

Clearinghouse Rule 16-005

**PROPOSED ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
CREATING PERMANENT RULES**

The scope statement for this rule, SS 081-15, was published in Register No. 716B, on August 31, 2015, and approved by State Superintendent Tony Evers, on September 15, 2015. 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, 2015 WI App 21, 361 Wis.2d 255.

The state superintendent of public instruction hereby proposes to create PI 49, relating to the Special Needs Scholarship Program.

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: N/A

Plain language analysis:

2015 Wisconsin Act 55 created the Special Needs Scholarship Program. The effective date of the program is the 2016-17 school year. Section 115.7195 (10), Stats., requires the department to promulgate administrative rules related to student and school application processes. This proposed rule creates procedures for administering the special needs scholarship program, including procedures related to the eligibility and participation of schools, the calculation and distribution of state aid paid for special needs scholarships, and the application procedures for students and private schools.

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:

The proposed rule is needed to implement the Special Needs Scholarship Program provided under s. 115.7915, Stats., that was created by the 2015-17 budget, 2015 Wisconsin Act 55.

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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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 Carl.Bryan@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 is created 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), Stats., and the application and approval procedures for pupils and eligible schools under s. 115.7915, Stats.

PI 49.02 Definitions. In this chapter:

- (1) “Classroom records” means teacher-recorded test scores, teacher-originated report cards and progress reports, and teacher-originated attendance records.
- (2) “Count date” means the third Friday in September and the second Friday in January except as provided under s. 121.05 (3m), Stats.
- (3) “Department” means the Wisconsin department of public instruction.
- (4) “Full scholarship pupil” means a pupil who was determined to meet the application requirements of s. 115.7915, Stats., and this chapter, and is eligible for a payment under s. 115.7915 (4m) (a), Stats.
- (5) “Eligible education expenses” means all direct and indirect costs associated with a private school’s educational programming for pupils enrolled in grades kindergarten to 12.
- (6) “Financial audit” means the audit of a school required under s. 115.7915 (6) (e), Stats.

(7) “Generally accepted auditing standards” means the auditing standards prescribed by the accounting examining board under s. Accy 1.202.

(8) “Official attendance records” means a listing of all kindergarten through grade 12 pupils enrolled in the school by grade level.

(9) “Parent” has the meaning given in s. 115.76 (12), Stats.

(10) “Partial scholarship pupil” means a pupil who was determined to meet the application requirements of s. 115.7915, Stats., and this chapter, and is eligible for a payment under s. 115.7915 (4m) (e), Stats.

(11) "Professional standards" means both of the following:

(a) Standards established by the accounting examining board under ch. 442, Stats.

(b) Standards issued by the comptroller general of the United States for engagements in which the use of generally accepted governmental auditing standards is required.

(12) “Reserve” means the difference between the revenue received under s. 115.7915, Stats., and the amount of net eligible education expenses for special needs scholarship program pupils.

(13) “Scholarship” means a payment under s. 115.7915 (4m), Stats.

(14) “School term” has the meaning given in s. 115.001 (12), Stats.

(15) “School year” has the meaning given in s. 115.001 (13), Stats.

(16) “Special needs scholarship program administrator” means the person signing the notice of intent to participate form under s. PI 49.03 (3).

(17) “Special needs scholarship program” means the program established under s. 115.7915, Stats.

(18) “State superintendent” means the state superintendent of public instruction.

PI 49.03 School requirements.

(1) PRIVATE SCHOOL. A school participating in the special needs scholarship program shall be a private school as defined in s. 115.001 (3r), Stats.

(2) SPECIAL NEEDS SCHOLARSHIP PROGRAM ADMINISTRATOR. The special needs scholarship program administrator shall be one of the following:

(a) An owner of the school.

(b) An individual appointed as the school’s special needs scholarship program administrator by the governing body of the organization operating the school.

(3) NOTICE OF INTENT TO PARTICIPATE. Annually by March 1, a school that intends to participate in the special needs scholarship program in the following school year shall submit to the department a notice of intent to participate. The notice shall include all of the following:

(a) The number of spaces the school has available for new applicants to the program.

(b) The number of full scholarship pupils and partial scholarship pupils that will continue to participate in the special needs scholarship program. The school shall include all special needs scholarship program pupils on the 2nd Friday in January count report submitted 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. 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 its notice of intent to participate to the department.

(c) The school's special education program profile required under s. 115.7915 (6) (g), Stats.

(d) The signature and mailing address of the special needs scholarship program administrator.

(e) The school's agreement that it will use the plan established by the department for ensuring that it will select pupils on a random basis as required under s. 115.7915 (3) (b), Stats., from a new pool of applicants each school year. The school may give preference to siblings of pupils who are attending the school at the time the pupil applies.

Note: The notice of intent to participate and special education program profile may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://sms.dpi.wi.gov/>.

(4) **BACKGROUND CHECKS.** The school shall conduct a criminal background check prior to employing any individual at the school. The school shall conduct the criminal background check for all employees, including contracted individuals. The school may not employ any of the following individuals:

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

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

(5) **CERTIFICATE OF OCCUPANCY.**

(a) By May 1 prior to the first year a school participates in the special needs scholarship program, a school shall submit one of the following to the department for each of the locations of the school:

1. A certificate of occupancy issued by the municipality within which the building is located.

2. If the municipality within which the building is located does not issue certificates of occupancy, a certificate of occupancy issued by the local or regional governmental unit with authority to issue certificates of occupancy.

3. A letter or form from the municipality within which the building is located that explains that the municipality does not issue certificates of occupancy.

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

1. A certificate of occupancy issued by the municipality within which the building is located.

2. If the municipality within which the building is located does not issue certificates of occupancy, a certificate of occupancy issued by the local or regional governmental unit with authority to issue certificates of occupancy.

3. A letter or form from the municipality within which the building is located that explains that the municipality does not issue certificates of occupancy.

(c) A temporary certificate of occupancy does not meet the requirement of this subsection.

(6) **ACCREDITATION REQUIREMENTS.** Annually by August 1, a school participating in the special needs scholarship program shall provide to the department a letter from the school's

accrediting agency stating that the school is accredited as of the date of the letter. The letter shall meet all of the following requirements:

- (a) The letter 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.
 - 4. A statement that the school is accredited as of the date of the letter.
- (b) The letter shall be dated no earlier than the beginning of the school year.
- (c) The letter shall be signed by an authorized member of the accrediting agency.

PI 49.04 Financial information and surety bond.

- (1) BOND REQUIREMENTS. The department shall calculate the amount of scholarships expected to be received by each school based on the number of pupils included in a school's notice of intent to participate submitted under s. PI 49.03 (3). If a school expects to receive at least \$50,000 in scholarships, the school shall do one of the following:
- (a) Annually by June 1 prior to the school year, provide a bond payable to the state of Wisconsin equal to 25 percent of the total amount of scholarships expected to be received by the school during the school year.
 - (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 total amount of scholarships expected to be received by the school during the school year, including all of the following:
 - 1. A budget and cash flow report, on a form provided by the department, for the ensuing 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 special needs scholarship program revenues and costs.
 - e. A schedule of anticipated beginning and ending net program assets.
 - 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. 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://sms.dpi.wi.gov/>.

(2) FINANCIAL INFORMATION REVIEW. The department shall review the financial information provided by a school under sub. (1) (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. (1) (b).
- (b) The school has negative cash flows in any month in the budget submitted under sub. (1) (b).
- (c) The school has a negative net asset balance in the financial audit or in the budget submitted under sub. (1) (b).
- (d) The school has a negative net current obligation in its financial audit or in the budget submitted under sub. (1) (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) (b).
- (f) The audit opinion statement included in the financial audit contains a qualification as to the school's ability to continue as a going concern.
- (g) The school failed to make payments to vendors as required by written agreement or, if there is no written agreement, within 90 days of invoice or payment request. The department shall consider this an indicator even if the school has entered into a payment plan with the vendor to pay the past due amount.
- (h) The school has past due amounts with government agencies, including payment of employee withholdings. The department shall consider this an indicator even if the school has entered into a payment plan with the government agency to pay the past due amount.
- (i) The school failed to pay its employees as required by ch. 109, Stats., or written agreement with the employee.

(3) INSUFFICIENT FINANCIAL INFORMATION. The department shall determine that a school does not meet the requirements under s. 115.7915 (6) (f) 2., Stats., if any of the indicators under sub. (2) exist. 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) (a) by June 1 prior to the school year.

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

- (a) The school failed to timely file the financial audit or the reports required under s. PI 49.07 (1).
- (b) The school failed to timely refund the department any amount certified due from the school under s. PI 49.07 (4).
- (c) The school failed to timely refund the department the reserve balance as prescribed under s. PI 49.09.
- (d) The school failed to timely refund the department any other money owed to the department for any other reason under this chapter or s. 115.7915, Stats.

PI 49.05 Pupil application requirements.

(1) **RESIDENCY ELIGIBILITY.** A school shall obtain one of the residency documents specified by the department from a parent on the application that shows the applicant resides at the address on the application at the time of application. The residency document shall be dated no earlier than three months prior to the start of the open application period in which an applicant applies. If a school receives a lease agreement as a residency document, the lease term shall include the date the application was received. The document shall contain the name of the parent on the application and match the address on the application.

(2) **ADDRESS VERIFICATION.** A school shall verify that the address on a pupil's application is in the Wisconsin school district listed on the application using the state of Wisconsin's Statewide Voter Registration System or another manner permitted by the department.

(3) **APPLICATION RECEIPT.** A school may only receive an application during an open application period on the notice of intent to participate submitted under s. PI 49.03 (3). The school shall receive all documentation, including the documentation required under sub. (1), during the same open application period in which the school receives the application.

(4) **EXPLANATION OF RIGHTS.** When an applicant applies to a school, the school shall provide the applicant's parent with all of the following:

(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 school participating in the special needs scholarship program on a document provided by the department under s. 115.7915 (4) (a) 1., Stats.

(b) The profile of the school's special education program provided under s. PI 49.03 (3) (c).

(5) **CURRENT INDIVIDUALIZED EDUCATION PROGRAM OR SERVICES PLAN.** A school shall ensure the pupil has an individualized education program or services plan that is in effect at the time of application.

(6) **INELIGIBLE APPLICATIONS.** An application shall be determined ineligible if any of the following apply:

(a) The application does not comply with this section or s. 115.7915 (2), Stats., and a correction of the application under sub. (7) is not allowable.

(b) The application contains contradictory information.

(7) **CORRECTING APPLICATIONS.** A school shall correct an application in the following circumstances and manner:

(a) The school shall correct an application by December 15 for applications received during an open application period prior to the third Friday in September and by May 1 for applications received during an open application period after the third Friday in September. If the school does not correct the application as required in this subsection by the specified date, the application is ineligible.

(b) The school shall obtain additional residency documentation after the open application period in which the application was received that meets the requirements in sub. (1) if all of the following apply:

1. The school received residency documentation from the parent on the application during the open application period in which the application was received and the residency documentation contained an address and the name of the parent on the

application, even if the parent's name is misspelled or is a different legal name for the parent.

2. The additional residency documentation is in the parent's name, contains the applicant's correct address, and meets the requirements in sub. (2).

Note: The application may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://sms.dpi.wi.gov/>.

PI 49.06 School year enrollment.

(1) **APPLICATION ELIGIBILITY DETERMINATION.** A school shall make application eligibility determinations based on the requirements under s. PI 49.05 and s. 115.7915 (2), Stats. A school shall make eligibility determinations and report accepted applications to the department prior to the next open application period or prior to the next count date, whichever occurs first. A school shall notify each applicant in writing whether the school accepted or denied the applicant's application.

(2) **DOCUMENT RETENTION.** A school shall retain all of the following records for at least 5 years from the end of the school year in which the pupil applies or 5 years after the pupil no longer attends the school, whichever occurs later, unless the department or a law enforcement agency requires the school to retain the records for a longer period:

(a) Copies of pupil paper applications, individualized education programs or services plans, and supporting residency documentation required under s. PI 49.05 (1) for all accepted and non-accepted special needs scholarship program pupils who have submitted applications to the school.

(b) Copies of all notices to a pupil or pupil's parent regarding acceptance and non-acceptance.

(c) Copies of all documents required under s. PI 49.12.

(3) **SIMULTANEOUSLY ENROLLED PUPIL.** A pupil participating in the special needs scholarship program may not 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 and receive a scholarship.

(4) **SEPTEMBER 1 APPLICATION AND CLASS LIST SUBMISSION.** Annually by September 1, a school shall submit to the department in the online application system or other manner specified by the department all of the following:

(a) A list of pupils participating in the special needs scholarship program at the school that identifies if each pupil was determined to no longer be a child with a disability under s. 115.7915 (4m) (e) 1, Stats., in a previous year.

(b) A class list of all pupils participating in the special needs scholarship program enrolled in the school that includes the grade level for each pupil. The class list may not include pupils that have withdrawn from the school.

(c) The school's start and end date for the current school year.

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

(a) A pupil count report stating all of the following:

1. The grade of each pupil participating in the special needs scholarship program on the immediately preceding count date.

2. Whether each pupil meets the requirements under sub. (6).
3. Whether each pupil is a full scholarship pupil or partial scholarship pupil.
4. The total number of pupils in the school on the immediately preceding count date that meet the requirements under sub. (6).

(b) 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 in the special needs scholarship program in the previous school year:

1. Obtain residency documentation for the pupil's address on the third Friday in September that meets the requirements of s. PI 49.05 (1) and is dated between the third Friday in August and October 1.
2. Determine the resident school district for the new address as prescribed under s. PI 49.05 (2).

(6) COUNT REQUIREMENTS. A school may include a pupil on its pupil count report under sub. (5) (a) only if one of the following applies:

- (a) The pupil is in attendance for instruction on the count date.
- (b) The pupil is absent on the count date but attended the school for instruction at least one day during the school term prior to the count date and at least one day after the count date, and the pupil was not enrolled in another school in or out of Wisconsin, including another private school, a home-based educational program, a charter school under s. 118.40 (2r) or (2x), Stats., or a public school district, during the period of absence from the school.

PI 49.07 Enrollment audits.

(1) REPORT COMPLETION AND SUBMISSION. A school shall engage an auditor to complete the enrollment audit for the school's enrollment reported under s. PI 49.06 (5). The auditor shall compile the enrollment audit using agreed upon procedures that identify ineligible pupils for whom the school has received payment under s. 115.7915 (4m), Stats., and additional eligible pupils qualifying the school for a payment. The school shall submit its third Friday in September enrollment audit to the department by December 15. The school shall submit its second Friday in January enrollment audit to the department by 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.

(3) REQUIRED PROCEDURES. An auditor shall complete the procedures specified in the department's audit guide, including all of the following:

- (a) Determine the school's process for preparing attendance records and accepting and reviewing applications.
- (b) Verify that any 4-year-old kindergarten program under s. 121.004 (7) (cm), Stats., includes at least 87.5 hours of 4-year-old kindergarten outreach activities as documented by teacher logs.
- (c) Complete a fraud risk assessment.
- (d) If the school uses a student information system, complete testing of the system. If the auditor does not use the test plan provided by the department, the auditor shall annually submit the plan to the department for approval.

- (e) Verify that the total number of pupils participating in the special needs scholarship program on the official attendance records match the total number of pupils participating in the special needs scholarship program based on the original classroom records for each grade.
- (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 for each grade.
- (g) Verify the enrollment for all special needs scholarship program pupils reported on the pupil count report under s. PI 49.06 (5) (a) using the school's official attendance records.
- (h) Verify that all special needs scholarship program pupils the school includes on its official attendance records are also included on the original classroom records. Also verify that all special needs scholarship program pupils the school includes on the school's original classroom records are included on the official attendance records.
- (i) Verify that the special needs scholarship program pupils meet the requirements of s. PI 49.06 (6).
- (j) Verify that the school did not receive a payment under s. 115.7915 (4m), Stats., for any of the following:
 - 1. Pupils for whom the school is receiving a childcare payment for all day care.
 - 2. Pupils who are enrolled in a partnership or contract school of a public school district.
 - 3. Pupils participating in a program under ss. 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). 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.
- (L) Reconcile the enrollment the school reported to the department under s. 115.30 (3), Stats., with the official attendance records of the school.
- (m) Verify that the applications for pupils participating in the special needs scholarship program meet the requirements of s. PI 49.05 and s. 115.7915 (2), Stats. If an applicant participated in the special needs scholarship program in the previous year, the auditor shall verify that the residency documentation obtained pursuant to s. PI 49.06 (5) (b) meets the requirements of that paragraph.
- (n) Verify that the employees of the school meet the requirements under s. PI 49.03 (4).
- (o) Perform other auditing procedures as agreed upon by the auditor and the department.

(4) CERTIFICATIONS.

- (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. If a school fails to provide an enrollment audit,

the department shall determine that all special needs scholarship program pupils are ineligible.

(b) The school shall refund to the department the amount certified as due to the department. 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), Stats., by the amount owed. If the school is not currently eligible to receive special needs scholarship program payments, the school shall refund the department within 30 days of the date of the certification letter.

(c) The department shall pay any additional amount due to the school for eligible pupils within 60 days of the date of the certification letter.

Note: The Enrollment Audit may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://sms.dpi.wi.gov/>.

PI 49.08 Financial audit.

(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 be prepared in accordance with generally accepted accounting principles and shall comply with all of the following:

(a) Except as provided under par. (b), the 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.

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

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

(d) 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. A financial audit that includes a modified audit opinion for any other reason does not meet the requirements under s. 115.7915 (6) (e), Stats., and this chapter unless the modification is approved by the department.

(2) **COMPLIANCE WITH PROFESSIONAL STANDARDS.** An auditor engaged by a school to provide the audit opinion in this section shall comply with professional standards, including all of the following:

(a) The auditor shall develop written audit programs identifying the steps and procedures to be followed in conducting the audit, including establishing the planning materiality that the auditor will use for the audit.

(b) The auditor shall trace all entries on the financial audit to the trial balance provided by the school.

(c) The auditor shall obtain sufficient appropriate audit evidence to conclude that the financial statements do not contain misstatements the effect of which, when aggregated with misstatements in other accounts and transactions, exceeds the planning materiality and result in a material misstatement in the

financial statements or in the school's net eligible education expenses. The auditor shall determine sufficient appropriate audit evidence based on the requirements of the American Institute of Certified Public Accountants.

PI 49.09 Financial audit supplemental schedule.

(1) ELIGIBLE EDUCATION EXPENSES. The eligible education expenses included in the financial audit supplement schedule shall comply with all of the following:

- (a) Eligible education expenses may only include those expenses that already have or will result in a cash disbursement.
- (b) Eligible education expenses may only include 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.
- (c) An expense may only be included as an eligible education expense one time.
- (d) The following may not be included in kindergarten through grade 12 eligible education expenses:
 1. Contributed services, capital assets, or goods.
 2. Scholarship awards and financial support for pupils to attend the private school, including payments to parents or others on behalf of pupils.
 3. Daycare expenses except expenses for before or after school care for kindergarten through grade 12 pupils that are enrolled in educational programming at the school.

(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 in sub. (1).

(3) SUPPLEMENTAL SCHEDULE CALCULATIONS. The supplemental schedule shall calculate all of the following:

- (a) Eligible education expenses exclusively for special needs scholarship program pupils.
- (b) Net eligible education expenses for all pupils as follows:
 1. Determine the amount of eligible education expenses, excluding eligible education expenses in par. (a).
 2. Subtract government assistance revenues.
- (c) The net eligible education expenses for special needs scholarship program pupils as follows:
 1. Calculate the percentage of pupils at the school participating in the special needs scholarship program as the special needs scholarship program pupils compared to the all pupils. The pupils at the school shall be determined based on the average of the pupils in the enrollment audits under s. PI 49.07.
 2. Multiply the amount calculated under par. (b) by the percentage under subd. 1.
 3. Add the eligible education expenses in par. (a).
- (d) The reserve balance as follows:
 1. Determine the total scholarships received.
 2. Add the prior year reserve balance, if any.
 3. Subtract the net eligible education expenses for special needs program pupils determined under par. (c).
- (e) The school's cash and investment balance that must be maintained as follows:

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).

2. Subtract the amount under subd. 1. from the amount under par. (d).

(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 also 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 total required under this chapter, and chs. PI 35 and 48.

(5) FINAL FINANCIAL AUDIT. 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. If a school fails to submit the financial audit, the department shall determine that the school's net eligible education expenses for the year are zero for purposes of determining the school's reserve balance.

(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.

PI 49.10 School financial requirements.

(1) ENGAGEMENT LETTER. A school shall have a written engagement letter with each auditor providing services required by this chapter. The school or auditor shall provide a copy of the engagement letter to the department upon request. The written engagement letter shall contain all of the following:

(a) A statement that the auditor shall comply with generally accepted auditing standards and the requirements of this chapter.

(b) A statement that the auditor shall comply with generally accepted governmental auditing standards if other governmental agencies providing funds to the school require it.

(c) The responsibilities of the school and the auditor in meeting the requirements of this chapter.

(d) The services the auditor provides to the school that are in addition to those audit and attestation services required under this chapter.

(e) The auditor's acknowledgement that the department will rely on the auditor's work to fulfill the department's responsibilities under s. 115.7915, Stats., and this chapter.

(f) The auditor's compensation for the services the auditor provides to the school.

(2) FINANCIAL ACCOUNTING SYSTEM. A school shall use a double entry financial accounting system organized in a manner that enables preparation of the financial audit. A school shall balance the financial accounting system and provide the auditor with a trial balance of the account balances.

(3) ADJUSTING ENTRIES. A school shall approve adjusting entries recommended by an auditor before the entries are recorded in the school's financial accounting system.

(4) RECORDS RETENTION. A school shall retain all financial and pupil records relating to the enrollment audits under s. PI 49.07 and the financial audit for at least 5 years from the due date of the financial audit for each school year, unless the department or a law enforcement agency requests that the school retain the records for more than 5 years.

(5) RECORDS AVAILABILITY. A school shall furnish all financial and pupil records the auditor considers necessary to provide the audit opinion or agreed upon procedure reports. Upon request by the department, a school shall provide the department access to the records referenced in the auditor's working papers and provide copies of such records to the department.

(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. 49.07 (4) or PI 49.09 (6).

(7) AUDITOR BAR. A school participating in the special needs scholarship program may not engage an auditor who fails to timely and properly fulfill the auditing and reporting requirements of this chapter or s. 115.7915, Stats., until such time as the auditor provides evidence acceptable to the department that the auditor has made procedural changes and has successfully completed professional development training that enables the auditor to comply with the requirements of this chapter.

PI 49.11 Auditor requirements.

(1) INDEPENDENCE REQUIREMENTS. An auditor engaged by a school shall comply with the standards of the American Institute of Certified Public Accountants, including all of the following:

(a) An auditor shall comply with the requirements of s. Accy 1.101.

(b) An auditor shall obtain the school's trial balance if completing compilation or review services.

(c) Except as provided in par. (d), an auditor may not post or prepare for posting typical reoccurring financial transactions to the school's general ledger, including cash receipts and disbursements, invoices or billings for services, billings from vendors and suppliers, and payroll activity.

(d) An auditor shall obtain written approval of the school's management prior to posting adjusting, correcting, and closing journal entries to the school's general ledger. An auditor's working papers shall document evidence of management approval for all such entries resulting from a financial statement compilation, review, or audit.

(e) If an auditor assists in the preparation of a school's budget, the auditor shall do all of the following:

1. Comply with s. Accy 1.201, regarding forecasts.

2. Identify that such assistance was provided, if required by the department.

(2) INQUIRIES. An auditor shall promptly respond to inquiries or requests made by the department. The auditor shall notify the school of any inquiries or requests made by the department and the auditor's response.

(3) WORKPAPER RETENTION. An auditor shall retain working papers relating to the enrollment audits under s. PI 49.07 and the financial audit for at least 5 years from the due date of the financial audit for each school year, unless the department or a law enforcement agency requests that the auditor retain working papers for more than 5 years.

(4) **WORKPAPER REVIEW.** An auditor shall permit the department to review audit working papers prepared in support of the enrollment audits under s. PI 49.07 and the financial audit. An auditor shall promptly provide copies of working papers the department requests.

(5) **AUDITOR PEER REVIEW REPORTS.** An auditor completing any of the audits and agreed upon procedure reports under s. 115.7915, Stats., and this chapter shall submit the auditor's peer review to the department within 30 days of report issuance.

(6) **LICENSE REQUIREMENT.** An auditor completing the audits and agreed upon procedure reports under this chapter or s. 115.7915, Stats., shall be a firm licensed as a certified public accounting firm by the accounting examining board under ch. 442, Stats. An individual auditor who accepts the engagement shall be a licensed certified public accountant.

(7) **AUDITOR BAR.** An auditor who fails to timely and properly fulfill the auditing and reporting requirements of this chapter or s. 115.7915, Stats., shall not complete accounting, auditing, or other reporting requirements for any schools participating in the special needs scholarship program until such time as the auditor submits to 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 successfully completed professional development training that will enable the auditor to comply with the requirements of this chapter and s. 115.7915, Stats.

PI 49.12 Education services.

(1) **RECORD OF IMPLEMENTATION AND PROGRESS.** Annually by June 15, a school shall provide a record of implementation and progress form required under s. 115.7915 (6) (h) 2., Stats., for each full scholarship pupil participating in the special needs scholarship program to the school board of the pupil's resident school district.

Note: The record of implementation and progress form may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://sms.dpi.wi.gov/>

(2) **QUARTERLY REPORTING.** A school shall report to the parent of a pupil participating in the special needs scholarship program on the pupil's academic progress at least quarterly.

PI 49.13 State aid payment calculation. The state superintendent shall make the payments under s. 115.7915 (4m), Stats., to schools participating in the special needs scholarship program. No aid may be paid to a school in the special needs scholarship program unless the school has met the requirements in this chapter and in s. 115.7915, Stats. The state superintendent shall determine the full-time equivalent under this section based on the requirements under s. PI 35.06 (6). The state superintendent shall make the payments as follows:

(1) **SEPTEMBER PAYMENT.** The September payment shall be based on the number of special needs scholarship program pupils at the school reported under s. PI 49.06 (4). The state superintendent shall calculate the September payment as 25 percent times the total of all of the following:

- (a) The number of full scholarship pupils multiplied by the per pupil payment amount determined under s. 115.7915 (4m) (a), Stats.

- (b) The full-time equivalent for partial scholarship pupils, as reported under s. PI 49.06 (4) (a), multiplied by the per pupil payment amount determined under s. 115.7915 (4m) (e), Stats.

(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 required under s. PI 49.06 (5) (a), 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:

- (a) The number of full scholarship pupils multiplied by the per pupil payment amount determined under s. 115.7915 (4m) (a), Stats.
- (b) The full-time equivalent for partial scholarship pupils, as reported under s. PI 49.06 (4) (a), multiplied by the per pupil payment amount determined under s. 115.7915 (4m) (e), Stats.

(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 required under s. PI 49.06 (5) (a), 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:

- (a) The number of full scholarship pupils multiplied by the per pupil payment amount determined under s. 115.7915 (4m) (a), Stats.
- (b) The full-time equivalent for partial scholarship pupils, as reported under s. PI 49.06 (4) (a), multiplied by the per pupil payment amount determined under s. 115.7915 (4m) (e), Stats.

(4) CEASED INSTRUCTION. The state superintendent may not make a September, November, or February payment to a school that has ceased instruction prior to the payment date.

(5) END PRIOR TO SCHOOL TERM. The state superintendent may not make a May payment to a school that has ceased instruction prior to the end of its scheduled school term.

PI 49.14 Department authority.

(1) INQUIRIES. The department may make inquiries to ascertain the accuracy and completeness of information contained in audits or reports required under s. 115.7915, Stats., and this chapter. Schools and auditors shall promptly respond to inquiries made by the department.

(2) TRAINING. The department may provide training to school staff and auditors. The department may charge a reasonable fee for providing training under this subsection.

(3) PUPIL CONFIDENTIALITY. The department shall maintain pupil confidentiality at all times.

(4) ORDER TO BAR. The department may issue an order barring a private school from participating in the special needs scholarship program if the department determines that the school has done any of the following:

- (a) Failed to provide the financial audit in two or more years by the date specified in s. PI 49.08.

- (b) Provided a financial audit that does not comply with the requirements under s. 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 (2).
- (d) Included assets in the financial information provided under s. 115.7915 (6) (f) 2., Stats., and s. PI 49.04 (2) that exceed the assets of the school.
- (e) Failed to provide a bond required under s. PI 49.04 for three consecutive months after the date the bond is due.
- (f) Failed to conduct background checks required under s. PI 49.03 (4) for two or more individuals.
- (g) Employed individuals or contracted with individuals who did not meet the requirements under s. PI 49.03 (4).

PI 49.15 Right to a request a hearing.

(1) WHO MAY REQUEST. A person or school adversely affected by an action of the department under this chapter may request a contested case hearing on that action. A request for a contested case hearing shall be filed with the office of legal services within 14 days of the date of the department's action.

Note: See s. 227.42, Stats. A request for a contested case hearing may be filed with the office of legal services at the following address:

Office of Legal Services
 Wisconsin Department of Public Instruction
 125 S. Webster St.
 PO Box 7841
 Madison, WI 53707-7841

(2) REQUEST FORM.

(a) A request for a contested case hearing under sub. (1) shall be in writing and shall describe all of the following:

1. The department action on which a hearing is requested.
2. The requester's substantial interest claimed to be adversely affected.
3. How the department's action adversely affected the requester's substantial interest.
4. The grounds for the hearing request, including each of the specific material facts or legal issues that are in dispute. Any material fact or legal issue that is not disputed shall be deemed admitted.
5. The relief sought.

(b) Upon the request of the department, the person or school who filed a request for a hearing under sub. (1) shall provide the department with any additional clarifying information the department determines is necessary to decide whether to grant or deny a hearing request.

(3) GRANTING OR DENYING REQUEST.

(a) The department shall grant or deny a request for a contested case hearing under sub. (1) within 20 days after a request is filed, unless the person or school requesting the hearing agrees to an extension of time. The department may grant a request for a contested case hearing if, upon preliminary review, it appears that all of the following apply:

1. The department has jurisdiction over the matter.
 2. The request for a hearing complies with the requirements under subs. (1) and (2).
 3. The requestor is entitled to a hearing under s. 227.42, Stats.
- (b) Any action taken by the department which is contested under sub. (1) shall remain in effect until the state superintendent issues a final decision and order under s. 227.47, Stats.

SECTION 2. 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 _____, 2016

Tony Evers, PhD
State Superintendent