

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ADOPTING EMERGENCY 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. Pursuant to *Coyne v. Walker*, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope for this rule. *Coyne v. Walker*, 368 Wis.2d 444.

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

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 rule amends Chapter 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. The proposed rule will also make other various changes to conform the rule to best practices and efficiencies in program administration. Key aspects of the rule include the following:

- Specify the requirements for the modified financial audit and the standard financial audit.
- Clarify the individuals for which schools must complete background checks.

- Modify certain due dates so the dates will not be on a weekend.
- Modify the accreditation requirements to allow accrediting organizations to provide a notice rather than a letter of the accreditation status of schools.
- Specify that the budget required must include the anticipated beginning and ending reserve balance.
- Specify that schools may change the number of available scholarships in certain circumstances.
- Specify what is required for an Individualized Education Program (IEP) or services plan to be in effect.
- Specify 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, 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.
- Remove the pupil eligibility requirements related to open enrollment denials since the requirement for an open enrollment denial was removed from s. 115.7915, Stats.
- Clarify the pupil eligibility requirements for transfer pupils and how transfer requests may be corrected if errors are identified by the auditor.
- Clarify 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.
- Modify the dates by which applications and transfer requests must be submitted to the department.
- Specify that the school must identify pupils no longer eligible for a scholarship in the preliminary enrollment report and pupil count reports.
- Remove the requirement to use original classroom records when completing the enrollment audit.
- Specify the requirements for a school to receive a special needs scholarship program summer school payment and the audit requirements of the summer school report.
- Specify that a pupil may attend a different school for summer school and still be eligible for a special needs scholarship program scholarship.
- Clarify the requirements for including fixed assets in the financial audit.
- Specify what is considered a management letter.
- Clarify what expenses are primarily related to special needs scholarship program pupils and how they impact the general expenses requirements.
- Clarify the school's responsibility for the financial requirements.
- Specify 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.

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

Comparison with rules in adjacent states: N/A

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)

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Wisconsin Department of Public Instruction
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(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. The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

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 (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 opinion~~ PI 49.09.

SECTION 4. PI 49.02 (9p) is created to read:

PI 49.02 (9p) "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.

SECTION 5. PI 49.02 (15) is amended to read:

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

SECTION 6. 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 7. 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 8. PI 49.03 (4) is repealed and recreated to read:

PI 49.03 (4) BACKGROUND CHECKS. (a) A school shall conduct a criminal background check prior to employing any individual at the school and every 5 years thereafter.

(b) A school shall conduct a criminal background check for all individuals defined as employees under s. 108.02 (12), Stats., who are directly or indirectly related to educational programming provided under s. 115.7915, Stats., and this chapter.

(c) 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 9. PI 49.03 (5) (a) (intro.) and (6) 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 one of the following documents to the department for all locations of the school:

(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 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:

1. The school's name.
2. The school's address for each location included in the accreditation.
3. The grades accredited by the agency.
4. ~~A statement~~ Notification that the school is accredited as of ~~the date of~~ the date of time the letter notice is submitted.

(b) The letter notice shall be ~~dated~~ submitted 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.

SECTION 10. 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 number of scholarships available and the expected special needs scholarship program summer school payment in a school’s notice of intent to participate submitted under s. PI 49.03 (3).

(b) “Revised expected payment” means a school’s expected scholarship payment amount based on the number of scholarships available and the expected special needs scholarship program summer school payment in a revised school information update form submitted under sub. (5).

SECTION 11. 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, provide a bond payable to the state of Wisconsin equal to 25 percent of the initial expected payment.

(b) Annually by March 1 prior to the school year, submit financial information to 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. Submit to 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. Submit to the department the most recent balance sheet and income statement for the legal entity of the school.

4. Submit to the department bank statements for all cash and investment accounts included in the balance sheet required under subd. 3.

5. Submit to the department 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 12. PI 49.04 (2) (intro.) and (a), (b), (c), (d), and (e) and (3) (c) are amended to read:

PI 49.04 (2) FINANCIAL INFORMATION REVIEW. The department shall review the financial information provided by a school under sub. ~~(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 under sub. ~~(1m)~~ (b).

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

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

(d) The school has a negative net current obligation in its financial audit or in the budget submitted 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 in the financial audit or in the budget submitted under sub. ~~(1)(1m)~~ (b).

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

SECTION 13. PI 49.04 (5) is created to read:

PI 49.04 (5) REVISIONS TO NUMBER OF AVAILABLE SCHOLARSHIPS. (a) A school that submitted 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.
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 submitted 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 submit to the department a school information update form with the revised number of scholarships available.
2. The school shall submit to the department a 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 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.
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:
- If a bond was not filed under subd. 2., the revised expected payment is at least \$50,000.
 - 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 submits 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 space 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) for applications and s. PI 49.05 (5) (c) 2. for transfer requests.

(f) Notwithstanding pars. (a), (b), and (c), a bond provided under this subsection shall include the expected special needs scholarship program summer school payment based on the revised school information update form provided under this subsection.

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 14. 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 15. PI 49.05 (3) (c) is repealed.

SECTION 16. PI 49.05 (4) (a) (intro.) is 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:

SECTION 17. PI 49.05 (4) (a) 3. is repealed.

SECTION 18. 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 under par. (a) and the school has an available scholarship for the online application system, or another manner permitted by pupil, the ~~department.~~ school shall do all of the following:

SECTION 19. 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 verification that the pupil has an individualized education program or services plan that meets the requirements under sub. (7) and requesting that the local education agency send a copy of the individualized education program or services plan to the school.

2. Send an email to the pupil's resident school district notifying them that, pending verification that the requirements of subd. 1. are met, the child will be awarded a scholarship under s. 115.7915, Stats.

SECTION 20. 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 21. PI 49.05 (5) (c) 1. a. and b. 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 provided 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 provided 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 provided under par. (b). The document shall contain the name of the parent on the transfer request and match the address on the transfer request.
- 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 22. PI 49.05 (6) (a) and (c) are amended to read:

PI 49.05 (6) (a) ~~If 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) 1-2.

(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 23. PI 49.05 (7) is repealed and recreated to read:

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 had a disability.

SECTION 24. PI 49.05 (7m) is created to read:

49.05 (7m) LETTER OF ACCEPTANCE OR DENIAL. Within 7 days of receiving the verification requested under sub. (4) (b) 1., the special needs scholarship program administrator or designee shall notify the applicant in writing of 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 25. PI 49.05 (8) (intro.) is amended to read:

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 26. 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 27. PI 49.06 (2) and (3) (intro.) are amended to read:

PI 49.06 (2) SIMULTANEOUSLY ENROLLED PUPIL. ~~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) (a) 2. b., Stats., shall be based on the full-time equivalent for each pupil times the payment amount in s. 115.7915 (4m) (a) 2. b., Stats. The full-time equivalent shall be determined as follows:

SECTION 28. PI 49.06 (3m) is created to read:

PI 49.06 (3m) APPLICATION SUBMISSION. Annually by the second Friday in August, a school shall submit to 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 (7m) or transfer requests accepted under s. PI 49.05 (5) that have not previously been submitted to the department.

SECTION 29. PI 49.06 (4) (intro.), (a), and (d), and (5) (intro.), (a), (c) (intro.) and 1. a. are amended to read:

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

(a) All applications determined eligible under s. PI 49.05 (4) and ~~(7)~~(7m) or transfer requests accepted under s. PI 49.05 (5) ~~and (7)~~that have not previously been submitted to the department.

(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 the department, using the online application system or other manner specified by the department, all of the following:

(a) All applications determined eligible under s. PI 49.05 (4) and ~~(7)~~(7m) or transfer requests accepted under s. PI 49.05 (5) ~~and (7)~~ that have not previously been submitted to the department.

(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 withdrawn from the school or the special needs scholarship program in the previous school year:

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.

SECTION 30. PI 49.06 (5) (d) and (e) 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 year.

SECTION 31. PI 49.07 (1) (intro.) 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., 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 an enrollment audit to the department for the following:

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

(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 32. PI 49.07 (3) (e) is repealed.

SECTION 33. 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.

SECTION 34. PI 49.07 (3) (h) is repealed.

SECTION 35. PI 49.07 (3) (k), (m), (p) and (t) are amended to read:

PI 49.07 (3) (k) Select a sample of at least 60 pupils not participating in the special needs scholarship program from ~~original classroom~~ official attendance records and verify the school included the selected pupils in the pupil count report under s. PI 49.06 (5) (b). 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 the requirements under s. PI 49.03 (4) ~~(a) or (b)~~ (c) 1. or 2.

(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) (c) 1. b., 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 36. PI 49.07 (u) is created to read:

PI 49.07 (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 37. 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 38. PI 49.07 (4) (b) 1. and 2. is repealed.

SECTION 39. PI 49.08 (1) is repealed and recreated to read:

PI 49.08 (1) FINANCIAL AUDIT REQUIREMENT. Annually by October 15, a school shall provide 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 provide a financial audit that includes a modified audit opinion due to fixed assets purchased in previous years not being included in the financial audit as follows:

1. 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.
2. 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.

(c) 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 40. 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 provide 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 41. PI 49.09 (1) (b), (3) (a) (intro.), 1. and 2. and 4., (b) 1., (d) 1., (e) 1., and (4) are 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.

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.

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

1. Determine the amount of eligible education expenses ~~exclusively~~primarily for special needs scholarship program pupils. Eligible education expenses primarily for special needs scholarship program pupils shall be at least 50 percent related to special needs scholarship program pupils. The amount included as an eligible education expense shall be determined using an allocation method specifically related to the expense being allocated.

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

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

(b) 1. Determine the amount of eligible education expenses, excluding eligible education expenses in par. (a). 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.

(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). Summer school revenue received under s. 115.7915 (4p), Stats., shall be included in the school year it is received.

(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.

(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.

SECTION 42. 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 43. PI 49.13 (intro.) and (2) (intro.) are amended to read:

PI 49.13 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:

(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 44. PI 49.13 (2m) is created to read:

PI 49.13 (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 submitted under s. 115.7915 (6) (k), Stats., unless otherwise determined ineligible by the department.

SECTION 45. 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 46. PI 49.13 (6) and (7) are created to read:

PI 49.13 (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. By the last weekday in June, a school may provide a statement of actual costs on a form provided by the department for a special needs scholarship program pupil. Notwithstanding subs. (1), (2), and (3), the per pupil payment amount for the school that provided the statement in the following school year for that pupil shall be 25 percent of the amount calculated under s. 115.7915 (4m) (a) 3. and (cm), Stats.

Note: The statement of actual cost 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 47. PI 49.14 (4) (c), (d) and (g) are amended to read:

49.14 (4) (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 ~~(1)(1m)~~ (b).

(d) Included assets in the financial information provided under s. 115.7915 (6) (f) 2., Stats., and s. PI 49.04 ~~(1)(1m)~~ (b) that exceed the assets of the school.

(g) Employed an individual ~~or contracted with an individual~~ who met the requirements under s. PI 49.03 (4) ~~(a)~~(c) 1. or ~~(b)2.~~

SECTION 48. 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 submit the list to the department 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:

(a) Music programs, lessons, sections, or clinics.

(b) Swimming instruction programs, if taught or directed by a teacher at the site of the instruction.

(c) 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. Annually by September 15 immediately following summer school, a school counting pupils for special needs scholarship program summer school payment purposes shall submit to the department a summer school report 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 49. STATEMENT OF EMERGENCY

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

2017 Wisconsin Acts 36 and 59 made several changes to the statutes governing the special needs scholarship program. The Department is required by statute to promulgate rules in order to administer this program. Unless these modifications are in place, the Department may be prevented from efficiently implementing and administering the program and schools and applicants may not have clear guidance on program requirements. The promulgation of emergency rules will help ensure implementation of the program remains consistent through the completion of the permanent rule making process.

SECTION 50. EFFECTIVE DATE:

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Dated this _____ day of _____, 2018

Tony Evers, PhD

State Superintendent