



**GENERAL INFORMATION**

Rule No.  PI 35, 48, 49	Relating to  Parental Choice and Special Needs Scholarship Programs offsetting revenue	Rule Type  Permanent and Emergency
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**SIGNATURE**

State Superintendent Review <input type="checkbox"/> Approved. <i>Begin Drafting Rule</i> <input type="checkbox"/> Disapproved. <i>Reason for Disapproval</i>	State Superintendent Signature  	Date Signed Mo./Day/Yr.
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**NARRATIVE**

1. Finding/nature of the emergency (Emergency Rule only).

An emergency rule is required to ensure the forgiven portions of the “Paycheck Protection Program” (PPP) loans are not included as offsetting revenue in the 2020-21 financial audits.

Section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) created the PPP to the U.S. Small Business Administration’s 7(a) Loan Program and provided for forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP. Private schools participating in the Parental Choice Programs and Special Needs Scholarship Program must annually submit a financial audit that determines the school’s net eligible education expenses. Pursuant to the authority under s. 118.38 (4) (a) 1., Stats., on May 1, 2020, the department waived the requirement that any PPP loans received under the CARES Act that are forgiven on or before June 30, 2020, be included as offsetting revenue in the 2019-20 financial audit. However, the forgiveness for many of the participating schools’ loans will occur during the 2020-21 school year and not during the 2019-20 school year.

Pursuant to ss. 115.7915 (6) (e), 118.60 (7) (am) 2m. a., and 119.23 (7) (am) 2m. a., Stats., and ch. PI 35, 48 and 49, the 2020-21 school year is from July 1, 2020 to June 30, 2021. Pursuant to ss. 115.7915 (6) (e), 118.60 (7) (am) 2m. a., and 119.23 (7) (am) 2m. a., Stats., and ss. PI 35.09 (1), 48.09 (1) and 49.08 (1), the due date for the 2020-21 school year financial audit is October 15, 2021. Further, pursuant to s. PI 49.13 (7), the due date of the 2020-21 statement of actual cost is July 16, 2021. As such, a rule is needed to address the PPP loans and the forgiveness of the PPP loans for private schools participating in the Parental Choice and Special Needs Scholarship programs. A permanent rule, however, will not be promulgated in time for the Parental Choice Programs or the Special Needs Scholarship Program financial audits or the Special Needs Scholarship Program statement of actual cost due dates and the change to the treatment of the PPP loans for the 2020-21 financial audit would not become effective during the 2020-21 school year based on the timelines for permanent rule promulgation, so an emergency rule is needed.

Without an emergency rule, the forgiven portion of the PPP loan will be treated inconsistently between the 2019-20 and 2020-21 school years and the loans that are forgiven during the 2020-21 school year will reduce each participating school’s net eligible education expenses.

2. A description of the objective of the proposed rule.

The proposed rule under this statement of scope will amend chs. PI 35, 48, and 49 of the Wisconsin Administrative Code to provide that loans under the Paycheck Protection Program, which are forgiven by the federal government, are not offsetting revenue in the Parental Choice Programs and the Special Needs Scholarship Program financial audit or the Special Needs Scholarship Program statement of actual cost.

3. A description of the existing policies and new policies included in the proposed rule and an analysis of policy alternatives.

Chapters PI 35, 48, and 49 of the Wisconsin Administrative Code govern the administrative rules relating to the Milwaukee Parental Choice Program, the Racine And Wisconsin Parental Choice Programs, and the Special Needs Scholarship Program, respectively. Under the current rules, private schools participating in the Parental Choice Programs and Special Needs Scholarship Program must annually submit a financial audit that determines the school’s net eligible education expenses. Further, under current rule, private schools participating in the Special Needs Scholarship Program must submit a statement of actual costs for services provided to each pupil participating in the Special Needs Scholarship Program.

However, since the rules were promulgated, the Paycheck Protection Program, created under the CARES Act, provided for

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**NARRATIVE (cont'd)**


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forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP. Pursuant to the authority under s. 118.38 (4) (a) 1., Stats., on May 1, 2020, the department waived the requirement that any PPP loans received under the CARES Act that are forgiven on or before June 30, 2020, be included as offsetting revenue in the 2019-20 financial audit. However, the forgiveness for many of the participating schools' loans will occur during the 2020-21 school year and not during the 2019-20 school year. Pursuant to ss. 115.7915 (6) (e), 118.60 (7) (am) 2m. a., and 119.23 (7) (am) 2m. a., Stats., and ch. PI 35, 48 and 49, the 2020-21 school year is from July 1, 2020 to June 30, 2021. Pursuant to ss. 115.7915 (6) (e), 118.60 (7) (am) 2m. a., and 119.23 (7) (am) 2m. a., Stats., and ss. PI 35.09 (1), 48.09 (1) and 49.08 (1), the due date for the 2020-21 school year financial audit is October 15, 2021. Further, pursuant to s. PI 49.13 (7), the due date of the 2020-21 statement of actual cost is July 16, 2021.

A rule is needed to address the PPP loans and the forgiveness of the PPP loans for private schools participating in the Parental Choice and Special Needs Scholarship programs. Without a rule, the forgiven portion of the PPP loan will be treated inconsistently between the 2019-20 and 2020-21 school years and the loans that are forgiven during the 2020-21 school year will reduce each participating school's net eligible education expenses.

4. The statutory authority for the proposed rule.

The Department is given statutory authority to promulgate rules under PI 35 with respect to the Milwaukee parental choice program:

**119.23 Milwaukee parental choice program.**

(11) The department shall do all of the following:

(a) Promulgate rules to implement and administer this section. The department may not by rule establish standards under sub. (7) (am) that exceed the standards established by the American Institute of Certified Public Accountants.

Further, the Department is given statutory authority to promulgate rules under PI 48 with respect to the statewide parental choice program:

**118.60 Parental choice program for eligible school districts and other school districts.**

(11) The department shall do all of the following:

(a) Promulgate rules to implement and administer this section. The department may not by rule establish standards under sub. (7) (am) that exceed the standards established by the American Institute of Certified Public Accountants.

Finally, under s. 115.7915 (10), Stats., the Department is given statutory authority to promulgate rules to implement and administer the Special Needs Scholarship program under PI 49, 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.

5. An estimate of the amount of time agency employees will spend developing the proposed rule and of other resources needed to develop the rule.

The amount of time needed for rule development by Department staff and the amount of other resources necessary are indeterminate.

6. A description of all of the entities that will be affected by the proposed rule.

Private schools participating in the Milwaukee Parental Choice Program, the Wisconsin Parental Choice Program, and the Special Needs Scholarship Program may be impacted by this rule.

7. A summary and preliminary comparison of any existing or proposed federal regulation that addresses or is intended to address the activities to be regulated by the proposed rule.

N/A

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