

## Report From Agency

### FINAL REPORT CLEARINGHOUSE RULE 21-046 CHAPTERS PI 35, 48, 49

#### Parental Choice and Special Needs Scholarship Programs offsetting revenue, statements of actual cost, and affecting small business

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#### Analysis by the Department of Public Instruction

**Statutory authority:** ss. 115.7915 (10), 118.60 (11) (a), and 119.23 (11) (a), Stats.

**Statute interpreted:** ss. 115.7915, 118.60, and 119.23, Stats.

This rule will amend chs. PI 35, 48, and 49 of the Wisconsin Administrative Code to provide that loans under the Paycheck Protection Program (PPP), which are forgiven by the federal government, are not offsetting revenue in the financial audit supplemental schedule for any of the state's Parental Choice Programs or the Special Needs Scholarship Program.

Schools participating in the Special Needs Scholarship Program have the option to submit a statement of actual costs that specifies the special education expenses the school incurred for educating a Special Needs Scholarship Program pupil in the prior school year. If a school submits a statement of actual costs for a pupil, the payment amount for that pupil in the subsequent school year is based on the actual costs for the pupil in the statement. The proposed rule specifies that if an amount included in a Special Needs Scholarship Program statement of actual costs is part of a forgiven PPP loan, and the amount is forgiven on or before October 15<sup>th</sup> following the school year, the costs in the statement of actual costs must be reduced by the forgiven amount. The proposed rule also specifies that any adjustments due to forgiven PPP loans will be paid back through the Enrollment Audit certification process. Finally, it indicates that the payment amount for an actual cost pupil will not be below the Special Needs Scholarship Program payment rate for a pupil that did not submit a statement of actual costs.

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The hearing notice was published in the June 28, 2021, edition of the Wisconsin Administrative Register. A public hearing was held on July 26, 2021.

*No persons testified at the July 28, 2021 hearing. However, the following persons submitted written testimony:*

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Sharon Schmeling	Wisconsin Council for Religious and Independent Schools	X		

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

- The respondent in favor of the rule argued that the promulgation of CR 21-046 prevents private schools receiving loans under the Paycheck Protection Program (PPP) from unintended consequences faced by the current rule in clarifying how PPP funds will be treated alongside choice program requirements. The respondent also argues the

rule clarifies current rule so both programs can function for the benefit of the public, as intended by the Legislature.

*Agency response:* The department agrees. No changes are needed.

***Changes made as a result of oral or written testimony:***

- No changes were made.

***Changes to the analysis or the fiscal estimate:***

- No changes were made.

***Responses to Clearinghouse Report:***

**2. Form, Style and Placement in Administrative Code:**

The changes were accepted.

**4. Adequacy of References to Related Statutes, Rules and Forms:**

a. The department's comparison to rules in adjacent states in the proposed rule describes the structure of private school choice programs in those states. Because private school choice in those states is structured differently than the private school choice programs in Wisconsin, there are no rules governing the forgiveness of PPP loans under the audit process for private school choice programs in those states. The comparison of the proposed rule to rules in adjacent states has been updated to clarify this.

b. The changes were accepted.

**5. Clarity, Grammar, Punctuation and Plainness:**

The current plain language analysis of the proposed rule already specifies that schools participating in the Special Needs Scholarship Program have an option to submit a statement of actual costs to calculate and receive a payment for a student participating in the program based on a statement of actual costs. Since the rule does not relate to the initial requirements for the statement of actual costs, the department does not believe further clarification is necessary for the proposed rule. No changes are needed.

***Final regulatory flexibility analysis:***

Pursuant to s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required for this rule because the small business regulatory review board has not determined that the rule will have a significant economic impact on a substantial number of small businesses.