendation was accepted by the Department.

5. Clarity, Grammar, Punctuation and Plainness:

- a. The Department modified s. PI 49.04 (1) to clarify the calculation of the “initial expected payment” and “revised expected payment.”
- b. The Department did not modify the language in Section 14. It is the Department’s intent to require the information required under s. PI 49.04 (1m) (b) 2. for any government agencies.
- c. Section 16 of the proposed rule requires that schools that would like to increase the number of SNSP scholarships available by a certain amount provide a bond by the last weekday in August if the school did not previously file a bond with the Department. Schools that previously provided a bond must file a revised bond with the Department by the first weekday in November. These dates are different so that the Department does not make payments to a school before a surety bond has been provided to cover the payments being made by the school. The Department makes the first Special Needs Scholarship Program payment by the end of September. A school that has not previously provided a bond may not be able to obtain a surety bond whereas a school that has previously provided a surety bond generally is able to increase the surety bond amount. Further, if a school has already provided a surety bond equal to 25% of the initial expected scholarship payment, that initial surety bond generally covers the amount of the first Special Needs Scholarship Program payment.
- d. The Department did not accept this recommendation. The Department believes the language is clear on what is required from a school if it increases the number of scholarships available but a surety bond is not required. Wis. Admin. Code PI 49.04 (5) specifies the requirement for a school increasing the number of scholarships available when a bond is not required.
- e. The Department removed s. PI 49.04 (5) (f) and specified in s. PI 49.04 (5) (a) 1., (b) 1., and (c) 1. how the expected summer school payment must be included in the school information update form.
- f. This recommendation was accepted by the Department.
- g. It appears that the section reference is incorrect in this comment since “and sub. (3)” does not appear in the language in Section 31. It appears that the section reference should be section 34. The recommended changes were made by the Department to Section 34.
- h. This recommendation was accepted by the Department.
- i. The Department intended to use “school term”. “School term” is defined under s. 115.001 (12) as, “...the time commencing with the first school day and ending with the last school day that the schools of a school district are in operation for attendance of pupils in a school year, other than for the operation of summer classes.” The school

year is defined under s. 115.001 (13) as “the time commencing with July 1 and ending with the next succeeding June 30.”

- j. This recommendation was accepted by the Department. The term “offsetting revenue” was also removed from s. PI 49.09 (3) (b) 2.

Changes deemed necessary by the Department to improve implementation of the rule:

- Changed “space” to “scholarship” in s. PI 49.03 (3) (a), s. PI 49.04 (5) (e), s. PI 49.05 (4) (c) 2. and PI 49.05 (5) (c) 2. to be consistent with the terminology used in the remainder of the rule.
- Changed applications and transfer requests “submitted” to “filed” in s. PI 49.06 (4) (c) and (5) (b) 1. to be consistent with the terminology used in s. PI 49.06 (3m).
- Added “category” after grade to s. PI 49.07 (3) (f) for clarity.