

## Clearinghouse Rule 19-095

### PROPOSED ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION REVISING PERMANENT RULES

The scope statement for this rule, SS 042-18, was published in Register No. 748A1 on April 2, 2018, and approved by State Superintendent Tony Evers on April 27, 2018.

The State Superintendent of Public Instruction hereby proposes an order to repeal s. PI 49.02 (3), 49.05 (3) (c), (4) (a) 3., 49.06 (3) (b) 2. a., b., (4) (a), (5) (a), and 49.07 (3) (e), (h), (4) (b) 1. and 2.; to renumber and amend s. PI 49.05 (4) (b), (5) (c) 1., 49.06 (3) (b) 2. (intro.), 4., 49.07 (4) (b) (intro.), and 49.09 (1) (b); to amend s. PI 49.01, 49.02 (5m), (7), (15), (18), 49.03 (3) (intro.), (a), (b) 1., 3., (3) (d), (5) (a) (intro.), (b) (intro.), (6) (intro.), (a) (intro.), 4., (b), (c) and (7), 49.04 (2) (intro.), (a), (b), (c), (d), (e), (f), (3) (c) and (4) (intro.), 49.05 (1) (a), (4) (a) (intro.), 2., (c) 2., (5) (c) 2., (6) (a), (c), (8) (intro.), 49.06 (2), (3), (b) 4., (4) (intro.), (c), (d), (5) (intro.), (b) 1., (c) (intro.), 1. a. and c., 49.07 (1) (intro.), (a), (b), (2), (3) (a), (f), (j) 3., (k), (m), (p), (t) and (4) (a), 49.09 (1) (e) 1., (2), (3) (a) (intro.), 1., 2., 3. b., 4., (b) 1., 2., 3. b., (c) 1., 3., (d) 1., (e) 1., (4), (5) (a), (6), 49.10 (6), 49.11 (5), (7) (b), 49.13 (intro.), (2) (intro.), (3) (intro.), and 49.14 (4) (a), (b), (c), (d), (e) and (g); to repeal and recreate s. PI 49.03 (4), 49.04 (1), 49.05 (7), and 49.08 (1); and to create s. PI 49.02 (3m), (9s), (12m), (19m), 49.03 (3) (bm), 49.04 (1m), (5), 49.05 (4) (b) 1., 2., (5) (c) 1. a., b., c., 1m., (7g), (7r), (8) (e), (9), 49.06 (3) (b) 2m., 4. a. to c., (3m), (5) (d), (e), (7), 49.07 (3) (u), 49.08 (3), (4), (5), 49.09 (1) (b) 2., (3) (c) 4., 49.13 (1) (c), (2) (c), (2m), (3) (c), (6), (7), and 49.16, relating to changes to rules governing the Special Needs Scholarship Program as a result of 2017 Wisconsin Acts 36 and 59 and other changes.

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### ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

**Statute interpreted:** s. 115.7915, Stats.

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

**Explanation of agency authority:**

Under s. 115.7915 (10), Stats., the Department is required to promulgate rules to implement and administer the special needs scholarship program, including rules relating to: (a) eligibility and participation of eligible schools; (b) calculation and distribution of scholarships; and (c) application and approval procedures for students and eligible schools.

**Related statute or rule:** ss. 118.60 and 119.23, Stats., and ch. PI 35 and ch. PI 48

**Plain language analysis:**

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.

Key aspects of this rule include the following:

- Specifies the requirements for the modified financial audit and the standard financial audit.
- Specifies the background check requirements including how the background check must be completed.
- Modifies certain due dates so the dates will not fall on a weekend.
- Specifies that the notice of intent to participate may be submitted by the special needs scholarship program administrator.

- Modifies the accreditation requirements to allow accrediting organizations to provide a notice rather than a letter of the accreditation status of schools.
- Specifies that the budget required for meeting the financial requirements option for schools with expected payments over \$50,000 must include the anticipated beginning and ending reserve balance.
- Clarifies that schools with expected scholarships over \$50,000 that use the financial requirements option and participate in the private school choice programs must have a financial audit under ss. 118.60 and 119.23 that demonstrates the school has the ability to pay the expected scholarship amount. Also specifies the financial requirements include the school not having a net loss or negative change in net assets.
- Specifies that schools may change the number of available scholarships in certain circumstances.
- Specifies what is required for an Individualized Education Program (IEP) or services plan to be in effect.
- Specifies when the school must send the following emails:
  - The email to the local education agency that developed the IEP or services plan verifying that the student had an IEP or services plan that was in effect; and
  - If the resident school district did not develop the IEP or services plan, the email to the pupil's resident school district notifying them that the pupil will receive a scholarship if the verification above determines the pupil is eligible for the program.
- Specifies that the local education agency sending the IEP or services plan to the private school in response to the IEP or services plan verification email request is considered the verification that the student has an IEP or services plan that meets programmatic requirements.
- Removes the pupil eligibility requirements related to open enrollment denials since the requirement for an open enrollment denial was removed from s. 115.7915, Stats.
- Clarifies the pupil eligibility requirements for transfer pupils and how transfer requests may be corrected if errors are identified by the auditor.
- Clarifies that if a pupil who no longer has a disability attends a different school, the pupil is not eligible for a special needs scholarship program scholarship.
- Modifies the full time equivalent determination so that it is based on the required number of hours for first grade pupils in the private school rather than first grade pupils in the public school district.
- Modifies the dates by which applications and transfer requests must be submitted to the department.
- Specifies that the school must identify pupils no longer eligible for a scholarship in the preliminary enrollment report and pupil count reports.
- Clarifies the agreement of services requirements.
- Removes the requirement to use original classroom records when completing the procedures for special needs scholarship program pupils for the enrollment audit. The procedures ensure the submitted pupil counts are accurate by comparing the school submitted pupil count reports to the official attendance records.
- Specifies that the identification of special needs scholarship program pupils may be in a different report than the official attendance records, if the official attendance records are from the student information system.
- Specifies the requirements for a school to receive a special needs scholarship program summer school payment and the audit requirements of the summer school report.
- Specifies that a pupil may attend a different school for summer school and still be eligible for a special needs scholarship program scholarship.
- Clarifies the requirements for including fixed assets in the financial audit.
- Specifies that leased right of use assets, which will be required in financial audits due to a change in generally accepted accounting principles, are not included in the required cash and investment balance calculation.
- Specifies how net eligible education expenses are calculated if the school is not eligible for all special needs scholarship program payments.
- Specifies what is considered a management letter.
- Clarifies what expenses are primarily related to special needs scholarship program pupils and how they impact the reserve balance schedule calculations.
- Clarifies the school's responsibility for the financial requirements.
- Specifies the requirements for the statement of actual cost, how payments will be made for students with a statement of actual cost, and the impact on the reserve balance schedule calculations.

**Summary of, and comparison with, existing or proposed federal regulations:** N/A

**Comparison with rules in adjacent states:** There do not appear to be comparable rules or statutes governing special needs scholarship programs in neighboring states.

**Summary of factual data and analytical methodologies:**

2015 Wisconsin Act 55, the 2015-17 biennial budget, created the special needs scholarship program. The Department promulgated administrative rules, CR 16-005, relating to the special needs scholarship program; and CR 16-066, relating to revisions to the special needs scholarship program; both of which are currently in effect. Since then, 2017 Wisconsin Act 36 and 2017 Wisconsin Act 59, the 2017-19 biennial budget, made several changes relating to the administration of this program. As a result of recent changes in statute and items identified since the rules were implemented, modifications to PI 49 are needed to better assist participating schools and the Department in the administration of the program. Without a rule change, statute and rule will not be consistent and the Department may be prevented from efficiently administering the program.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:** N/A

**Anticipated costs incurred by private sector:** N/A

**Effect on small business:**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Agency contact person: (including email and telephone)**

Carl Bryan  
Administrative Rules Coordinator  
Wisconsin Department of Public Instruction  
[adminrules@dpi.wi.gov](mailto:adminrules@dpi.wi.gov)  
(608) 267-9127

**Place where comments are to be submitted and deadline for submission:**

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at [adminrules@dpi.wi.gov](mailto:adminrules@dpi.wi.gov). The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

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**SECTION 1. PI 49.01 is amended to read:**

**PI 49.01 Purpose.** Any qualified pupil in grades kindergarten to 12 who meets the requirements under s. 115.7915, Stats., may attend any school participating in the special needs scholarship program under s. 115.7915, Stats. This chapter establishes eligibility and participation requirements for schools participating in the special needs scholarship program under s. 115.7915, Stats., the calculation and distribution of scholarships under s. 115.7915 (4m) and (4p), Stats., and the application and approval procedures for pupils and eligible schools under s. 115.7915, Stats.

**SECTION 2. PI 49.02 (3) is repealed.**

**SECTION 3. PI 49.02 (3m) is created to read:**

**PI 49.02 (3m)** “Classroom records” means teacher-originated test scores, report cards, progress reports, and attendance records.

**SECTION 4. PI 49.02 (5m) and (7) are amended to read:**

**PI 49.02 (5m)** “Designee” means an individual who is designated to assist in processing pupil applications and transfer requests by the special needs scholarship program administrator on a form provided by the department.

(7) “Financial audit” means the modified financial audit of a school or standard financial audit, and includes the audit opinion and supplemental schedule, required under s. 115.7915 (6) (e), Stats., including the audit opinionPI 49.09.

**SECTION 5. PI 49.02 (9s) and (12m) are created to read:**

**PI 49.02 (9s)** “Modified financial audit” means the audit required under s. 115.7915 (6) (e), Stats., for a school that received less than \$100,000 under ss. 115.7915, 118.60, and 119.23, Stats., in any school year.

**(12m)** “Primarily special needs scholarship program expenses” mean eligible education expenses that are at least 50 percent related to special needs scholarship program pupils.

**SECTION 6. PI 49.02 (15) and (18) are amended to read:**

**PI 49.02 (15)** “Scholarship” means a payment under s. 115.7915 (4m) or (4p), Stats.

**(18)** “Special needs scholarship program administrator” means the person who has the authority to ~~process~~do all of the following:

**(a)** Process pupil applications and ~~submit~~transfer requests.

**(b)** File reports and forms required under this chapter and s. 115.7915, Stats.

**SECTION 7. PI 49.02 (19m) is created to read:**

**PI 49.02 (19m)** “Standard financial audit” means the audit required under s. 115.7915 (6) (e), Stats., for a school that annually received a total of at least \$100,000 under ss. 115.7915, 118.60, and 119.23, Stats., in any school year.

**SECTION 8. PI 49.03 (3) (intro.), (a), (b) 1. and 3. are amended to read:**

**PI 49.03 (3) NOTICE OF INTENT TO PARTICIPATE.** Annually by the first weekday in March~~4~~, a school that intends to participate in the special needs scholarship program in the following school year shall ~~submit to the department~~file a notice of intent to participate with the department. The notice shall include all of the following:

**(a)** The number of ~~space~~scholarships the school has available for new pupils applying to the special needs scholarship program under s. PI 49.05 (3) or transferring to the school under s. PI 49.05 (5).

**(b) 1.** The school shall include all special needs scholarship program pupils on the second Friday in January count report ~~submitted~~filed under s. PI 49.06 (5), unless the school has received written correspondence from the parent withdrawing the pupil from the special needs scholarship program.

3. The school may only identify a pupil as a partial scholarship pupil if the pupil's individualized education program team has determined that the pupil is no longer a child with a disability as specified under s. 115.7915 (4m) (e) 1., Stats., prior to the date the school ~~submits~~files its notice of intent to participate ~~to~~with the department.

**SECTION 9. PI 49.03 (3) (bm) is created to read:**

**PI 49.03 (3) (bm)** The expected number of special needs scholarship program pupils that will participate in summer school under s. PI 49.16.

**SECTION 10. PI 49.03 (3) (d) is amended to read:**

**PI 49.03 (3) (d)** The signature of the head of the governing board, or if designated by the head of the governing board, the special needs scholarship program administrator.

**SECTION 11. PI 49.03 (4) is repealed and recreated to read:**

**PI 49.03 (4) BACKGROUND CHECKS.** (a) In this subsection, “license” means a valid license issued by the department under ch. PI 34.

(b) Schools shall conduct criminal background investigations of all employees by completing one of the following:

1. Conduct a criminal background check prior to employing any individual at the school and every 5 years after the date of the previous background check.

2. Complete all of the following procedures for an individual with a license:

a. Obtain and retain a copy of the license.

b. Annually determine that the individual has a license in advance of the employee working for the school term.

(c) The requirements under par. (b) shall be completed for all individuals defined as employees under s. 108.02 (12), Stats., who are directly or indirectly related to educational programming. For the purposes of this paragraph, an individual shall be determined to be directly or indirectly related to educational programming if any of the following apply:

1. Any compensation for the individual is included as an eligible education expense in a financial audit submitted under ss. 115.7915, 118.60, or 119.23, Stats.

2. The individual interacts with pupils.

3. The individual performs financial, administrative, or academic duties for the school.

(d) A school may not employ any of the following individuals:

1. Individuals who have engaged in immoral conduct as defined under s. 115.31 (1) (c), Stats.

2. Individuals who are not eligible for a teaching license under s. 118.19 (4), Stats.

**SECTION 12. PI 49.03 (5) (a) (intro.) and (b) (intro.), (6) (intro.), (a) (intro.) and 4., (b) and (c), and (7) are amended to read:**

**PI 49.03 (5) (a)** By the first weekday in May ~~+~~ prior to the first year a school participates in the special needs scholarship program, the school shall ~~submit~~file one of the following documents ~~to~~with the department for all locations of the school:

(b) If a school moves to a new location or adds a new location, the school shall ~~submit to the department~~file one of the following with the department before pupils attend the new location:

(6) ACCREDITATION REQUIREMENTS. A school participating in the special needs scholarship program shall be accredited by an accrediting agency under s. 115.7915 (2) (c), Stats., for all of the grades the school makes available to special needs scholarship program pupils. Annually by August 1, a school participating in the special needs scholarship program shall ~~provide to file with~~ the department a letter notice from the school's accrediting agency under s. 115.7915 (2) (c), Stats., stating that the school is accredited as of the date of the letter notice. The letter notice shall meet all of the following requirements:

(a) The letter notice shall include the following information:

4. A ~~statement~~Notification that the school is accredited ~~as of~~at the ~~date of~~time the letter notice is filed.

(b) The letter notice shall be ~~dated~~filed no earlier than the beginning of the school year.

(c) The letter notice shall be ~~signed~~completed by an authorized member of the accrediting agency.

(7) STATE SUPERINTENDENT APPROVAL. Annually by the first weekday in March ~~+~~ preceding the school year of participation, a school seeking approval as a private school by the state superintendent under s. 115.7915 (2) (c), Stats., shall ~~submit to file with~~ the department a special needs scholarship program private school requirements form demonstrating the school meets all of the requirements under s. 118.165 (1), Stats.

**SECTION 13. PI 49.04 (1) is repealed and recreated to read:**

**PI 49.04 (1) DEFINITIONS.** In this section:

(a) “Initial expected payment” means a school’s expected scholarship payment amount based on the total of the following:

1. The full-time equivalent for pupils expected to participate in the special needs scholarship program multiplied by the per pupil payment amount determined under s. 115.7915 (4m), Stats. The full-time equivalent for the pupils in this subdivision

shall be based on the number of scholarships identified as available in the school's notice of intent to participate filed under s. PI 49.03 (3).

2. The expected summer school payment for pupils participating in the special needs scholarship program based on the expected number of special needs scholarship program pupils that will participate in summer school identified in the school's notice of intent to participate filed under s. PI 49.03 (3).

**(b)** "Revised expected payment" means a school's expected scholarship payment amount calculated as the total of the following:

1. The full-time equivalent for pupils expected to participate in the special needs scholarship program multiplied by the per pupil payment amount determined under s. 115.7915 (4m), Stats. The full-time equivalent for the pupils in this subdivision shall be based on the number of scholarships identified as available in a revised school information update form filed under sub. (5).

2. The expected summer school payment for pupils participating in the special needs scholarship program based on the expected number of special needs scholarship program pupils that will participate in summer school identified in the school's notice of intent to participate filed under s. PI 49.03 (3).

#### **SECTION 14. PI 49.04 (1m) is created to read:**

**PI 49.04 (1m) FINANCIAL REQUIREMENTS.** If a school's initial expected payment is at least \$50,000, the school shall do one of the following:

**(a)** Annually by the first weekday in June prior to the school year, file a bond with the department payable to the state of Wisconsin equal to 25 percent of the initial expected payment.

**(b)** Annually by the first weekday in March prior to the school year, file financial information with the department that demonstrates that the school has the ability to pay an amount equal to the initial expected payment, including all of the following:

1. A budget and cash flow report, on a form provided by the department, for the following school year that contains all of the following:

- a. Anticipated enrollments for all pupils enrolled in the school.
- b. Anticipated enrollments for special needs scholarship program pupils.
- c. Estimated total revenues and costs.
- d. Estimated amounts required under s. PI 49.09 (3) (a) and (b).
- e. A schedule of anticipated beginning and ending net assets.
- f. Anticipated beginning and ending reserve balance.

2. A statement of whether the school has any past due amounts, interest, or penalties due to the U.S. internal revenue service, the Wisconsin department of workforce development, or the Wisconsin department of revenue. An amount must be disclosed even if it is in dispute. If a school has past due amounts, interest, or penalties due to a government entity, the school shall do all of the following:

- a. Disclose to the department the outstanding amount owed.
  - b. File with the department statements or other correspondence from the government entity stating the amount the government entity claims is due, the amount in dispute, and nature of the amount due.
3. The most recent balance sheet and income statement for the legal entity of the school.
4. Bank statements for all cash and investment accounts included in the balance sheet required under subd. 3.
5. Any other information required by the department to determine the financial position of the school.

**Note:** The budget and cash flow report may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://dpi.wi.gov/sms/special-needs-scholarship>.

#### **SECTION 15. PI 49.04 (2) (intro.), (a), (b), (c), (d), (e), and (f), (3) (c) and (4) (intro.) are amended to read:**

**PI 49.04 (2) FINANCIAL INFORMATION REVIEW.** The department shall review the financial information ~~provided~~filed by a school under sub. ~~(1)(1m)~~ (b) and any other information available to the department to determine if the school meets the requirements under s. 115.7915 (6) (f) 2., Stats. In making a determination, the department shall remove the special needs scholarship program revenue from the school's budget to determine if any of the following indicators exist:

**(a)** The school has inadequate revenues and other financial resources to fund current operations in the budget ~~submitted~~filed under sub. ~~(1)(1m)~~ (b).

**(b)** The school has negative cash flows in any month in the budget ~~submitted~~filed under sub. ~~(1)(1m)~~ (b).

(c) The school has a negative net asset balance in the financial audit, or in a financial audit submitted under s. 118.60 or 119.23, Stats., or in the budget ~~submitted~~filed under sub. ~~(1)~~(1m) (b).

(d) The school has a negative net current obligation in ~~the~~ financial audit, or in a financial audit submitted under s. 118.60 or 119.23, Stats., or in the budget ~~submitted~~filed under sub. ~~(1)~~(1m) (b). The net current obligation shall be calculated as the current assets less the current liabilities.

(e) The school has a net ~~operating~~ loss or negative change in net assets in the financial audit, or a financial audit submitted under s. 118.60 or 119.23, Stats., or in the budget ~~submitted~~filed under sub. ~~(1)~~(1m) (b).

(f) The audit opinion statement included in the financial audit, or a financial audit submitted under s. 118.60 or 119.23, Stats., contains a qualification as to the school's ability to continue as a going concern.

(3) (c) A school that does not meet the requirements under s. 115.7915 (6) (f) 2., Stats., shall ~~provide~~file a surety bond with the department that meets the requirements under sub. ~~(1)~~(1m) (a) by the first weekday in June ~~+~~ prior to the school year.

(4) BOND CALL PROVISIONS. The department may call a bond ~~submitted~~filed by a school under this section for any of the following reasons:

### **SECTION 16. PI 49.04 (5) is created to read:**

**PI 49.04 (5) REVISIONS TO NUMBER OF AVAILABLE SCHOLARSHIPS.** (a) A school that filed a bond under sub. (1m) (a) that the department determined met the requirements under s. 115.7915 (6) (f) 1., Stats., may revise the number of scholarships available as follows:

1. The school shall file with the department a school information update form with the revised number of scholarships available. The school information update form shall include the expected summer school payment for pupils participating in the special needs scholarship program based on the expected number of special needs scholarship program pupils that will participate in summer school identified in the school's notice of intent to participate filed under s. PI 49.03 (3).
2. A school may not accept more special needs scholarship program pupils than indicated on its notice of intent to participate under s. PI 49.03 (3) until the school information update form is filed with the department.
3. The school shall file with the department a revised bond if the expected payment increases and the difference between the initial expected payment and the revised expected payment based on the number of scholarships available under subd. 1 is at least \$50,000. The revised bond shall be equal to 25 percent of the revised expected payment based on the number of scholarships available under subd. 1. This bond shall be filed with the department by the first weekday in November.
4. After the third Friday in September, a school may not increase the number of scholarships available under this paragraph if either of the following apply:
  - a. If a bond was not revised under subd. 3., the revised expected payment is at least \$50,000 more than the initial expected payment.
  - b. If a bond was revised under subd. 3., the revised expected payment is at least \$50,000 more than the amount calculated under subd. 3.

(b) A school that filed financial information under sub. (1m) (b) that the department determined met the requirements under s. 115.7915 (6) (f) 2., Stats, may revise the number of scholarships available as follows:

1. The school shall file with the department a school information update form with the revised number of scholarships available. The school information update form shall include the expected summer school payment for pupils participating in the special needs scholarship program based on the expected number of special needs scholarship program pupils that will participate in summer school identified in the school's notice of intent to participate filed under s. PI 49.03 (3).
2. The school shall file a bond with the department if the expected payment increases and the difference between the initial expected payment and the revised expected payment based on the number of scholarships available under subd. 1 is at least \$50,000. The bond shall be payable to the state of Wisconsin and be equal to 25 percent of the difference between the initial expected payment and the revised expected payment based on the number of scholarships under subd. 1. This bond shall be filed with the department by the last weekday in August.
3. A school may not accept more special needs scholarship program pupils than indicated on its notice of intent to participate under s. PI 49.03 (3) until the bond required under subd. 2. is filed with the department.
4. After the last weekday in August, a school may not increase the number of scholarships available under this paragraph if either of the following apply:
  - a. If a bond was not filed under subd. 2., the revised expected payment is at least \$50,000 more than the initial expected payment.

b. If a bond was filed under subd. 2., the revised expected payment is at least \$50,000 more than the amount calculated under subd. 2.

(c) A school that had an initial expected payment of less than \$50,000 may revise the number of scholarships available as follows:

1. The school shall file with the department a school information update form with the revised number of scholarships available. The school information update form shall include the expected summer school payment for pupils participating in the special needs scholarship program based on the expected number of special needs scholarship program pupils that will participate in summer school identified in the school's notice of intent to participate filed under s. PI 49.03 (3).

2. The school shall file with the department a bond if the expected payment increases and the revised expected payment based on the number of scholarships available under subd. 1 is at least \$50,000. The bond shall be payable to the state of Wisconsin and be equal to 25 percent of the revised expected payment based on the number of scholarships available under subd. 1. This bond shall be filed with the department by the last weekday in August.

3. A school may not accept more special needs scholarship program pupils than indicated on its notice of intent to participate under s. PI 49.03 (3) until the bond required under subd. 2. is filed with the department.

4. After the last weekday in August, a school may not increase the total number of scholarships available under this paragraph if either of the following apply:

a. If a bond was not filed under subd. 2., the revised expected payment is at least \$50,000.

b. If a bond was filed under subd. 2., the revised expected payment is at least \$50,000 more than the amount calculated under subd. 2.

(d) A school that files a revised school information update form under this subsection may not remove an available scholarship for which it has already received an application under s. PI 49.05 (3) or a transfer request under s. PI 49.05 (5)

(b) unless the application or transfer request has been determined ineligible.

(e) Pupils that are determined eligible under s. PI 49.05 (4) (a) or (5) (c) 1. for whom there is no scholarship available until the requirements in par. (a), (b) or (c) are met shall be placed on the waiting list as specified under s. PI 49.05 (4) (c) 2. for applications and s. PI 49.05 (5) (c) 2. for transfer requests.

**Note:** The school information update form may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://dpi.wi.gov/sms/special-needs-scholarship>.

#### **SECTION 17. PI 49.05 (1) (a) is amended to read:**

**PI 49.05 (1) (a)** An explanation of the rights of a child with a disability and his or her parent in a public school compared to the rights of a child with a disability and his or her parent at a private school participating in a special needs scholarship program on a document provided by the department under s. 115.7915 (4) ~~(a) 1.(am)~~, Stats.

#### **SECTION 18. PI 49.05 (3) (c) is repealed.**

#### **SECTION 19. PI 49.05 (4) (a) (intro.) and 2. are amended to read:**

**PI 49.05 (4) (a)** Determine if the application is eligible pending the verification under par. (b) 1. by verifying all of the following:

2. The residency document ~~provided~~submitted under sub. (3) (b) is one of the residency documents specified by the department that shows the pupil resides at the address on the application at the time of application. The residency document shall be dated no earlier than 3 months prior to the date the application is ~~provided~~submitted under sub. (3) (a). If a school receives a lease agreement as a residency document, the lease term shall include the date the application was ~~provided~~submitted under sub. (3) (a). The document shall contain the name of the parent on the application and match the address on the application.

#### **SECTION 20. PI 49.05 (4) (a) 3. is repealed.**

#### **SECTION 21. PI 49.05 (4) (b) is renumbered PI 49.05 (4) (b) (intro.) and amended to read:**

**PI 49.05 (4) (b)** ~~Identify if~~If the application is determined eligible ~~in~~under par. (a) and the school has an available scholarship for the ~~online application system, or another manner permitted by pupil,~~ department school shall do all of the following:



**SECTION 22. PI 49.05 (4) (b) 1. and 2. are created to read:**

**PI 49.05 (4) (b) 1.** Send an email to the local education agency that developed the pupil's individualized education program or services plan requesting that the local education agency verify the pupil has an individualized education program or services plan that meets the requirements under sub. (7).  
**2.** Send an email to the pupil's resident school district notifying it that, pending verification that the requirements of sub. (7) are met, the child will be awarded a scholarship under s. 115.7915, Stats.

**SECTION 23. PI 49.05 (4) (c) 2 is amended to read:**

**PI 49.05 (4) (c) 2.** The application under sub. (3) is determined eligible but the school does not have spacea scholarship available for the pupil. The school shall state in the letter the pupil's place on the school's waiting list.

**SECTION 24. PI 49.05 (5) (c) 1. is renumbered PI 49.05 (5) (c) 1. (intro.) and amended to read:**

**PI 49.05 (5) (c) 1.** ~~Identify~~Determine if the transfer request is eligible, ~~using by verifying all of the online application system or another manner permitted by the department following:~~

**SECTION 25. PI 49.05 (5) (c) 1. a., b., c., and 1m. are created to read:**

**PI 49.05 (5) (c) 1. a.** The address on the pupil's transfer request is in the Wisconsin school district listed on the transfer request using the state of Wisconsin's Statewide Voter Registration System or another source permitted by the department.  
**b.** The residency document submitted under par. (b) 2. is one of the residency documents specified by the department that shows the pupil resides at the address on the transfer request at the time the pupil applies. The residency document shall be dated no earlier than 3 months prior to the date the transfer request is submitted under par. (b). If a school receives a lease agreement as a residency document, the lease term shall include the date the transfer request was submitted under par. (b). The document shall contain the name of the parent on the transfer request and match the address on the transfer request.  
**c.** The pupil was a special needs scholarship program pupil on the most recent count date based on the department's response to the email request under subd. 1m.  
**1m.** Send an email to the department requesting verification that the student was a special needs scholarship program pupil on the most recent count date.

**SECTION 26. PI 49.05 (5) (c) 2., (6) (a) and (c) are amended to read:**

**PI 49.05 (5) (c) 2.** Notify an applicant in writing if the transfer request was accepted or not accepted. The school shall state in its letter the reason or reasons why the transfer request is ineligible if the transfer request is determined ineligible. If the transfer request is determined eligible but the school does not have spacea scholarship available for the pupil, the school shall state in the letter the pupil's place on the school's waiting list.

**(6) (a)** ~~If a~~A school may give receives an application under sub. (3) or a transfer request under sub. (5) from a sibling of a pupil who is already attending the school, ~~the school may give the sibling~~ preference over either of the following:

1. An application under sub. (3), a pupil who if the school has not yet been identified as eligible sent either of the emails required under sub. (4) (b) or.

2. A transfer request under sub. (5), if the school has not sent the letter of acceptance under sub. (5) (c) +2.

**(c)** If the school is unable to determine if the sibling application or transfer request is eligible within the time period required under par. (b), the school must accept the applications and transfer requests in the order they were received ~~in~~.

**SECTION 27. PI 49.05 (7) is repealed and recreated to read:**

**PI 49.05 (7) INDIVIDUALIZED EDUCATION PROGRAM OR SERVICES PLAN IN EFFECT.** A pupil shall be determined to have an individualized education program or services plan in effect if the pupil meets one of the following:

**(a)** A local education agency is implementing the individualized education program or services plan at the time the school receives an application as provided under sub. (3).

(b) A local education agency developed the individualized education program or services plan no earlier than 3 years prior to September 15 of the school term for which the student submits an application under sub. (3), and there has not been a more recent reevaluation that determined the student no longer has a disability.

**SECTION 28. PI 49.05 (7g) and (7r) are created to read:**

**PI 49.05 (7g) LOCAL EDUCATION AGENCY VERIFICATION.** The local education agency that developed the pupil's individualized education program or services plan shall provide one of the following to the school within 5 business days of receiving the request under sub. (4) (b) 1.:

(a) If the pupil has an individualized education program or services plan that meets the requirements under sub. (7), the local education agency shall send a copy of the individualized education program or services plan to the school as verification that the pupil meets the requirement under sub. (7).

(b) If the pupil does not have an individualized education program or services plan that meets the requirements under sub. (7), the local education agency shall send an email or other written correspondence to the school indicating that the pupil does not meet the requirement under sub. (7).

**(7r) LETTER OF ACCEPTANCE OR DENIAL.** Within 7 days of receiving the verification under sub. (7g), the special needs scholarship program administrator or designee shall notify the applicant, in writing, whether the application submitted under sub. (3) was determined eligible or ineligible. If the application is determined ineligible, the letter shall state the reason or reasons why the application is ineligible.

**SECTION 29. PI 49.05 (8) (intro.) is amended to read:**

**PI 49.05 (8) SCHOLARSHIP CONTINUANCE.** ~~A~~Except as provided under sub. (9), a scholarship awarded to a pupil under this chapter shall continue until any of the following occur:

**SECTION 30. PI 49.05 (8) (e) and (9) are created to read:**

**PI 49.05 (8) (e)** A student who has been determined to no longer have a disability leaves the school he or she is attending.

**(9) SUMMER SCHOOL ATTENDANCE.** A pupil may attend summer school at a different school and continue to receive a special needs scholarship program scholarship. The school the pupil attends under this subsection may not receive a special needs scholarship program payment under s. PI 49.16 for the pupil.

**SECTION 31. PI 49.06 (2) and (3) are amended to read:**

**PI 49.06 (2) SIMULTANEOUSLY ENROLLED PUPIL.** ~~A~~Except as provided under s. PI 49.05 (9), a pupil participating in the special needs scholarship program may not receive a scholarship and be simultaneously enrolled, in or out of Wisconsin, in another private school, a home-based private educational program, a charter school under s. 118.40 (2r) or (2x), Stats., or a public school district. A pupil receiving a scholarship under s. 115.7915, Stats., may not receive a payment under s. 118.60 or 119.23, Stats.

**(3) FULL-TIME EQUIVALENT.** ~~The amount paid by the department to a school under s. 115.7915 (4m), Stats., shall be based on the full-time equivalent for each pupil times the payment amount in s. 115.7915 (4m), Stats.~~ The full-time equivalent shall be determined as follows:

**SECTION 32. PI 49.06 (3) (b) 2. (intro.) is renumbered PI 49.06 (3) (b) 2. and amended to read:**

**PI 49.06 (3) (b) 2.** ~~The full-time equivalent for a~~ A pupil enrolled in a 5-year-old kindergarten program that requires full-day attendance by the pupil for ~~less than 54~~ at least 54 days a week, ~~but not on any day of the week that pupils enrolled in other grades in the school do not attend school,~~ for an entire school term shall be ~~calculated~~ counted as follows: a 0.8 full-time equivalent.

**SECTION 33. PI 49.06 (3) (b) 2. a. and b. are repealed.**

**SECTION 34. PI 49.06 (3) (b) 2m. is created to read:**

**PI 49.06 (3) (b) 2m.** A pupil enrolled in a 5-year-old kindergarten program that requires full-day attendance by the pupil for 3 days a week, but not on any day of the week that pupils enrolled in other grades in the school do not attend school, for an entire school term shall be counted as a 0.6 full-time equivalent.

**SECTION 35. PI 49.06 (3) (b) 4. is renumbered PI 49.06 (3) (b) 4. (intro.) and amended to read:**

**PI 49.06 (3) (b) 4.** For purposes of ~~subs. 1. and 2.~~this subsection, “full-day” means the ~~length of the school day required for first grade pupils in the public school district in which a school is operating.~~following:

**SECTION 36. PI 49.06 (3) (b) 4. a. to c. are created to read:**

- a. If the private school offers first grade and is participating in a program under s. 118.60 or 119.23, Stats., the length of the school day required to meet the total number of hours of instruction for first grade pupils under ss. 118.60 (2) (a) 8. and 119.23 (2) (a) 8., Stats.
- b. If the private school does not participate in a program under s. 118.60 or 119.23, Stats., the length of the school day required to meet the total number of hours of instruction for first grade pupils at the private school under s. 118.165 (1) (c), Stats.
- c. If the private school does not offer first grade and is participating in a program under s. 118.60 or 119.23, Stats., the length of the school day required to meet the total number of hours of instruction for first grade pupils under s. 118.165 (1) (c), Stats.

**SECTION 37. PI 49.06 (3m) is created to read:**

**PI 49.06 (3m) APPLICATION AND TRANSFER REQUEST SUBMISSION.** By the next filing deadline, a school shall file with the department, using the online application system or other manner specified by the department, all of the applications determined eligible under s. PI 49.05 (4) and (7r) or transfer requests accepted under s. PI 49.05 (5) that have not previously been filed with the department. The filing deadlines are the second Friday in August, the last weekday in August, the third Friday in September, or the second Friday in January.

**SECTION 38. PI 49.06 (4) (intro.) is amended to read:**

**PI 49.06 (4) SEPTEMBER 1 APPLICATION AND PRELIMINARY CLASS LIST SUBMISSION.** Annually by ~~September 1~~the last weekday in August, a school shall ~~submit to file with~~ the department, using the online application system or other manner specified by the department, all of the following:

**SECTION 39. PI 49.06 (4) (a) is repealed.**

**SECTION 40. PI 49.06 (4) (c), (d), and (5) (intro.) are amended to read:**

**PI 49.06 (4) (c)** A class list of all pupils enrolled in the special needs scholarship program at the school by grade level. The class list may only include applications or transfer requests filed under sub. (3m) by the last weekday in August and may not include pupils that have withdrawn from the school.

**(d)** ~~The school's start and end date for the current school year.~~A list of the pupils that were enrolled in the special needs scholarship program that are no longer eligible for a scholarship under s. PI 49.05 (8) and have not been previously reported to the department.

**(5) APPLICATION SUBMISSION AND PUPIL COUNT REPORTS.** Annually by ~~October 1~~the last weekday in September and ~~February 1~~the last weekday in January, a school shall ~~submit to file with~~ the department, using the online application system or other manner specified by the department, all of the following:

**SECTION 41. PI 49.06 (5) (a) is repealed.**

**SECTION 42. PI 49.06 (5) (b) 1., (c) (intro.), 1. a. and c. are amended to read:**

**PI 49.06 (5) (b)** 1. The grade of each pupil participating in the special needs scholarship program on the immediately preceding count date. In order to be eligible for payment, a 4-year-old kindergarten pupil, 5-year-old kindergarten pupil, and first grade pupil shall attain the age specified in s. 118.14 (1), Stats. A pupil may only be included in the pupil count report if the pupil's application or transfer request was filed under sub. (3m) by the count date for which the report is being submitted.

(c) As part of the pupil count report for the third Friday in September, a school shall do all of the following for pupils that ~~participated~~ submitted applications or transfer requests in a previous school year that were determined eligible under s. PI 49.05 and have not had one of the special needs scholarship program in the previous school year events in s. PI 49.05 (8) occur:

1.a. The documentation is dated between the third Friday in August and ~~October 1~~ the last weekday in September. If a school receives a lease agreement as a residency document, the lease term includes the third Friday in September.

c. The document contains the name of the ~~applicant~~ parent.

**SECTION 43. PI 49.06 (5) (d) and (e) and (7) are created to read:**

**PI 49.06 (5) (d)** A list of the pupils that were enrolled in the special needs scholarship program that are no longer eligible for a scholarship under s. PI 49.05 (8) and have not been previously reported to the department.

(e) As part of the pupil count report for the third Friday in September, the school shall provide the school's start and end date for the current school term.

**(7) AGREEMENT OF SERVICES.** A school may only include a pupil on its report under sub. (4) (b) or (5) (b) if the school has a written agreement, as required under s. 115.7915 (6) (h) 1., Stats., with the pupil's parent that meets all of the following requirements:

1. The agreement specifies the services that will be provided to the special needs scholarship program pupil.
2. The agreement is signed and dated by the parent and the school by the due date of a report submitted under sub. (4) (b) or the count date for a report submitted under sub. (5) (b).

**SECTION 44. PI 49.07 (1) (intro.), (a) and (b), (2) and (3) (a) are amended to read:**

**PI 49.07 (1) REPORT COMPLETION AND SUBMISSION.** A school shall engage an auditor to compile the enrollment audit using agreed upon procedures that identify ineligible pupils for whom the school has received payment under s. 115.7915 (4m) or (4p), Stats., pupils with incorrect data in the department's database, and additional eligible pupils qualifying the school for a payment. The report shall be prepared in accordance with professional standards and identify the procedures agreed upon by the auditor and the department that were used. A school shall ~~submit~~ file an enrollment audit ~~to~~ with the department for the following:

(a) The third Friday in September enrollment reported under s. PI 49.06 (5) (b). A school shall ~~submit~~ file its third Friday in September enrollment audit ~~to~~ with the department by December 15.

(b) The second Friday in January enrollment reported under s. PI 49.06 (5) (b). A school shall ~~submit~~ file its second Friday in January enrollment audit ~~to~~ with the department by the first weekday in May ~~1~~.

**(2) SCHOOL RECORDS.** A school shall provide its auditor with the official attendance records and the original classroom records for the auditor's use in conducting the enrollment audit. The official attendance records shall identify pupils participating in the special needs scholarship program. If the official attendance records are from the school's student information system, the school may provide a separate report from the student information system that identifies which students are special needs scholarship program pupils.

**(3) (a)** Determine the school's process for preparing attendance records and accepting and reviewing applications and transfer requests.

**SECTION 45. PI 49.07 (3) (e) is repealed.**

**SECTION 46. PI 49.07 (3) (f) is amended to read:**

**PI 49.07 (3) (f)** Verify that the total number of pupils attending the school on the official attendance records match the total number of pupils based on the ~~original classroom records~~ pupil count report under s. PI 49.06 (5) (b) for each grade category.

**SECTION 47. PI 49.07 (3) (h) is repealed.**

**SECTION 48. PI 49.07 (3) (j) 3., (k), (m), (p), and (t) are amended to read:**

**PI 49.07 (3) (j) 3.** Pupils participating in a program under ~~ss.~~ s. 118.60 or 119.23, Stats.

**(k)** Select a sample of at least 60 pupils not participating in the special needs scholarship program from original classroom records and verify the school included the selected pupils in the ~~pupil count report under s. PI 49.06 (5) (b)~~ official attendance records. The sample shall include pupils from each classroom. If the pupils are in different classrooms during the day, the auditor may select one period and select pupils from each classroom for that period. If the auditor identifies an auditing exception, the auditor shall increase the sample size in increments of 60 pupils until the auditor finds no additional exceptions or until the auditor verifies that all pupils have been properly included in reported enrollments. If the school has an enrollment of fewer than 60 pupils who did not participate in the special needs scholarship program, the auditor shall examine records for all pupils who did not participate in the special needs scholarship program.

**(m)** Verify that any application that has not been counted on a previous count date under s. PI 49.06 (5) (b) meets the requirements of s. PI 49.05 and s. 115.7915 (2), Stats. If the auditor identifies that an application is missing the information required under s. PI 49.05 (4) (a) 2. ~~or 3.~~, the school may correct the application ~~may be corrected~~ if the applicant provides the missing documentation. The missing documentation shall be provided by ~~December 15 for applications accepted by the third Friday in September and by May 1 for applications accepted by the second Friday in January.~~ the due date of the enrollment audit specified under sub. (1) in which the application is required to be reviewed under this subsection. If the missing documentation is not provided by the required date, the application shall be determined ineligible.

**(p)** Verify that the school ~~completed the background checks required under s. PI 49.03 (4) and did not employ or contract any individuals that met~~ complied with the requirements under s. PI 49.03 (4) ~~(a) or (b).~~

**(t)** Verify that any transfer request that has not been counted on a previous count date under s. PI 49.06 (5) (b), meets the requirements of s. PI 49.05. If the auditor identifies that a transfer request is missing the information required under s. PI 49.05 (5) (b) 2. or 3., the school may correct the transfer request if the applicant provides the missing documentation. The missing documentation shall be provided by the due date of the enrollment audit specified under sub. (1) in which the transfer request is required to be reviewed under this subsection. If the missing documentation is not provided by the required date, the transfer request shall be determined ineligible.

**SECTION 49. PI 49.07 (3) (u) is created to read:**

**PI 49.07 (3) (u)** If the school operated a summer school program, review all school documentation to support the summer school report the school filed with the department under s. PI 49.16 (5). The review shall be part of the third Friday in September enrollment audit.

**SECTION 50. PI 49.07 (4) (a) is amended to read:**

**PI 49.07 (4) (a)** Upon review of the enrollment audits, the department shall certify an amount due from a school ~~for payments made to the school for ineligible pupils or an amount due to the school for additional eligible pupils.~~ The certifications shall include any adjustments identified in the financial audit submitted under ss. PI 49.08 and PI 49.09 to the actual costs incurred in the reports submitted under s. PI 49.13 (7). If a school fails to provide file an enrollment audit with the department, the department may determine that all special needs scholarship program pupils are ineligible.

**SECTION 51. PI 49.07 (4) (b) (intro.) is renumbered PI 49.07 (4) (b) and amended to read:**

**PI 49.07 (4) (b)** A school shall refund to the department the amount certified as due to the department as ~~follows specified~~ under s. PI 49.13 (6).

**SECTION 52. PI 49.07 (4) (b) 1. and 2. are repealed.**

**SECTION 53. PI 49.08 (1) is repealed and recreated to read:**

**PI 49.08 (1) FINANCIAL AUDIT REQUIREMENTS.** Annually by October 15, a school shall submit a financial audit and financial audit supplemental schedule to the department. The financial audit shall comply with all of the following:

(a) The financial audit shall either include the school-only balances and activity or shall be prepared at the consolidated level as permitted by generally accepted accounting principles.

(b) A school may submit a financial audit that includes a modified audit opinion due to fixed assets purchased in previous years not being included in the financial audit.

(c) The school shall have support for the original purchase price for the fixed assets and evidence that the school paid for the fixed asset purchases in order for the depreciation expense to be an eligible education expense. If any fixed assets are included in the statement of financial position that do not meet these requirements, the financial audit shall include a footnote disclosure that includes the fixed asset amount, accumulated depreciation, and current year depreciation expense for the fixed assets that do not meet the requirements to be included as an eligible education expense.

(d) Except as provided under par. (b) and sub. (4) (b), a financial audit that includes a modified audit opinion does not meet the requirements under s. 115.7915 (6) (e), Stats., and this chapter unless the modification is approved by the department.

**SECTION 54. PI 49.08 (3), (4), and (5) are created to read:**

**PI 49.08 (3) STANDARD FINANCIAL AUDIT.**

(a) The standard financial audit shall be prepared in accordance with generally accepted accounting principles.

(b) Except as provided under par. (c), the standard financial audit shall include 2-year comparative financial statements containing all of the statements required by generally accepted accounting principles, including a statement of financial position, a statement of activities, and a statement of cash flows. Both years of the financial statements shall be audited.

(c) The first year a school completes a standard financial audit for the special needs scholarship program, the statement of activities and statement of cash flows may only include the current school year.

**(4) MODIFIED FINANCIAL AUDIT.**

(a) The modified financial audit shall include an audited one-year statement of financial position prepared as required by generally accepted accounting principles.

(b) A school may submit a modified financial audit that includes a modified audit opinion due to post-retirement benefits being excluded from the statement of financial position.

**(5) MANAGEMENT LETTER.** The management letter required under s. 115.7915 (6) (e), Stats., shall include all of the following if issued by the auditor:

(a) Any letter issued under the American Institute of Certified Public Accountants Statement on Auditing Standards 114.

(b) Any letter issued under the American Institute of Certified Public Accountants Statement on Auditing Standards 115.

(c) Any other letter to management communicating significant deficiencies or material weaknesses in the internal controls.

**SECTION 55. PI 49.09 (1) (b) is renumbered 49.09 (1) (b) (intro.) and is amended to read:**

**PI 49.09 (1) (b)** Eligible education expenses may only include the following:

1. In a standard financial audit, expenses that are in the statement of activities, except for the cost of land. The amount that the school paid for land shall be included in the first year the land is used for educational programming using an allocation method under par. (d), if applicable.

**SECTION 56. PI 49.09 (1) (b) 2. is created to read:**

**PI 49.09 (1) (b) 2.** In a modified financial audit, expenses that would be included in the statement of activities for the school year based on generally accepted accounting principles except for the following:

a. The amount that the school paid for land shall be included in the first year the land is used for educational programming using an allocation method under par. (d), if applicable.

b. Post-retirement benefits may be included as an eligible education expense based on the amount expended for the post-retirement benefits in the school year.

**SECTION 57. PI 49.09 (1) (e) 1., (2), (3) (a) (intro.), 1., 2., 3.b. and 4., (b) 1., 2., and 3.b., (c) 1. and 3. are amended to read:**

**PI 49.09 (1) (e) 1.** Contributed services, ~~capital~~fixed assets or goods.

**(2) AUDITOR REVIEW OF ELIGIBLE EDUCATION EXPENSES.** An auditor shall ensure the eligible education expenses a school included in the supplemental schedule comply with the requirements under sub. (1) and s. PI 49.08 (1) (c).

**(3) (a)** Net eligible education expenses ~~exclusively incurred primarily~~ for special needs scholarship program pupils as follows:

1. Determine the amount of ~~eligible education expenses exclusively for primarily~~ special needs scholarship program ~~pupil expenses.~~ The amount included as an eligible education expense shall be determined using an allocation method specifically related to the expense being allocated. This amount may not include costs included as eligible in any statements provided under s. PI 49.13 (7).

2. Subtract all government assistance revenues received for ~~eligible education expenses exclusively for primarily~~ special needs scholarship program ~~pupil expenses.~~

3.b. The non-administrative fundraising expenses included in the expenses in subd. 1. In this subdivision, administrative expenses include expenses for school personnel, copying, mailing, or ~~capital~~fixed assets used for other school purposes.

4. Subtract all insurance proceeds received for ~~eligible education expenses exclusively for primarily~~ special needs scholarship program ~~pupil expenses.~~

**(b) 1.** Determine the amount of eligible education expenses, excluding eligible education expenses in par. (a) and costs included as eligible in any statements provided under s. PI 49.13 (7) incurred in that school year. If an expense is included under par. (a) that is not 100 percent related to special needs scholarship program pupils, the total expense prior to applying the allocation percentage shall be excluded under this subdivision.

2. Subtract all government assistance revenues received for eligible education expenses. This amount shall not include government assistance revenues subtracted in par. (a) 2. or in the statements provided under s. PI 49.13 (7).

3.b. The non-administrative fundraising expenses included in the expenses in subd. 1. In this subdivision, administrative expenses include expenses for school personnel, copying, mailing, or ~~capital~~fixed assets used for other school purposes.

**(c) 1.** Calculate the percentage of pupils at the school participating in the special needs scholarship program as the full-time equivalent for the special needs scholarship program pupils compared to the all pupil full-time equivalent. The full-time equivalents shall be based on the average of the full-time equivalents determined in the enrollment audits under s. PI 49.07. The full-time equivalent for the special needs scholarship program pupils shall exclude pupils that received a payment under s. PI 49.13 (7) in that school year.

3. Add the net eligible education expenses under par. (a) and costs included as eligible in any statements provided under s. PI 49.13 (7) incurred in that school year.

**SECTION 58. PI 49.09 (3) (c) 4. is created to read:**

**PI 49.09 (3) (c) 4.** Subtract government assistance revenue related to that school year that is subtracted in the statements provided under s. PI 49.13 (7).

**SECTION 59. PI 49.09 (3) (d) 1., (e) 1., (4), (5) (a) and (6) are amended to read:**

**PI 49.09 (3) (d) 1.** Determine the total scholarships received for the school year being audited and any adjustments for the school year under s. PI 49.07 (4). This amount shall include summer school revenue received under s. 115.7915 (4p), Stats., for the immediately preceding summer.

(e) 1. Determine the sum of any remaining depreciation on fixed assets used by the school and any land purchases that have not yet been included in eligible cost under sub. (1) (b) that meet the requirements to be included as an eligible education expense. The depreciation under this subdivision shall not include depreciation for leased right of use assets.

(4) MAINTAIN RESERVE BALANCE. The school shall maintain the reserve balance, if positive, for future eligible education expenses for special needs scholarship program pupils. The school's cash and investment balance shall be at least as much as the amount calculated under sub. (3) (e), if positive. If the school is participating in a program under s. 118.60 or 119.23, Stats., the cash and investment balance shall be at least as much as the reserve calculated under this chapter and chs. PI 35 and 48 less the sum of any remaining depreciation on fixed assets used by the school and any land purchases that have not yet been included in eligible cost under sub. (1) (b) that meet the requirements to be included as an eligible education expense. The depreciation under this subsection shall not include depreciation for leased right of use assets.

(5) (a) If a school ceases to participate or is barred from participation in the special needs scholarship program under s. 115.7915, Stats., it shall submit to the department the financial audit for the final school year in which it participated. The net eligible education expenses under sub. (3) (c) shall be multiplied by the percent of the school year the school participated in the special needs scholarship program if the school was not eligible for all of the payments under s. PI 49.13. This percentage shall be calculated as follows:

1. The net eligible education expenses shall be multiplied by 25 percent if the school was only eligible for the September payment.

2. The net eligible education expenses shall be multiplied by 50 percent if the school was only eligible for the September and November payments.

3. The net eligible education expenses shall be multiplied by 75 percent if the school was only eligible for the September, November, and February payments.

(6) REFUND OF THE RESERVE. If a school ceases to participate or is barred from participating in the special needs scholarship program under s. 115.7915, Stats., and the school's reserve is positive, the school shall refund the reserve balance to the department. ~~The school shall make the refund within 30 days of the date of the closure payment letter sent to the school by the department as specified under s. PI 49.13 (6).~~

#### **SECTION 60. PI 49.10 (6) is amended to read:**

**PI 49.10 (6) SCHOOL RESPONSIBILITY.** An auditor's failure to completely or properly perform the responsibilities set forth in s. 115.7915, Stats., or this chapter is not a defense to any determination the department makes ~~that there is an amount due from a school or to a school under s. PI 49.07 (4) or PI 49.09 (6) under this chapter or s. 115.7915, Stats.~~

#### **SECTION 61. PI 49.11 (5) and (7) (b) are amended to read:**

**PI 49.11 (5) AUDITOR PEER REVIEW REPORTS.** An auditor completing any of the audits and agreed upon procedure reports under s. 115.7915, Stats., or this chapter shall ~~submit~~ file the auditors peer review required under s. 442.087, Stats., ~~to~~ with the department within 30 days of the report issuance.

(7) (b) An auditor who is barred under par. (a) shall not complete accounting, auditing, or other reporting requirements for any schools participating in the special needs scholarship program or in a program under s. 118.60 or 119.23, Stats., until such time as all of the following occur:

1. The auditor submits to files with the department evidence acceptable to the department that the auditor has made procedural changes to the manner in which the auditor conducts an audit ~~and has.~~

2. The auditor successfully ~~completed~~ completes professional development training that will enable the auditor to comply with the requirements of this chapter, chs. PI 35 and 48, and ss. 115.7915, 118.60, and 119.23, Stats.

#### **SECTION 62. PI 49.13 (intro.) is amended to read:**

**PI 49.13 State aid payment calculation.** The state superintendent shall make the payments under s. 115.7915 (4m) and (4p), Stats., to schools participating in the special needs scholarship program. The state superintendent may withhold payment from a school under s. 115.7915 (4m) and (4p), Stats., if the school violates this chapter or s. 115.7915, Stats. The state superintendent shall make the payments as follows:



**SECTION 63. PI 49.13 (1) (c) is created to read:**

**PI 49.13 (1) (c)** The prior year actual cost for pupils, as reported by the school under sub. (7), and as calculated under s. 115.7915 (4m) (a) 3. and (cm), Stats.

**SECTION 64. PI 49.13 (2) (intro.) is amended to read:**

**PI 49.13 (2) NOVEMBER PAYMENT.** The November payment shall be based on the number of special needs scholarship program pupils reported ~~by October 1~~ in the school's pupil count report for the third Friday in September required under s. PI 49.06 (5) (b), unless a pupil is determined ineligible by the department. The state superintendent shall calculate the November payment as 50% percent times the amount owed for eligible pupils less the September payment received. The state superintendent shall calculate the amount owed for eligible pupils as the total of all of the following:

**SECTION 65. PI 49.13 (2) (c) and (2m) are created to read:**

**PI 49.13 (2) (c)** The prior year actual cost for pupils, as reported by the school under sub. (7), and as calculated under s. 115.7915 (4m) (a) 3. and (cm), Stats.

**(2m) SUMMER SCHOOL PAYMENT.** The November payment shall include any payments due to the school for summer school instruction of special needs scholarship pupils in the immediately preceding summer as indicated in the report filed under s. 115.7915 (6) (k), Stats., unless otherwise determined ineligible by the department.

**SECTION 66. PI 49.13 (3) (intro.) is amended to read:**

**PI 49.13 (3) FEBRUARY AND MAY PAYMENTS.** The February payment and May payment shall each be based on the number of special needs scholarship program pupils reported ~~by February 1~~ in the school's pupil count report for the second Friday in January required under s. PI 49.06 (5) (b), unless a pupil is determined ineligible by the department. The state superintendent shall calculate the February and May payments as 25% percent times the total of all of the following:

**SECTION 67. PI 49.13 (3) (c), (6) and (7) are created to read:**

**PI 49.13 (3) (c)** The prior year actual cost for pupils, as reported by the school under sub. (7), and as calculated under s. 115.7915 (4m) (a) 3. and (cm), Stats.

**(6) AMOUNT DUE TO DEPARTMENT.** A school shall refund an amount due to the department under this chapter or s. 115.7915, Stats., as follows:

**(a)** If the school is currently eligible to receive special needs scholarship program payments, the department shall reduce the payments made under s. 115.7915 (4m) and (4p), Stats., by the amount owed. If reducing a payment made under s. 115.7915 (4m) and (4p), Stats., is insufficient to pay the amount owed, the school shall pay the remaining amount within 60 days of the date of the notice to the school of the amount due.

**(b)** If the school is not currently eligible to receive special needs scholarship program payments, the school shall refund the department within 60 days of the date of the notice to the school of the amount due.

**(7) STATEMENT OF ACTUAL COST. (a)** By the third Friday in July, a school may submit a statement of actual costs on a form provided by the department for a special needs scholarship program pupil. The statement of actual costs shall calculate the actual costs for the pupil as the costs for the pupil under par. (b) less any government assistance revenue received for educational programming for the pupil.

**(b)** The statement of actual cost may only include costs that meet at least one of the following criteria:

1. The cost was incurred to provide the services identified in the pupil's individualized education program or services plan.
2. The cost was incurred to provide specially designed instruction, regardless of where the instruction is conducted, that is provided to meet the unique needs of a child with a disability, including instruction in physical education.
3. The cost was incurred to provide aids, services and other supports that are provided in regular education classes or other education-related settings to enable a child with a disability to be educated with nondisabled children to the maximum extent appropriate.

4. The cost was incurred to provide transportation or such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education, including all of the following:
- Speech-language pathology and audiology services.
  - Interpreting services.
  - Psychological services.
  - Physical and occupational therapy.
  - Recreation, including therapeutic recreation.
  - Social work services.
  - School nursing services designed to enable a child with a disability to receive an education as described in the agreement of services required under s. 115.7915 (6) (h) 1., Stats.
  - Counseling services, including rehabilitative counseling.
  - Orientation and mobility services.
  - Medical services for diagnostic and evaluative purposes only.
  - The early identification and assessment of disabling conditions in children.
5. The cost was incurred to provide services or activities for school personnel to meet the unique needs of a child with a disability.
- (c) Notwithstanding, par. (b) 4., the cost of a medical device that is surgically implanted or the replacement of such a device may not be included in the statement of actual cost.
- (d) The statement of actual costs may only include costs that meet the eligible education expense requirements under s. PI 49.09 (1).
- (e) The statement of actual costs may only include costs for a pupil incurred after the pupil is accepted into the special needs scholarship program at the school under s. PI 49.05 (7r) or 49.09 (5) (c) 2.
- (f) Only the school that submitted the statement of actual costs under par. (a) may receive the per pupil payment based on the actual cost in the statement in the subsequent school year under subs. (1), (2), and (3).
- Note:** The statement of actual cost may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://dpi.wi.gov/sms/special-needs-scholarship>.

**SECTION 68. PI 49.14 (4) (a), (b), (c), (d), (e) and (g) are amended to read:**

- 49.14 (4) (a)** Failed to ~~provide~~submit the financial audit or financial audit supplemental schedule in two or more years by the date specified in s. PI 49.08.
- (b)** ~~Provided~~Submitted a financial audit or financial audit supplemental schedule that does not comply with the requirements under s. PI 49.08 or 49.09 in two or more instances in the same year or in different years.
- (c)** Excluded liabilities, whether or not the school disputes the amount owed, from the financial information required under s. 115.7915 (6) (f) 2., Stats., and s. PI 49.04 ~~(1m)~~ (b).
- (d)** Included assets in the financial information ~~provided~~filed under s. 115.7915 (6) (f) 2., Stats., and s. PI 49.04 ~~(1m)~~ (b) that exceed the assets of the school.
- (e)** Failed to ~~provide~~file a bond required under s. PI 49.04 for 3 consecutive months after the date the bond is due.
- (g)** Employed an individual ~~or contracted with an individual who met the requirements under~~in violation of s. PI 49.03 (4) ~~(a)(d) 1. or (b)2.~~

**SECTION 69. PI 49.16 is created to read:**

- PI 49.16 Summer school attendance and payment. (1) DEFINITION.** In this section, "academic purposes" means summer school learning experiences that are related to or similar to instruction the school offers during the regular school term or for which credit toward graduation is given.
- (2) LIST OF CLASSES.** Annually by the first weekday in May, a school shall file with the department a list of academic summer school classes and laboratory periods that the school will provide in the following summer. The department shall annually review the list to ensure the classes are for academic purposes.
- (3) PROGRAM REQUIREMENTS.** A school may count any of the following as instruction for academic purposes:
- Music programs, lessons, sections, or clinics.
  - Swimming instruction programs, if taught or directed by a teacher at the site of the instruction.
  - Field trips if accompanied by a teacher and if all pupils have equal access to the field trips regardless of a pupil's ability to pay.

(4) PUPIL ATTENDANCE REQUIREMENTS. A school may include a pupil in its summer school report if the pupil was a special needs scholarship program pupil on a count date during the school year immediately preceding the summer school instruction.

(5) REPORT. A school counting pupils for special needs scholarship program summer school payment purposes shall file a summer school report with the department listing the special needs scholarship program pupils who attended summer school and the number of days the pupils attended. The school shall report this information on a form provided by the department.

(6) CHOICE PAYMENT. A school may not receive a summer school payment under ss. 118.60 (4m) or 119.23 (4m), Stats., and a summer school payment under s. 115.7915 (4p), Stats., for the same pupil in the same school year.

**Note:** A summer school report form may be obtained at no charge from the Wisconsin department of public instruction's website at <http://dpi.wi.gov/sms/special-needs-scholarship>.

#### **SECTION 70. EFFECTIVE DATE:**

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22 (2) (intro.), Stats.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019

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Carolyn Stanford Taylor  
State Superintendent