

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Department of Public Instruction will hold a public hearing as required under s. 227.16, Stats., to consider the promulgation of Clearinghouse Rule 21-046 and Emergency Rule 2117, amending ss. PI 49.07 (4) (a) and 49.13 (7) (a) and creating ss. PI 35.10 (3m), 48.10 (3m), and 49.09 (3m), relating to Parental Choice and Special Needs Scholarship Programs offsetting revenue, statements of actual cost, and affecting small business. The hearing will be held via conference call only in the manner as follows:

Date and Time: Monday, July 26, 2021, at 11:00 AM

Location (Conference Call Only): +1 608-620-9781, Phone Conference ID: 229 531 629#

The proposed administrative rules are available to review at https://docs.legis.wisconsin.gov/code/chr/all/cr_21_046 and https://docs.legis.wisconsin.gov/code/emergency_rules/all/emr2117.

Accessibility

The hearing is fully accessible to persons with disabilities. If you require reasonable accommodation to access the hearing, please call Carl Bryan using the contact information provided below prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Appearances at the Hearing and Submittal of Written Comments

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make a presentation of their position on the proposed rules orally or in writing. The purpose of this hearing to consider public testimony on the proposed rules under consideration. Questions or comments about the rules under consideration may be posed and will be duly recorded.

Individuals who are unable to attend the hearing but would like to submit written comments may do so via the Legislature's form for submitting comment at <https://docs.legis.wisconsin.gov/feedback/agencyform?cite=cr/2021/46>. Questions or additional testimony may be accepted by contacting Carl Bryan, Administrative Rules Coordinator, at adminrules@dpi.wi.gov. Written comments on the proposed rules received no later than the date of the hearing will be given the same consideration as testimony presented at the hearing.

Initial Regulatory Flexibility Analysis

An analysis conducted by the department indicates that the proposed rules may impact small businesses in the state. Pursuant to s. 227.114, Stats., a small business means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000. The department finds that some participating private schools in the state's Parental Choice Programs or the Special Needs Scholarship are independently owned and operated, not dominant in its field, and employ fewer than 25 full-time employees, which meet the criteria listed under s. 227.114, Stats. Many participating private schools received loans under the Paycheck Protection Program (PPP), which may be forgiven after the 2019-20 school year.

Sections 1, 2, and 4 of the proposed rules provide that the forgiven portion of loans under the PPP are not included as offsetting revenues in the financial audit supplemental schedule for schools participating in any of the state's Parental

Choice Programs and the Special Needs Scholarship Program. It is the department's understanding that most schools participating in the Parental Choice Programs or the Special Needs Scholarship had a PPP loan. The effect on small businesses as a result of this rule is indeterminate because the department does not have: 1) the PPP loan amounts; 2) the amounts forgiven; and 3) when the amounts will be forgiven for each private school participating in the Parental Choice Programs or Special Needs Scholarship Program. According to the Small Business Administration, First Draw PPP loans made to eligible borrowers qualify for full loan forgiveness if during the 8- to 24-week covered period following loan disbursement:

- Employee and compensation levels are maintained;
- The loan proceeds are spent on payroll costs and other eligible expenses; and
- At least 60% of the proceeds are spent on payroll costs.

The department anticipates that schools participating in the Parental Choice Programs or Special Needs Scholarship Program will meet the above criteria and have their PPP loan forgiven in whole or part. Without these rules, the forgiven portion of a PPP loan that was used for eligible education expenses would be included in offsetting revenue and decrease a school's eligible education expenses, resulting in an increase in the school's Parental Choice Programs and/or Special Needs Scholarship reserve balance. The reserve balance is the remaining balance of Parental Choice Programs or Special Needs Scholarship revenue that hasn't been spent on eligible education expenses. Private schools participating in the Parental Choice Programs or Special Needs Scholarship Program are required to have a cash and investment balance that is at least as much as the reserve balances with certain adjustments. As a result, the increase in the reserve balances would result in schools being required to have a higher cash and investment balance.

Additionally, sections 3 and 5 of the proposed rules specify that any amount forgiven for a PPP loan until October 15th in the following school year reduces the costs in the Special Needs Scholarship Program statement of actual cost. The proposed rules provide if an amount is forgiven between the due date of the statement of actual costs and October 15th, the change in the per pupil payment will be made through the Enrollment Audit certification process. Finally, the proposed rules ensure that schools will not receive less than the standard payment rate for a pupil included in a statement of actual costs due to changes in the actual cost, such as costs that are subsequently forgiven.

Forgiven PPP loans will not be counted as government assistance revenue and will therefore not increase the cash and investment balance required for participating in a Parental Choice Program or the Special Needs Scholarship Program as a result of these proposed rules. There are no anticipated compliance costs associated with the proposed rules or anticipated additional costs to small businesses. The proposed rules help small businesses by ensuring a private school does not receive a payment for a pupil below the standard payment rate due to costs in the statement of actual cost that are subsequently forgiven. The effect on small businesses as a result of the proposed rules is indeterminate.

Agency Small Business Regulatory Coordinator

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State Superintendent or Designee

Date