

## Chapter PI 35

### MILWAUKEE PARENTAL CHOICE PROGRAM

PI 35.01	Purpose.	PI 35.12	Auditor requirements.
PI 35.02	Definitions.	PI 35.13	Fiscal and internal control practices.
PI 35.03	School requirements.	PI 35.14	First time participant financial requirements.
PI 35.04	New private school requirements.	PI 35.15	Lack of financial viability and going concern determinations.
PI 35.05	Pupil application requirements.	PI 35.16	Administrator, teacher and teacher aide requirements.
PI 35.06	School year enrollment.	PI 35.17	Auditor fee.
PI 35.07	Enrollment audits.	PI 35.18	Income limit calculation.
PI 35.08	Summer school attendance and payment.	PI 35.19	State aid payment calculation.
PI 35.09	Financial audit.	PI 35.20	Department authority.
PI 35.10	Financial audit supplemental schedule.	PI 35.21	Request for a hearing on department action.
PI 35.11	School financial requirements.		

**Note:** Chapter PI 35 was created as an emergency rule effective September 20, 1990. Chapter PI 35 as it existed on July 30, 2016, was repealed and a new chapter PI 35 was created Register July 2016 No. 727, effective August 1, 2016.

**PI 35.01 Purpose.** Any qualified pupil in grades kindergarten to 12 who meets the requirements under s. 119.23 (2) (a), Stats., may attend any school participating in the Milwaukee parental choice program under s. 119.23, Stats. This chapter establishes approval criteria and requirements for schools participating in the choice program under s. 119.23, Stats., and requirements for receipt of state aid under s. 119.23 (4) and (4m), Stats.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16.

**PI 35.02 Definitions.** In this chapter:

(1) “4-year-old kindergarten outreach activities” means the direct services that a school provides to 4-year-old kindergarten parents and primary caregivers that have an educational component that fulfills the requirements of s. 121.004 (7) (cm), Stats.

(3) “Choice administrator” means the person designated as such on the notice of intent to participate form under s. PI 35.03 (3) or 35.04 (1) (a) or on the form under s. PI 35.04 (2).

(4) “Choice program” means the program established under s. 119.23, Stats., for pupils residing in the city of Milwaukee.

(5) “Classroom records” means teacher-originated test scores, report cards, progress reports, and attendance records.

(6) “Count date” means the third Friday in September and the second Friday in January except as provided under s. 121.05 (3m), Stats.

(7) “Credit” means the credit given to pupils in grades 9 to 12 for successful completion of a school term of study in one course that meets daily for a normal class period or the equivalent established by the governing body of a school.

(8) “Department” means the Wisconsin department of public instruction.

(9) “Eligible education expenses” has the meaning given in s. 119.23 (7) (am) 1m., Stats.

(10) “Financial audit” means the modified financial audit or standard financial audit, and includes the audit opinion and supplemental schedule, required under ss. 118.60 (7) (am) and 119.23 (7) (am), Stats., and ss. PI 35.10 and 48.10.

(11) “Financially viable” or “financial viability” means the ability of the school to pay for goods and services, make debt service payments, and pay other obligations as they become due.

(12) “First time participant” means a school that meets one of the following criteria:

(a) The school did not participate in a program under s. 118.60 or 119.23, Stats., at the time the school filed a notice of

intent to participate in the choice program with the department for the following school year.

(b) The school participated in a program under s. 118.60 or 119.23, Stats., at the time the school filed a notice of intent to participate in the choice program with the department for the following school year but one of the following occurred:

1. The school voluntarily withdrew from participation in a program under s. 118.60 or 119.23, Stats.

2. The state superintendent issued an order terminating or barring the school’s participation in a program under s. 118.60 or 119.23, Stats.

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

(14m) “Modified financial audit” means the audit required under ss. 118.60 (7) (am) and 119.23 (7) (am), Stats., for a school that received less than \$100,000 under ss. 115.7915, 118.60, and 119.23, Stats., in any school year.

(15) “New private school” means a private school that meets either of the requirements in s. 119.23 (1) (ai) 1. a. or b., Stats., for the 12 months immediately preceding either of the dates the school would be required to submit the information under s. PI 35.04 (1) and (2), except as provided under s. 119.23 (1) (ai) 2., Stats.

(16) “Official attendance records” means a listing of all kindergarten through grade 12 pupils enrolled in the school by grade level from the student information system required under s. 115.383 (3) (b), Stats.

(17) “Parent” means a parent listed on the pupil application submitted under s. PI 35.05 who is one of the following:

(a) The pupil’s biological parent, legal guardian, parent by adoption, or step-parent who resides in the same household as the pupil applicant. A parent on military duty is considered to be residing in the household.

(b) If no individual meets the requirements in par. (a), an individual who has the legal authority to make educational decisions for the pupil.

(18) “Professional standards” means all 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.

(c) Standards issued by the American Institute of Certified Public Accountants.

(19) “Reserve” means the difference between the revenue received under ss. 118.60 and 119.23, Stats., and the amount of net eligible education expenses for pupils participating in a program under ss. 118.60 and 119.23, Stats.

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

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

(21m) “Special needs scholarship program excluded expenses” means eligible education expenses included under s. PI 49.09 (3) (a) and costs included as eligible in any statements provided under s. 115.7915 (4c), Stats., incurred in that school year.

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

(23m) “Standard financial audit” means the audit required under ss. 118.60 (7) (am) and 119.23 (7) (am), 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.

(25) “Working papers” means the record of the audit procedures performed by the auditor, the relevant audit evidence obtained by the auditor, and the conclusions reached by the auditor.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (3) made under 35.17, Stats., Register July 2016 No. 727; CR 19-120: r. (2), am. (10), (12) (a), (b) (intro.), r. (14), cr. (14m), am. (15), cr. (21m), r. (22), cr. (23m), r. (24) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.03 School requirements. (1) PRIVATE SCHOOL.** A school participating in the choice program shall be a private school as defined in s. 118.165, Stats.

(2) **CHOICE ADMINISTRATOR.** The choice administrator shall be one of the following:

(a) An owner of the school.

(b) An individual appointed as the school’s choice administrator by the governing body of the organization operating the school.

(3) **NOTICE OF INTENT TO PARTICIPATE.** Except as provided under s. PI 35.04 (1) for new private schools, annually by January 10, a school that intends to participate in the choice program in the following school year shall file with the department a notice of intent to participate. The notice shall include all of the following:

(a) The school’s plan for ensuring it will select pupils on a random basis from a new pool of applicants each school year, as required under s. 119.23 (3) (a), Stats. The school’s plan shall be one of the following:

1. The plan provided by the department.

2. A plan provided by the school and approved by the department. A school using this option shall file the plan with the department for approval by January 10. If the school does not provide a plan by January 10 or the plan is not approved by the department by January 31, the school shall use the plan provided by the department. If the school makes a change to the plan in a subsequent school year, the school shall file, with the school’s notice of intent to participate, the revised plan for approval.

(b) The number of spaces the school has available for pupils participating in the choice program.

(bm) The expected number of choice program pupils that will participate in summer school under s. PI 35.08.

(c) The open application periods during which the school will accept choice program pupil applications. After January 10, a school may not amend the open application periods it selects.

(d) For first time participants, the name and location of the accredited institution of higher education from which the choice administrator received at least a bachelor’s degree and the date the

degree was received, the number of the choice administrator’s teaching or administrator license issued by the department, or an indication that the administrator is excluded from the requirement under s. 119.23 (2) (c) 2., Stats.

(e) The signature and mailing address of the choice administrator.

**Note:** The notice of school’s intent to participate form, which includes the department’s random selection plan, may be obtained at no charge from the Wisconsin department of public instruction’s webpage at <http://dpi.wi.gov/sms/choice-programs>.

(5) **DISCLOSURE OF INFORMATION.** (a) By January 10 prior to the school’s initial school year in the choice program, a first time participant shall file with the department the information required under s. 119.23 (6p) (a), Stats., and the mailing addresses for each governing body member on a form provided by the department.

(b) Annually by August 1, a school participating in the choice program that is not a first time participant shall file with the department any changes to the school’s governing body members, including signatures required under s. 119.23 (6m) (c), Stats., and the mailing addresses for each new governing body member on a form provided by the department.

**Note:** The disclosure of information form and school update form may be obtained at no charge from the Wisconsin department of public instruction’s webpage at <http://dpi.wi.gov/sms/choice-programs>.

(6) **ACCREDITATION REQUIREMENTS.** A school participating in the choice program shall be accredited by an accrediting agency under s. 119.23 (1) (ab), Stats. Annually by August 1, a school that is fully accredited under s. 119.23 (2) (a) 7., Stats., shall file with the department a notice from the school’s accrediting agency under s. 119.23 (1) (ab), Stats., stating that the school is accredited as of the date of the notice. The notice shall meet all of the following requirements:

(a) The 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. Notification that the school is accredited at the time the notice is filed.

(b) The notice shall be filed no earlier than the beginning of the school year.

(c) The notice shall be completed by an authorized member of the accrediting agency.

(7) **HOURS OF INSTRUCTION AND ANNUAL SCHOOL BOARD MEETINGS.** (a) By the first weekday in May of the school year immediately preceding the first school year in which a first time participant intends to participate in the choice program, a first time participant shall file with the department the hours of instruction for the upcoming school year on a form provided by the department. The hours of instruction shall comply with the requirements under s. 119.23 (2) (a) 8., Stats., and s. PI 35.06 (6).

(b) Annually by the last weekday in September, as part of the pupil count report for the third Friday in September required under s. PI 35.06 (8) or another manner prescribed by the department, a school shall file all of the following with the department:

1. The school’s start and end date for the current school term.

2. The dates of the two governing body meetings for the current school year required under s. 119.23 (7) (b) 3m., Stats.

3. The hours of instruction for the current school term. The hours of instruction shall comply with the requirements under s. 119.23 (2) (a) 8., Stats., and s. PI 35.06 (6).

**Note:** The hours of instruction form may be obtained at no charge from the Wisconsin department of public instruction’s webpage at <http://dpi.wi.gov/sms/choice-programs>.

(f) Upon request by the department, a school shall provide documentation showing how the school meets the hours of instruction requirements under s. 119.23 (2) (a) 8., Stats., and s. PI 35.06 (6).

**(8) SCHOOL FEES.** (a) A school may not charge pupils participating in a choice program for a field trip if the trip is required for a class, is part of the school's curriculum, or is part of the hours of instruction.

(b) A school may have a written policy indicating it will charge a fine for lost, damaged, or unreturned school property. The amount of the fine may not exceed the cost of the item.

(c) A school may not impose any fee or other sanction on a parent or pupil for failure to engage in fund raising.

**(9) ALL STUDENT ACCOUNTABILITY REPORT.** (a) By the first weekday in August of the school year in which a first time participant intends to participate in the choice program, a first time participant shall file a form with the department identifying whether the school will provide the data required under s. 115.385 (3) (b), Stats., to the department.

(b) Annually by the first weekday in August, a school may file a form with the department identifying changes to whether the school will provide the data required under s. 115.385 (3) (b), Stats., to the department. After the first weekday in August, the school may not make changes for that school year.

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

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (5) (a) 1., (b) 1. made under s. 35.17, Stats., Register July 2016 No. 727; CR 19-120: am. (3) (intro.), (a) 2., cr. (3) (bm), am. (3) (d), r. (4), renu. (5) (a) (intro.) to (5) (a) and am., r. (5) (a) 1., 2., renu. (5) (b) (intro.) to (5) (b) and am., r. (5) (b) 1., 2., am. (6) (intro.), (a) (intro.), 3., 4., (b), (c), (7) (a), renu. (7) (b) to (7) (b) (intro.) and am., cr. (7) (b) 1. to 3., r. (7) (c) to (e), cr. (7) (f), (9) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.04 New private school requirements. (1) PRECEDING AUGUST 1 REQUIREMENTS.** A new private school shall participate in a fiscal management training program approved by the department and submit all of the following to the department by August 1 of the school year immediately preceding the school year that the school intends to participate in the choice program:

(a) A new private school's notice of intent to participate that includes all of the following:

1. The name and location of the accredited institution of higher education from which the choice administrator received at least a bachelor's degree and the date the degree was received, the number of the choice administrator's teaching or administrator license issued by the department, or an indication that the administrator is excluded from the requirement under s. 119.23 (2) (c) 2., Stats.

2. The signature and mailing address of the choice administrator.

(b) The information specified under s. 119.23 (6m) (a), Stats.

(c) The governing body members' signatures required under s. 119.23 (6p) (a) 2., Stats., and the mailing addresses for each governing body member on a form provided by the department.

(e) A cashier's check or another guaranteed manner permitted by the department for the auditor fee required under s. 119.23 (2) (ag) 1. c., Stats.

(f) A budget and cash flow report, on a form provided by the department, for the following school year that contains all of the following:

1. Anticipated enrollments for all pupils enrolled in the school.
2. Anticipated enrollments for choice program pupils.
3. Estimated total revenues and costs.

4. Estimated amounts required under s. PI 35.10 (3) (a).

5. A schedule of anticipated beginning and ending net assets.

6. A schedule of monthly cash flows.

6m. Anticipated beginning and ending reserve balance.

7. The contingent funding sources the school will use if actual enrollments are less than expected and evidence of the availability of the funding sources.

8. 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.

**Note:** The notice of school's intent to participate form for a new school, disclosure of information for new schools, and the budget and cash flow report form may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://dpi.wi.gov/sms/choice-programs>.

**(2) NEW PRIVATE SCHOOLS PARTICIPATION INFORMATION.** A new private school shall submit all of the following to the department by January 10 of the school year immediately preceding the school year that the school intends to participate in the choice program.

(a) The school's plan for ensuring it will select pupils on a random basis from a new pool of applicants each school year, as required under s. 119.23 (3) (a), Stats. The school's plan shall be one of the following:

1. The plan provided by the department.

2. A plan provided by the school and approved by the department. A school using this option shall submit the plan to the department for approval by January 10. If the school does not provide a plan by January 10 or the plan is not approved by the department by January 31, the school shall use the plan provided by the department. If the school makes a change to the plan in a subsequent school year, the school shall submit, with the school's notice of intent to participate, the revised plan to the department for approval.

(b) The number of spaces the school has available for pupils participating in the choice program.

(bm) The expected number of choice program pupils that will participate in summer school under s. PI 35.08.

(c) The open application periods during which the school will accept choice program pupil applications. After January 10, a school may not amend the open application periods it selects.

(d) The name and location of the accredited institution of higher education from which the choice administrator received at least a bachelor's degree and the date the degree was received, the number of the choice administrator's teaching or administrator license issued by the department, or an indication that the administrator is excluded from the requirement under s. 119.23 (2) (c) 2., Stats.

(e) The signature and mailing address of the choice administrator.

**Note:** The new private schools participation information form, which includes the department's random selection plan, may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://dpi.wi.gov/sms/choice-programs>.

**(3) AUDITOR FEE PAYMENT INCREASES.** If the amount of the auditor fee for the school year in which the school will first par-

ticipate in the choice program is more than the amount paid in sub. (1) (e), the new private school shall pay the difference between the amount paid and the amount owed calculated under s. PI 35.17 (1) by January 10 of the school year immediately preceding the school year that the school intends to participate in the choice program. The school shall pay the difference with a cashier's check or another guaranteed manner permitted by the department.

**(4) THIRD PARTY PAYROLL PROVIDER.** By August 1 of the first school year in which a new private school intends to participate in the choice program, a new private school shall submit to the department an executed contract with a third-party payroll service showing that the payroll service will remit federal and state payroll taxes for each employee of the school.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (1) (c) made under s. 35.17, Stats., Register July 2016 No. 727; CR 19-120: am. (1) (c), r. (1) (d), am. (1) (e), cr. (1) (f) 6m., am. (2) (intro.), cr. (2) (bm), am. (3) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.05 Pupil application requirements. (1) DEFINITIONS.** In this section:

(a) "Continuing pupil" means an applicant who participated in the choice program or a program under s. 118.60, Stats., in the immediately preceding school year.

(b) "Prior year" means the calendar year prior to the school year for which the applicant is applying.

(c) "Family size" means the number of people who reside together as part of the same household and who are related by birth, marriage, or adoption. Family size includes parents, pupil applicants, and other children who share at least one parent by birth, adoption, or by a parent's current marriage. A parent on military duty is considered to be residing in the household.

(d) "Family income" means the federal adjusted gross income of the parents included in the family size.

**(2) RESIDENCY ELIGIBILITY.** A school shall obtain one of the residency documents specified by the department from an applicant's parent 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 3 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 parent name and match the address on the application.

**(3) ADDRESS VERIFICATION.** A school shall verify that the address on a pupil's application is in the city of Milwaukee by using the city of Milwaukee assessor website, the state of Wisconsin's Statewide Voter Registration System or any other source permitted by the department.

**(4) INCOME ELIGIBILITY.** A continuing pupil or a pupil on a choice program waiting list in the preceding school year is not subject to the income requirements for the choice program. A school shall determine if all other applicants meet the income eligibility requirements under s. 119.23 (2) (a), Stats., as follows:

(a) If the parent uses the department of revenue income determination method under s. 119.23 (2) (a) 1. b., Stats., the school or parent shall input the parent's social security number into the online application system or parent application. If the department of revenue is unable to verify family income, the parent shall use the department of public instruction income determination method under par. (b).

(b) If the parent uses the department of public instruction income determination method, the school shall do all of the following:

1. A school shall obtain the income documentation required

by the parent application from the parent. The school shall ensure the information on the income documentation matches the information provided in the online parent application.

2. A school shall determine whether a pupil is income eligible for the choice program based on the family size and prior year family income.

3. A pupil shall be determined ineligible if the application indicates the parent did not receive any income and the application does not contain a sufficient explanation of how basic needs are met.

4. A pupil shall be determined ineligible if the explanation of how basic needs are met states that income or government assistance was received, but the application states the parent listed on the application did not receive income or participate in government assistance programs.

**(5) AGE REQUIREMENT.** In order to be eligible for the choice program, a 4-year-old kindergarten pupil, 5-year-old kindergarten pupil, and a first grade pupil shall attain the ages specified in s. 118.14 (1), Stats.

**(6) APPLICATION RECEIPT.** A school may only receive an application during an open application period selected by the school under s. PI 35.03 (3) (c) or 35.04 (2) (c). Except as provided under sub. (8), the school shall receive all documentation, including the documentation required under subs. (2) and (4), during the same open application period in which the school receives the application.

**(7) 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. 119.23, Stats., and a correction of the application under sub. (8) is not allowable.

(b) The application contains contradictory information.

**(8) CORRECTING APPLICATIONS.** A school may correct an application only 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 the due date for the second Friday in January enrollment audit required under s. PI 35.07 (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 if all of the following apply:

1. The school received residency documentation from the parent during the open application period in which the application was received and the residency documentation contains the following:

a. An address.  
b. The parent's name, even if the name is misspelled, is abbreviated, or is a nickname.

2. The additional residency documentation is in the parent's name, contains the parent's correct address, and meets the requirements in subs. (2) and (3).

(c) The school shall obtain a prior year tax transcript for each parent on the application showing that the family is income eligible for the choice program based on the prior year income if both of the following apply:

1. The application indicates the parent on the application received income.

2. The income documentation provided by the parent during the open application period in which the application was received



is not for the correct year or is not the required document for the type of income included on the application.

(d) The school shall obtain a prior year tax transcript for each parent on the application showing a verification of non-filing and support that the parent received the government assistance in the prior year that is identified on the application, or a prior year tax transcript showing the parent did not receive any income in the prior year if both of the following apply:

1. The application indicates the parent on the application did not receive income but participated in government assistance programs.

2. The government assistance programs documentation provided by the parent during the open application period in which the application was received is not for the correct year or is not the required document for the type of government assistance included on the application.

(e) The school shall obtain documentation showing that the pupil participated in kinship or foster care if the application indicates the pupil participated in the kinship or foster care program but the school did not receive documentation that complies with the requirements in sub. (4).

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (4) (a) made under s. 13.92 (4) (b) 7., Stats., and correction in (6) made under s. 35.17, Stats., Register July 2016 No. 727; CR 19-120: am. (1) (a), (4) (a), (b) 2., (8) (c) (intro) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.06 School year enrollment.** (1) **APPLICATION ACCEPTANCE.** A school may not accept pupil applications until the school has completed all of the following:

(a) The school has filed with the department its notice of intent to participate for the following school year required under s. PI 35.03 (3) or a new private school has submitted the information required under s. PI 35.04 (2).

(b) The department has approved the school's plan for randomly selecting pupils to participate in the choice program or the school has adopted the random selection agreement provided by the department as set forth under s. PI 35.03 (3) (a) or 35.04 (2) (a).

(c) The school has paid the nonrefundable auditor fee required under s. 119.23 (2) (a) 3., Stats., or s. PI 35.04 (3).

(2) **APPLICATION ELIGIBILITY & VERIFICATION.** A school shall make application eligibility determinations based on the requirements in s. PI 35.05. The determination shall be made prior to random selection, prior to the next application period, within 60 days after the school receives the application, or prior to the next count date, whichever occurs first. The school shall also verify applications in the online application system within 60 days after the school receives the application or prior to the next count date, whichever occurs first.

(3) **RANDOM SELECTION.** A school shall accept pupils on a random basis in accordance with the method filed with the department and approved under s. PI 35.03 (3) (a) or 35.04 (2) (a).

(4) **APPLICATION RETENTION.** A school shall retain the following records for at least 5 years from the end of the school year in which the pupil applied to the school unless the department or a law enforcement agency requires the school to retain the records for a longer period:

(a) Electronic or paper copies of pupil paper applications and supporting income and residency documentation required under s. PI 35.05 for all accepted and non-accepted choice 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) Any other correspondence related to a pupil.

(5) **SIMULTANEOUSLY ENROLLED PUPIL.** A pupil participating in the choice program may not receive a choice program payment under s. 119.23, Stats., 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 payment under s. 119.23, Stats., may not receive a payment under s. 115.7915 (4m) or 118.60, Stats.

(6) **FULL-TIME EQUIVALENT.** The amount paid by the department to a school under s. 119.23 (4), Stats., shall be based on the full-time equivalent for each pupil times the payment amount in s. 119.23 (4), Stats. The full-time equivalent shall be determined as follows:

(a) Pupils in grades one through 12 shall be one full-time equivalent.

(b) A kindergarten pupil shall be one-half full-time equivalent except as follows:

1. A pupil enrolled in a 5-year-old kindergarten program that requires full-day attendance by the pupil for 5 days a week, but not on any day of the week that pupils enrolled in other grades in the school do not attend school, for an entire school term shall be counted as one full-time equivalent.

2. A pupil enrolled in a 5-year-old kindergarten program that requires full-day attendance by the pupil for 4 days a week, but not on any day of the week that pupils enrolled in other grades in the school do not attend school, for an entire school term shall be counted as a 0.8 full-time equivalent.

2m. A pupil enrolled in a 5-year-old kindergarten program that requires full-day attendance by the pupil for 3 days a week, but not on any day of the week that pupils enrolled in other grades in the school do not attend school, for an entire school term shall be counted as a 0.6 full-time equivalent.

3. A school may count a pupil enrolled in a 4-year-old kindergarten program that provides the required number of hours of direct pupil instruction under s. 121.02 (1) (f), Stats., as a 0.6 full-time equivalent if the program also annually provides at least 87.5 additional hours of 4-year-old kindergarten outreach activities.

4. For purposes of this subsection, "full-day" means the following:

a. If the private school offers first grade, the length of the school day required to meet the total number of hours of instruction for first grade pupils under ss. 118.60 (2) (a) 8. and 119.23 (2) (a) 8., Stats.

b. If the private school does not offer first grade, the length of the school day required to meet the total number of hours of instruction for first grade pupils under s. 118.165 (1) (c), Stats.

(7) **PRELIMINARY APPLICATION AND CLASS LIST SUBMISSION.** Annually by the last weekday in August, a school shall file with the department, using the online application system or other manner specified by the department, all of the following:

(a) All accepted applications.

(b) A class list of all pupils enrolled in the choice program at the school by grade level. The class list may not include pupils that have withdrawn from the school.

(8) **APPLICATION SUBMISSION AND PUPIL COUNT REPORTS.** Annually by the last weekday in September and the last weekday in January, a school shall file with 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 choice program on the immediately preceding count date. In order to be el-

igible for payment, a 4-year-old kindergarten pupil, 5-year-old kindergarten pupil, and first grade pupil shall attain the age specified in s. 118.14 (1), Stats.

2. Whether each choice program pupil meets the requirements under sub. (9).

3. The total number of pupils in the school on the immediately preceding count date that meet the requirements under sub. (9).

4. The pupils on the choice program waiting list on the immediately preceding count date.

(b) All accepted applications the school received that were not previously reported under sub. (7).

**(9) COUNT REQUIREMENTS.** A school may include a pupil on its pupil count report under sub. (8) (a) only if one of 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.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (1) (b), (3) made under s. 35.17, Stats., Register July 2016 No. 727; CR 19-120: am. (1) (a), (3), (6) (b) 1., renum. (6) (b) 2. (intro.) to (6) (b) 2. and am., r. (6) (b) 2. a., b., cr. (6) (b) 2m., renum. (6) (b) 4. to (6) (b) 4. (intro.) and am., cr. (6) (b) 4. a., b., am. (7) (intro.), (b), (8) (intro.), cr. (8) (a) 4. Register May 2020 No. 773, eff. 6-1-20.

**PI 35.07 Enrollment audits. (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. 119.23 (4) or (4m), Stats., pupils with incorrect data in the department's database, 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 file an enrollment audit with the department for the following:

(a) The third Friday in September enrollment reported under s. PI 35.06 (8). A school shall file its third Friday in September enrollment audit with the department by December 15.

(b) The second Friday in January enrollment reported under s. PI 35.06 (8). A school shall file its second Friday in January enrollment audit with the department by the first weekday in May if the school also participates in a program under s. 118.60, Stats. The school shall file its second Friday in January enrollment audit with the department by the last weekday in June if the school is not also participating in a program under s. 118.60, Stats.

**(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 student information system shall identify pupils participating in the choice program. The school shall provide the auditor with official attendance records or another report from the student information system that identify which students are choice program pupils.

**(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) If a school counts any 4-year-old kindergarten pupil as a 0.6 full-time equivalent, as provided under s. PI 35.06 (6) (b) 3., verify that the 4-year-old kindergarten program is providing at least 87.5 hours of 4-year-old kindergarten outreach activities as documented by teacher logs.

(c) Complete a fraud risk assessment.

(d) Complete testing of the pupil enrollment software using one of the following:

1. The department's pupil enrollment software test plan.

2. A pupil enrollment software test plan developed by the auditor. The auditor shall annually file the plan with the department for approval. The auditor shall not use the test plan until it is approved by the department.

(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 pupil count report under s. PI 35.06 (8) (a) for each grade category.

(g) Verify the enrollment for all choice program pupils reported on the pupil count report under s. PI 35.06 (8) (a) using the school's official attendance records.

(i) Verify that the choice program pupils meet the requirements of s. PI 35.06 (9).

(j) Verify that the school did not receive a payment under s. 119.23 (4) or (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 public school district.

3. Pupils participating in the program under s. 115.7915, Stats.

(k) Reconcile tuition revenues and pupils for whom tuition is waived with the school's records from the student information system that identify pupils who do not participate in the choice program. If the school charges a choice program pupil tuition, ensure the school obtained documentation indicating the pupil meets the requirements of s. 119.23 (3m) (b), Stats.

(L) Select a sample of at least 60 pupils not participating in the choice program from original classroom records and verify the school included the selected pupils in the official attendance records. 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 choice program, the auditor shall examine records for all pupils who did not participate in the choice program.

(m) Reconcile the enrollment the school reported to the department under s. 115.30 (3), Stats., with the official attendance records of the school.

(n) Verify that the applications for pupils participating in the choice program and pupils on the choice program waiting list meet the requirements of s. PI 35.05.

(o) Verify that any pupils in 4-year-old kindergarten, 5-year-old kindergarten, or first grade meet the age requirements in s. 118.14 (1), Stats.

(p) 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 35.08 (5). The review shall be part of the third Friday in September enrollment audit.

(q) Perform other auditing procedures as agreed upon by the auditor and the department.

(r) Verify that the choice program waiting list pupils reported on the pupil count report required under s. PI 35.06 (8) (a) 4. match the pupils on the school's choice program waiting list.

**(4) CERTIFICATIONS.** (a) Upon review of the enrollment audits, the department shall certify an amount due from a school or an amount due to the school. If a school fails to file an enrollment audit with the department, the department may determine that all choice pupils are ineligible.

(b) A school shall refund to the department the amount certified as due to the department as specified under s. PI 35.19 (5).

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

**Note:** The enrollment audit form and department's pupil enrollment software test plan may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://dpi.wi.gov/sms/choice-programs>.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (3) (b) under 13.92 (4) (b) 7., Stats., Register December 2016 No. 732; CR19-120: am. (1) (intro.), (a), (b), r. (c), am. (2), (3) (d) 2., r. (3) (e), am. (3) (f), (g), r. (3) (h), am. (3) (k), (L), (n), cr. (3) (r), am. (4) (a), a. (4) (b) (intro.) to (4) (b) and am., r. (4) (b) 1., 2. Register May 2020 No. 773, eff. 6-1-20.

### PI 35.08 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 file with the department a list 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:

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

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

(cm) 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 in the choice program on the second Friday in January during the school term immediately preceding the summer for which the school seeks payment, or the school has accepted the pupil's choice program application for the school term immediately following that summer.

**(5) REPORT.** A school counting pupils for choice summer school payment purposes shall file a summer school report with the department, using the online application system or other manner specified by the department, listing the choice program pupils who attended summer school and the number of days the pupils attended.

**(6) PAYMENT.** A school may not receive a summer school payment under s. 118.60 (4m) or 115.7915 (4p), Stats., and a summer school payment under s. 119.23 (4m), Stats., for the same pupil in the same school year.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; CR 19-120: am. (1), (2), renum. (3) (a) (intro.), 1., 2., 3. to (3) (intro.), (am), (bm), (cm) and, as renum., am. (3) (intro.), (bm), r. (3) (b), renum. (4) (intro.) to (4) and am., r. (4) (a), (b), am. (5), cr. (6) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.09 Financial audit. (1) FINANCIAL AUDIT REQUIREMENT.** Annually by October 15, a school shall submit a fi-

nancial 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 submit a financial audit that includes a modified audit opinion due to fixed assets purchased prior to the school's participation in a program under ss. 115.7915, 118.60, and 119.23, Stats., not being included in the financial audit.

(c) 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. 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.

(d) 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. 119.23 (7) (am) 2m. a., Stats., and this chapter unless the modification is approved by the department.

**(2) COMPLIANCE WITH AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS REQUIREMENTS.** As provided under s. 119.23 (7) (am) 2m. a., Stats., an auditor engaged by a school to provide the audit opinion in this section shall comply with the auditing standards established by the American Institute of Certified Public Accountants, 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 and financial audit supplemental schedule to the trial balance provided by the school under s. PI 35.11 (2).

(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 results 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.

**(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 choice 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 submit a modified financial audit that in-



cludes 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 ss. 118.60 (7) (am) and 119.23 (7) (am), 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.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; CR 19-120: r. and recr. (1), cr. (3) to (5) Register May 2020 No. 773, eff. 6-1-20.

### PI 35.10 Financial audit supplemental schedule.

**(1) ELIGIBLE EDUCATION EXPENSES.** The eligible education expenses included in the financial audit supplemental 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 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.

(c) An expense may only be included as an eligible education expense one time.

(d) If an expense or government assistance revenue is partially related to educational programming, the school shall use an allocation method to determine the portion that is related to educational programming. The allocation methods shall be included in the school's policy established under s. PI 35.13 (5) (h).

(e) The following may not be included in kindergarten through grade 12 eligible education expenses:

1. Contributed services, fixed 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.

4m. Special needs scholarship program excluded expenses.

5. Expenses for pupils who are enrolled in the public school district and attending the private 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 under sub. (1), s. PI 35.09 (1) (c), and the policy established under s. PI 35.13 (5) (h).

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

(a) Net eligible education expenses for all pupils as follows:

1. Determine the amount of eligible education expenses. This amount shall not include special needs scholarship program excluded expenses.

2. Subtract all government assistance revenues received for eligible education expenses. This amount shall not include government assistance revenues subtracted in s. PI 49.09 (3) (a) 2. or in the statements provided under s. 115.7915 (4c).

3. Subtract the lesser of the following:

a. Fundraising revenue.

b. The non-administrative fundraising expenses included in the expenses in subd. 1. In this subdivision, administrative expenses include expenses for school personnel, copying, mailing, or fixed assets used for other school purposes.

4. Subtract all insurance proceeds received for eligible education expenses. This amount shall not include insurance proceeds subtracted in s. PI 49.09 (3) (a) 4.

(b) The net eligible education expenses for pupils participating in a program under ss. 118.60 and 119.23, Stats., as follows:

1. Calculate the percentage of pupils at the school participating in a program under ss. 118.60 and 119.23, Stats., as the full-time equivalent for the pupils participating in a program under ss. 118.60 and 119.23, Stats., compared to the all pupil full-time equivalent. The full-time equivalents shall be based on the average of the full-time equivalents determined in the enrollment audits under ss. PI 35.07 and 48.07.

2. Multiply the amount calculated under par. (a) by the percentage under subd. 1.

(c) The reserve balance as follows:

1. Determine the total revenue received under ss. 118.60 and 119.23, Stats. Summer school revenue received under ss. 118.60 and 119.23, Stats., shall be included in the school year it is received.

2. Add the prior year reserve balance, if any.

3. Subtract the amount determined under par. (b).

4. Subtract any reserve amount repaid to the department.

(d) The school's cash and investment balance that shall be maintained under sub. 4 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) that meet the requirements to be included as an eligible education expense. The depreciation under this subdivision shall not include depreciation for leased right of use assets.

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

**(3m) PAYCHECK PROTECTION PROGRAM LOANS.** Notwithstanding sub. (3) (a) 2., the forgiven portion of Paycheck Protection Program loans administered by the U.S. small business administration under 15 USC 636 may not be included as offsetting government assistance revenue in the supplemental schedule.

**(4) MAINTAIN RESERVE BALANCE.** The school shall maintain the reserve balance, if positive, for future eligible education expenses for choice pupils. The school's cash and investment balance shall be at least as much as the amount calculated under sub. (3) (d), if positive. If the school is also participating in the program under s. 115.7915, Stats., the cash and investment balance shall be at least as much as the reserve calculated under this chapter and s. PI 49.09 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. The depreciation under this subsection shall not include depreciation for leased right of use assets. If a school fails to maintain a sufficient cash and investment balance, it shall repay the reserve balance to the department as specified under s. PI 35.19 (5).

(5) FINANCIAL AUDIT SUBMISSION. (a) If a school ceases to participate or is barred from participation in all of the programs the school is participating in under ss. 118.60 and 119.23, Stats., it shall submit to the department the financial audit required under s. 119.23 (7) (am) 2m. a., Stats., for the final school year in which it participated. The net eligible education expenses under sub. (3) (a) shall be multiplied by the percent of the school year the school participated in the choice program if the school was not eligible for all of the payments under s. PI 35.19. This percentage shall be calculated as follows:

1. The net eligible education expenses shall be multiplied by 25 percent if the school was only eligible for the September payment.

2. The net eligible education expenses shall be multiplied by 50 percent if the school was only eligible for the September and November payments.

3. The net eligible education expenses shall be multiplied by 75 percent if the school was only eligible for the September, November, and February payments.

(b) If a school fails to submit the financial audit, the school's net eligible education expenses for the year shall be determined to be 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 all of the programs the school is participating in under ss. 118.60 and 119.23, Stats., and the school's reserve is positive, the school shall refund the reserve balance to the department as specified under s. PI 35.19 (5).

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; CR 19-120: renum. (1) (b) to (1) (b) (intro.) and am., cr. (1) (b) 1., 2., am. (1) (e) 1., r. (1) (e) 4., cr. (1) (e) 4m., am. (2), (3) (a) 1., 2., renum. (3) (a) 3. to (3) (a) 3. (intro.) and am., cr. (3) (a) 3. a., b., am. (3) (a) 4., (b) 1., (c) 1., cr. (3) (c) 4., am. (3) (d) 1., (4), renum. (5) to (5) (a) (intro.) and am., cr. (5) (a) 1. to 3., (b), am. (6) Register May 2020 No. 773, eff. 6-1-20; EmR2117: emerg. cr. (3m), eff. 6-12-21; CR 21-046: cr. (3m) Register February 2022 No. 794, eff. 3-1-22.

**PI 35.11 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 so require.

(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. 119.23, 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 balance the financial accounting system required under s. PI 35.13 (1) and provide the auditor with a trial balance of the account balances.

(3) ADJUSTING ENTRIES. Adjustments to the school's trial

balance recommended by a school's auditor shall be approved by the school 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 35.07, the audit required under ss. PI 35.09 and 35.10, and the report on fiscal and internal control practices under s. PI 35.13 for at least 5 years from the due date of the financial audit, unless the department or a law enforcement agency requests 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 and copies to the records referenced in the auditor's working papers.

(6) SCHOOL RESPONSIBILITY. An auditor's failure to completely or properly perform the responsibilities set forth in s. 119.23, Stats., or this chapter is not a defense to any determination the department makes under this chapter or s. 119.23, Stats.

(7) AUDITOR BAR. A school participating in the choice program may not engage an auditor who the department bars under s. PI 35.12 (7), 48.12 (7), or 49.11 (7) 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, chs. PI 48 and 49, and ss. 115.7915, 118.60, and 119.23, Stats.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (7) made under s. 35.17, Stats., Register July 2016 No. 727; CR 19-120: am. (6) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.12 Auditor requirements. (1) INDEPENDENCE REQUIREMENTS.** An auditor engaged by a school to meet the requirements under this chapter and s. 119.23, Stats., shall comply with the standards of the American Institute of Certified Public Accountants, including all of following:

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

(b) An auditor shall obtain the school's trial balance required under s. PI 35.11 (2) if the auditor is 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 (1) (e) 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) WORKING PAPERS RETENTION. An auditor shall retain working papers relating to the enrollment audits under s. PI

35.07, the audit required under ss. PI 35.09 and 35.10, and the report on fiscal and internal control practices under s. PI 35.13 for at least 5 years from the due date of the financial audit, unless the department or a law enforcement agency requests the auditor to retain working papers for more than 5 years.

**(4) WORKING PAPERS REVIEW.** An auditor shall permit the department to review audit working papers prepared in support of the enrollment audits under s. PI 35.07, the audit required under ss. PI 35.09 and PI 35.10, and the report on fiscal and internal control practices under s. PI 35.13. The auditor shall promptly provide copies of working papers the department requests.

**(5) AUDITOR PEER REVIEW REPORT.** An auditor completing any of the audits and agreed upon procedure reports under s. 119.23, Stats., or this chapter shall file the auditor's peer review required under s. 442.087, Stats., with the department within 30 days of the report's issuance.

**(6) LICENSE REQUIREMENTS.** (a) The auditing firm that is engaged by a school to complete the audits and agreed upon procedure reports under this chapter or s. 119.23, Stats., shall be licensed as a certified public accounting firm by the accounting examining board under ch. 442, Stats.

(b) The individual auditor who signs the engagement letter for the audits and agreed upon procedure reports under this chapter or s. 119.23, Stats., shall be a licensed certified public accountant by the accounting examining board under ch. 442, Stats.

**(7) AUDITOR BAR.** (a) The department may bar an auditor who fails to timely and properly fulfill the auditing and reporting requirements of this chapter or s. 119.23, Stats.

(b) An auditor who is barred under par. (a) shall not complete accounting, auditing, or other reporting requirements for any school participating in a program under ss. 115.7915, 118.60, and 119.23, Stats., 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, chs. PI 48 and 49, and ss. 115.7915, 118.60, and 119.23, Stats.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (3), (7) (b) made under s. 35.17, Stats., Register July 2016 No. 727; correction in (7) (a) made under s. 35.17, Stats., Register December 2016 No. 732; CR 19-120: am. (5) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.13 Fiscal and internal control practices. (1) FINANCIAL ACCOUNTING SYSTEM.** A school participating in the choice program shall use a double entry financial accounting system organized in a manner that enables preparation of the audit under ss. PI 35.09 and 35.10 and contains any other information necessary to fiscally manage the school. The accounting system shall identify all sources of funding a school uses in the school's operation. The accounting system shall identify all of the following if the school receives revenue from the specified source:

- (a) Revenue from pupils participating in the choice program.
- (b) Revenue from parents or other privately paid tuition pupils.
- (c) Revenue from the school district in which the school is located for instruction of pupils enrolled in the school.
- (d) Revenue from the school district in which the school is located for transportation of the school's pupils.
- (e) Revenue from federal, state, and local governments.

**(2) SCHOOL BUDGET.** A school shall complete all of the following:

- (a) Annually by June 30, a budget for the following school year that contains all of the following:

1. Anticipated enrollments for all pupils enrolled in the school.
2. Anticipated enrollments for choice program pupils.
3. Estimated total revenues and costs.
4. Estimated amounts required under s. PI 35.10 (3) (a).
5. A schedule of anticipated beginning and ending net assets.
6. Identification of the contingent funding sources the school will use should actual enrollments be less than expected.
7. Anticipated beginning and ending reserve balance.

(b) If a school's actual third Friday in September enrollment for all pupils or for choice program pupils varies by 20 percent or 20 pupils, whichever is less, from the anticipated enrollments the school used in the budget required under par. (a), the school shall, annually by November 1, complete a revised budget containing all of the following:

1. The information required in par. (a) that reflects revenues resulting from the school's actual third Friday in September enrollment.
2. Any other required budget changes related to the change in revenues resulting from the school's actual third Friday in September enrollment.

**(3) EXPENSE PAYMENT.** A school shall pay in full all of the following as required by the written agreement or, if there is no written agreement, within 90 days of the receipt of the invoice or payment request:

- (a) Amounts owed to vendors.
- (b) Reimbursements to employees and other persons for expenses incurred on behalf of the school. A school may only reimburse an employee or other person if the employee or other person submits receipts supporting the reimbursement to the school and the request for reimbursement is made within the time period specified in the school's written policy for reimbursement. The school shall retain a record of all reimbursements, including supporting receipts.

**(4) EMPLOYEE COMPENSATION.** A school shall do all of the following:

(a) Have a signed, written agreement for each employee stating the employee's compensation. The agreement shall be signed by the employee and a representative of the school before the school makes the first payment to the employee for the school year.

(b) Provide each employee with a document that states the dates that the school will pay the employee. The school shall provide a copy of this document to the employee before the school makes the first payment required by the document.

(c) Provide a written document to the employee specifying any changes to a document under par. (a) or (b) before any change is effective. The written notification does not need to be signed. If the change is to the compensation for the employee, the written notification shall include all of the following:

1. The dollar amount of the compensation change or how the compensation change will be calculated.
2. If the compensation change is a one time amount that will be paid to the employee, the written notification shall specify when the one time compensation payment will be paid.
3. If the compensation change is an ongoing change, the written notification shall specify the date the ongoing compensation change is effective.

(d) Make payments to employees based on the documents in pars. (a) to (c).

**(5) FINANCIAL INTERNAL CONTROL SYSTEM.** A school shall

have an adequate system of financial internal controls which requires a school to do all the following:

(a) Deposit all receipts and pay all disbursements from a depository account maintained solely for the school's purposes unless the operating organization's financial accounting system separately identifies the school's transactions and account balances. The depository account the school or its operating organization uses for school purposes shall be located in the state of Wisconsin.

(b) Maintain documentation as to the nature and source of all cash receipts.

(c) Use pre-numbered checks for all non-electronic school disbursements except those from a petty cash fund.

(d) Maintain invoices and payment requests supporting disbursements.

(e) Ensure that no checks or other withdrawals are denied due to insufficient funds.

(f) Authorize electronic fund transfers by the school in accordance with a policy established by the school.

(g) Reconcile the school's bank accounts on a monthly basis.

(h) Establish a policy indicating what expenses will be included in eligible education expenses and the methods that will be used to allocate any expenses or government assistance revenues that are related to eligible education expenses and other activities.

**(6) GOVERNMENT AGENCY FILINGS AND PAYMENTS.** A school shall be current with all of the following:

(a) Filing, payments, and withholdings payment requirements of the U.S. internal revenue service.

(b) Filing, payments, and withholdings payment requirements of the Wisconsin department of revenue.

(c) Filing and payment requirements of the Wisconsin department of workforce development.

(d) Filing and payment requirements of the Wisconsin department of financial institutions.

(e) Filing requirements of the Wisconsin department of safety and professional services.

(f) Auditing requirements of federal, state, and local government entities. The school shall submit to the department a copy of audit reports issued or revisions of such reports within 30 days of submission to the requiring government agency.

**(7) LIABILITY INSURANCE.** A school shall have insurance coverage provided by an insurance company licensed to do business in the state of Wisconsin or by a non-profit, tax exempt mutual protective organization covering risks of schools of, and controlled by, a religious denomination. All coverage shall be on an occurrence form or a claims made basis. A school's minimum insurance coverage shall be as follows:

(a) Worker's compensation insurance as specified in ch. 102, Stats.

(b) Commercial general liability insurance in the following amounts unless the coverage amounts are based on a written recommendation of a risk or insurance consultant.

1. For each occurrence, minimum coverage in the amount of \$1,000,000.

2. Personal injury coverage of not less than \$1,000,000.

(c) Umbrella excess liability insurance with an aggregate limit minimum coverage of \$5,000,000, unless the coverage amount is based on a written recommendation of a risk or insurance consultant.

(d) Auto liability insurance with a combined single limit minimum coverage of \$1,000,000 for each accident unless the cover-

age amount is based on a written recommendation of a risk or insurance consultant.

(e) Errors and omissions insurance for school management with an aggregate limit minimum coverage of \$1,000,000 unless the coverage amount is based on a written recommendation of a risk or insurance consultant.

(f) Sexual misconduct liability insurance with an aggregate limit minimum coverage of \$1,000,000 unless the coverage amount is based on a written recommendation of a risk or insurance consultant.

**(8) SCHOOL BUS.** If a school operates or contracts for the operation of school buses with an organization other than a Wisconsin school district, the school or the contracted operator shall have school bus insurance as required under s. 121.53, Stats., and complete the inspections required under s. Trans 300.87. The school may not contract for the school bus operation with an organization other than a Wisconsin school district unless the operator has provided the school with a certificate of insurance meeting the requirements of s. 121.53, Stats., and has completed the inspection report required under s. Trans 300.87.

**(9) ALTERNATIVE VEHICLE PUPIL TRANSPORTATION.** Any motor vehicle, other than school buses, used by a school to provide pupil transportation shall comply with the conditions specified in s. 121.555, Stats.

**(10m) BACKGROUND CHECKS.** (a) In this subsection, "license" means a valid license issued by the department under ch. PI 34.

(b) Schools shall conduct criminal background investigations of all employees by completing one of the following:

1. Conduct a criminal background check prior to employing any individual at the school and every 5 years after the date of the previous background check.

2. Complete all of the following procedures for an individual with a license:

a. Obtain and retain a copy of the license.

b. Annually determine that the individual has a license in advance of the employee working for the school term.

(c) The requirements under par. (b) shall be completed for all individuals defined as employees under s. 108.02 (12), Stats., who are directly or indirectly related to educational programming. For the purposes of this paragraph, an individual shall be determined to be directly or indirectly related to educational programming if any of the following apply:

1. Any compensation for the individual is included as an eligible education expense in a financial audit submitted under s. 115.7915, 118.60, or 119.23, Stats.

2. The individual interacts with pupils.

3. The individual performs financial, administrative, or academic duties for the school.

(d) 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.

**(11) FIDELITY BOND.** A school shall have a fidelity bond indemnifying the school against loss resulting from dishonesty, malfeasance, or neglect by owners, officers, and employees.

**(12) EMPLOYEE EDUCATION.** A school shall ensure all teachers, administrators, and teacher aides meet the requirements of s. 119.23 (2) (a) 6. and (7) (b) 3., Stats., and s. PI 35.16, unless a teacher or administrator is exempt under s. 119.23 (2) (c), Stats.

**(13) MANAGEMENT LETTER REVIEW.** An auditor shall review



the management letter required under s. 119.23 (7) (am) 2m. a., Stats., and determine whether a school has properly remediated any concerns raised by the auditor in the letter. If the auditor determines a concern has not been properly remediated by the school, the auditor shall include the following in the report:

- (a) The concern that has not been properly remediated.
- (b) The action the school has taken to remediate the concern.
- (c) The potential impact of not resolving the concern.
- (d) Recommendations for resolving the concern.

**(14) FISCAL AND INTERNAL CONTROL PRACTICES REPORT.** A school shall engage an auditor to submit a report to the department by December 15 attesting to the school's compliance or non-compliance with the fiscal and internal control practices required in this section. The report shall meet all of the following requirements:

(a) 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 in determining compliance or non-compliance. In making such a determination, the auditor shall not rely on oral or written representations of the school's management or staff.

(b) If the auditor determines that the school has not complied with the fiscal and internal control practices in subs. (1) to (12), the report shall include a letter from the school describing the reasons for noncompliance and the corrective action the school is taking.

**Note:** The fiscal and internal control practices report may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://dpi.wi.gov/sms/choice-programs>.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (1) (intro.) made under s. 35.17, Stats., Register July 2016 No. 727; CR 19-120: am. (2) (intro.), cr. (2) (a) 7., am. (2) (b) (intro.), (4) (a), renum. (4) (c) to (4) (c) (intro.) and am., cr. (4) (c) 1. to 3., r. (10), cr. (10m), am. (14) (b) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.14 First time participant financial requirements. (1g) DEFINITIONS.** In this section:

(a) "Initial expected payment" means a school's expected payment amount calculated as the total of the following:

1. The full-time equivalent for pupils participating in a program under ss. 118.60 and 119.23, Stats., multiplied by the per pupil payment amount determined under ss. 118.60 (4) and 119.23 (4), Stats. The full-time equivalent for the pupils in this subdivision shall be based on the available seats in each program under ss. 118.60 and 119.23, Stats., in a school's notice of intent to participate filed under ss. PI 35.03 (3) and 48.03 (3) or the new private school participation information submitted under ss. PI 35.04 (2) and 48.04 (2).

2. The expected summer school payment for pupils participating in a program under ss. 118.60 and 119.23, Stats., based on the expected number of choice program pupils that will participate in summer school identified in the school's notice of intent to participate filed under ss. PI 35.03 (3) and 48.03 (3) or the new private school participation information submitted under ss. PI 35.04 (2) and 48.04 (2).

(b) "Revised expected payment" means a school's expected payment amount calculated as the total of the following:

1. The full-time equivalent for pupils participating in a program under ss. 118.60 and 119.23, Stats., multiplied by the per pupil payment amount determined under ss. 118.60 (4) and 119.23 (4), Stats. The full-time equivalent for the pupils in this subdivision shall be based on the pupils participating in a program under ss. 118.60 and 119.23, Stats., reported in the school's pupil count report for the third Friday in September required under ss. PI 35.06 (8) and 48.06 (8).

2. The summer school payment based on the school's summer school count report filed under ss. 118.60 (4) (a) and 119.23 (4) (a), Stats.

**(1r) MAY 1 REQUIREMENTS.** By May 1 of the school year immediately preceding the first school year in which a first time participant school intends to participate in the choice program, a first time participant shall participate in a fiscal management training program approved by the department and fulfill the requirements under sub. (3) or (4).

**(3) BUDGET REQUIREMENT.** A school that selects the budget and cash flow report option shall submit to the department all of the following:

(a) A budget and cash flow report, on a form provided by the department, for the following school year that contains all of the following:

1. Anticipated enrollments for all pupils enrolled in the school.
2. Anticipated enrollments for choice program pupils.
3. Estimated total revenues and costs.
4. Estimated amounts required under s. PI 35.10 (3) (a).
5. A schedule of anticipated beginning and ending net assets.
6. A schedule of monthly cash flows.
- 6m. Anticipated beginning and ending reserve balance.
7. The contingent funding sources the school will use if actual enrollments are less than expected and evidence of the availability of the funding sources.

8. 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.

(b) Examples of each type of written document used to satisfy the requirements under s. PI 35.13 (4) (a).

(c) A schedule of the pay dates for the school.

**Note:** A budget and cash flow report form may be obtained at no charge from the Wisconsin department of public instruction's webpage at <http://dpi.wi.gov/sms/choice-programs>.

**(4) BOND REQUIREMENT.** A school that selects the surety bond option shall annually submit a bond payable to the state of Wisconsin equal to 25 percent of the initial expected payment until the school meets all of the requirements in sub. (7).

**(5) REVISED BOND.** A school that submitted a bond under sub. (4) shall provide a revised bond if the difference between the initial expected payment and the revised expected payment is at least \$50,000. The revised bond shall be equal to 25 percent of the revised expected payment. A school shall file the revised bond with the department by the first weekday in November.

**(6) 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 a report required under s. 118.60 or 119.23, Stats., this chapter, or ch. PI 48.
- (b) The school failed to timely refund the department any amount certified due from the school under ss. PI 35.07 (4) or PI 48.07 (4).

(c) The school failed to timely refund the department the reserve balance as prescribed under s. 118.60 or 119.23, Stats., this chapter, or ch. PI 48.

(d) The school failed to timely refund the department any other money owed to the department for any other reason under s. 118.60 or 119.23, Stats., this chapter, or ch. PI 48.

**(7) BOND REMOVAL REQUIREMENTS.** A school that selected the surety bond option the first school year it participated in the choice program must submit a bond by May 1 annually until all of the following apply:

(a) The school provides a standard financial audit prepared at the consolidated level as required by generally accepted accounting principles that meets all of the following requirements:

1. The financial statements are two-year comparative financial statements that include the audit of the full-year financial information for both school years.

2. The net asset balance for both school years is positive.

3. The net current obligation for both school years is positive.

4. The school meets one of the following requirements:

a. The change in net assets is positive for both school years.

b. The change in net assets for both school years is greater than or equal to negative \$25,000, the net asset balance for both school years is greater than \$50,000, and the net current obligation for both school years is greater than \$50,000.

5. The school's financial audit does not contain an emphasis of matter or an expression of the auditor's doubt as to the school's ability to continue as a going concern.

(b) The school's fiscal and internal control practices report for the most recent school year included in the financial audit in par. (a) and the subsequent school year, and any other information available to the department, indicates that the school has complied with all of the following:

1. The school paid all amounts owed to the U.S. internal revenue service, Wisconsin department of revenue, and Wisconsin department of workforce development on a timely basis. This requirement shall not be considered met if the school had either of the following for the school years included in the financial audit in par. (a):

a. Any wage claims with the Wisconsin department of workforce development.

b. Any past due amounts, interest, and penalties with the U.S. internal revenue service, Wisconsin department of revenue, or Wisconsin department of workforce development.

2. The school has paid all vendors as required by ss. PI 35.13 (3) and 48.13 (3). An amount in dispute shall not be an indicator that the school does not meet the requirements to remove the bond if all of the following are true:

a. The school provided the department with written correspondence between the school and the vendor evidencing that the amount is in dispute.

b. The school has sufficient cash available to pay the amount in dispute.

c. The disputed amount is included in the financial audit as a current liability.

3. The school has paid all employees as required by ss. PI 35.13 (4) and 48.13 (4).

**(8) REQUIRED AUDIT BALANCES AND ACTIVITY.** An audit that only includes school-only balances and activity shall not be sufficient to meet the requirement in sub. (7) (a).

**(9) ASSET BALANCE.** The asset balance used for the determinations under sub. (7) (a) may only include pledge receivables or other receivables for which the school received cash payments

within one year of the date pledged or within one year of the date the amount is included as a receivable.

**(10) REVENUE.** The revenue used for the determinations under sub. (7) (a) may only include revenue for which the school receives cash payments within one year of the date pledged or within one year of the date the school includes the amount as revenue.

**(11) INSURANCE AND FIDELITY BOND EVIDENCE.** A first time participant shall file with the department a certificate of insurance or other evidence of having obtained the required insurance under s. PI 35.13 (7) and the fidelity bond under s. PI 35.13 (11). A first time participant shall file the information required under this subsection with the department by the first weekday in August if the school does not provide summer school under this chapter or ch. PI 48. A first time participant shall file the information required under this subsection with the department by the first weekday in May of the school year immediately preceding the first school year in which a first time participant intends to participate in the choice program if the school provides summer school under this chapter or ch. PI 48.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; CR 19-120: renum. (1) (intro.), (a) to (c) to (1r), (3) (a) to (c) and, as renumbered, am. (1r), cr. (1g), r. (2), cr. (3) (intro.), (a) 6m., (4) to (11) Register May 2020 No. 773, eff. 6-1-20; correction in (1g) (a) 1., (b) 1. made under s. 35.17, Stats., Register May 2020 No. 773.

**PI 35.15 Lack of financial viability and going concern determinations.** **(1) INDICATORS.** Any of the following shall be indicators that a school does not have the ability to continue as a going concern or that the school does not meet the financial viability requirements under s. 119.23 (7) (am) 2m, b. or (7m) (c), Stats.:

(a) The budget and statement of cash flows required under s. PI 35.13 (2) or 35.14 (3) show the school has inadequate revenues and other financial resources to fund current operations, has negative cash flows, has a negative net asset balance, or has a net loss.

(b) The audit opinion statement included in the financial audit, or in a financial audit submitted under s. 115.7915, Stats., contains an emphasis of matter regarding the school's ability to continue as a going concern.

(c) The school failed to make payments as required under s. PI 35.13 (3) or (4).

(d) The school failed to be current with filings, payments, or withholdings payments required under s. PI 35.13 (6).

(e) The audit reports required under s. PI 35.13 (6) (f) contain questioned costs or compliance findings that may affect the school's ability to continue.

(f) The school has a negative net asset balance in its financial audit or in a financial audit submitted under s. 115.7915, Stats.

(g) The school has a negative net current obligation in its financial audit, in a financial audit submitted under s. 115.7915, Stats., or in the budget and statement of cash flows required under s. PI 35.13 (2) or 35.14 (3). The net current obligation shall be calculated as the current assets less the current liabilities.

(h) The school has a net loss or negative change in net assets in its financial audit or in a financial audit submitted under s. 115.7915, Stats.

**(2) INFORMATION TO BE SUBMITTED.** A school shall submit to the department any information the department requires to determine the ability of the school to continue financially, including an audit of the school's legal operating organization prepared in accordance with generally accepted accounting principles. The school shall provide the department authority to speak directly to the U.S. internal revenue service, the Wisconsin department of

revenue, or the Wisconsin department of workforce development to determine the school's compliance with the requirements under s. PI 35.13 (6).

(3) **NOTIFICATION OF FINANCIAL IMPAIRMENTS.** The school shall promptly notify the department in writing of impairments in the school's ability to finance its operations.

(4) **NOTIFICATION OF CEASING OPERATIONS.** A school participating in the choice program shall notify the department immediately of a decision to cease educational program operations.

(5) **TRAINING.** Upon the request of the department, a school that has one or more of the indicators in sub. (1) shall attend a fiscal management training approved by the department.

(6) **FINANCIAL VIABILITY REVIEW AND SURETY BOND REQUIREMENT.** (a) The state superintendent shall review information submitted under s. 119.23, Stats., and this chapter and determine whether a school is financially viable.

(b) If the state superintendent determines that a school is not financially viable, the state superintendent may require a school to immediately obtain a surety bond. The surety bond shall be made payable to the state of Wisconsin. The purpose of the bond shall be to protect the department and the taxpayers of Wisconsin against loss in the event of any of the following:

1. The school fails to timely file the reports required under s. PI 35.07 (1) or s. 119.23 (7) (am) 2m. a., Stats.

2. The school fails to timely refund any amount certified due from the school under s. PI 35.07 (4).

3. The school fails to timely repay the reserve balance under s. PI 35.10.

(c) The amount of the bond required under par. (b) shall be equal to 25 percent of the total current school year payment amount as determined under s. 119.23 (4) and (4m), Stats.

(d) The bond shall remain in force until all of the following occur:

1. The school has a positive net asset balance for two consecutive school years, as indicated in the school's financial audit. The net asset balance used for this determination may only include pledge receivables or other receivables for which the school receives cash payments within one year of the date pledged or within one year of the date the amount is included as a receivable.

2. The school has a positive net current obligation for two consecutive school years, as shown by the school's financial audit. The net current obligation shall be calculated as the current assets less the current liabilities. The asset balance used for this determination may only include pledge receivables or other receivables for which the school received cash payments within one year of the date pledged or within one year of the date the amount is included as a receivable.

3. The school has net income for two consecutive school years, as indicated in the school's financial audit. The net income used for this determination may only include revenue for which the school receives cash payments within one year of the date pledged or within one year of the date the school includes the amount as revenue.

4. The school pays all amounts owed to the U.S. internal revenue service, Wisconsin department of revenue, and Wisconsin department of workforce development on a timely basis for two consecutive school years, including full payment of any wage claims and past due amounts, interest, and penalties. The school shall submit to the department a letter from each of these entities indicating compliance with this requirement and provide the department the authority necessary to speak directly to these agencies to confirm compliance.

5. The school has paid all vendors and employees as required by s. PI 35.13 (3) and (4) for two consecutive school years.

6. The school's financial audit does not contain an emphasis of matter or an expression of the auditor's doubt as to the school's ability to continue as a going concern for two consecutive school years.

7. If the school's financial audit does not include all revenues, expenditures, assets, and liabilities of the legal operating organization of the school, the school shall submit to the department financial statements for the school's legal operating organization prepared in accordance with generally accepted accounting principles that meet all of the following requirements:

a. The financial statements do not contain a qualified audit opinion or an expression of the auditor's doubt as to the organization's ability to continue as a going concern.

b. The financial statements are two-year comparative financial statements that include the audit of the full-year financial information for the school years in which the requirements in subs. 1. to 6. are satisfied.

c. The financial statements show that the legal operating organization of the school also meets the requirements under subs. 1. to 5.

(e) If the school is unable to complete the requirements in par. (d) within 5 years from the date the department initially requires a surety bond or if the school's financial position worsens, the department may terminate the school from the choice program.

(f) Upon the request of the department, a school that is required to provide a surety bond under par. (b) shall do all of the following:

1. Attend fiscal management trainings.

2. Submit to the department budget and cash flow reports and turnaround plans as prescribed by the department.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (1) (intro.), (a), (2) made under s. 35.17, Stats., Register July 2016 No. 727; CR 19-120: am. (1) (intro.), (a), (b), (f) to (h), (6) (b) (intro.), (c), (d) 4. to 6., (e) Register May 2020 No. 773, eff. 6-1-20.

## **PI 35.16 Administrator, teacher and teacher aide requirements. (1) DEFINITIONS.** In this section:

(a) "Accredited institution of higher education" means an institution that is listed on the U.S. Department of Education Database of Accredited Postsecondary Institutions and Programs.

(b) "Administrator" has the meaning given in s. 119.23 (1) (ae), Stats.

(c) "Teacher" has the meaning given in s. 119.23 (1) (d), Stats.

(d) "Teacher aide" means any individual assisting with educational programming who is not a teacher or volunteer.

(2) **ADMINISTRATOR AND TEACHER REQUIREMENTS.** Except as provided under s. 119.23 (2) (c), Stats., all administrators and teachers at a school shall comply with the requirements under s. 119.23 (2) (a) 6., Stats., whether they are a paid employee, substitute, independent contractor, or uncompensated volunteer.

(3) **TEACHER AIDE REQUIREMENTS.** All teacher aides at the school shall comply with the requirements under s. 119.23 (7) (b) 3., Stats., whether they are a compensated or uncompensated employee, substitute, or independent contractor.

(4) **FOREIGN DEGREE TRANSCRIPT EVALUATION.** If an individual requires a bachelor's degree under s. 119.23 (2) (a) 6., Stats., and has a degree or educational credential from a foreign institution, the individual shall have the degree or educational credential, transcripts, and pattern of training evaluated by one of the following professional evaluation services to determine if the



degree or credential is equivalent to a bachelor's degree from an accredited institution of higher education in the United States:

- (a) Educational Credential Evaluators, Inc.
- (b) Academic and Credential Records Evaluation and Verification Service.
- (c) American Association of Collegiate Registrars and Admissions Officers.
- (d) Any other organization members of the National Association of Credential Evaluation Services or the Association of International Credentials Evaluators.

**(5) REQUIRED DOCUMENTATION.** A school shall obtain and retain the following documentation to demonstrate that each administrator and teacher has the credentials required under s. 119.23 (2) (a) 6. a. and b., Stats.:

(a) A copy of the degree or diploma or an official transcript that states the month and year the degree was earned.

(b) If the administrator or teacher has a degree or educational credential from a foreign institution, the school shall obtain a copy of the evaluation report required under sub. (4) and ensure it indicates the individual has the equivalent of a bachelor's degree or higher from an accredited institution of higher education in the United States.

(c) A copy of the license issued by the department and verification that the license is current from the department website.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (5) (intro.) made under s. 35.17, Stats., Register July 2016 No. 727.

**PI 35.17 Auditor fee.** (1) The department shall annually determine the amount of the nonrefundable fee a school shall pay to the department under s. 119.23 (2) (a) 3., Stats. The department shall calculate the amount of the auditor fee by dividing the cost of the auditor position and unfunded prior year auditor costs, as determined by the department, by the number of schools that are required to submit the information under s. PI 35.06 (8).

(2) Except as provided under s. PI 35.04 (1) (e), a school shall pay the auditor fee with a cashier's check or another guaranteed manner permitted by the department by January 10 of the year prior to the school year in which the school participates in the choice program.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; CR 19-120: am. Register May 2020 No. 773, eff. 6-1-20.

**PI 35.18 Income limit calculation.** Annually by the first weekday in December, the state superintendent shall calculate the income and tuition limits for pupil participation in the choice program for the next school year as follows:

(1) Multiply the most recent federal poverty level available from the federal office of management and budget by 3.00 to determine the income limit for pupils participating in the choice program in the next school year.

(2) Multiply the most recent federal poverty level available from the federal office of management and budget by 2.20 to determine the income limit above which a school may charge tuition to choice pupils who are in grades 9 to 12.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; CR 19-120: am. (intro.) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.19 State aid payment calculation.** The state superintendent shall make the payments under ss. 119.23 (4) and (4m), Stats., to schools participating in the choice program. The state superintendent may withhold payment from a school under ss. 119.23 (4) and (4m), Stats., if the school violates this chapter or s. 119.23, Stats. The state superintendent shall make the payments as follows:

(1) **SEPTEMBER PAYMENT.** The state superintendent shall

calculate the September payment as the full-time equivalent for the choice program pupils multiplied by the per pupil payment amount determined under s. 119.23 (4), Stats., multiplied by 25 percent. The full-time equivalent for the choice program pupils at the school shall be based on the report filed under s. PI 35.06 (7). The state superintendent may not make a September payment to a school that has ceased instruction prior to the payment date.

(2) **NOVEMBER PAYMENT.** The department shall calculate the November payment as the full-time equivalent for the choice program pupils multiplied by the per pupil payment amount determined under s. 119.23 (4), Stats., multiplied by 50 percent less the September payment received for the pupil. The full-time equivalent for the choice program pupils shall be based on the choice program pupils reported in the school's pupil count report for the third Friday in September required under s. PI 35.06 (8), unless a pupil is determined ineligible by the department. The November payment shall include any payments due to the school for summer school instruction of choice program pupils in the immediately preceding summer as indicated in the report filed under s. 119.23 (4) (a), Stats., unless otherwise determined ineligible by the department. The department may not make a November payment to a school that has ceased instruction prior to the payment date.

(3) **FEBRUARY PAYMENT.** The department shall calculate the February payment as the full-time equivalent for the choice program pupils multiplied by the per pupil payment amount determined under s. 119.23 (4), Stats., multiplied by 25 percent. The full-time equivalent for the choice program pupils shall be based on the choice program pupils reported in the school's pupil count report for the second Friday in January under s. PI 35.06 (8), unless a pupil is determined ineligible by the department. The department may not make a February payment to a school that has ceased instruction prior to the payment date.

(4) **MAY PAYMENT.** The department shall calculate the May payment as the full-time equivalent for the choice program pupils multiplied by the per pupil payment amount determined under s. 119.23 (4), Stats., multiplied by 25 percent. The full-time equivalent for the choice program pupils shall be based on the choice program pupils reported in the school's pupil count report for the second Friday in January under s. PI 35.06 (8), unless a pupil is determined ineligible by the department. The department may not make a May payment to a school that has ceased instruction prior to the end of its scheduled school term unless the school obtained prior written approval from the department to end the school term early.

(5) **AMOUNT DUE TO DEPARTMENT.** A school shall refund an amount due to the department under this chapter or s. 119.23, Stats., as follows:

(a) If the school is currently eligible to receive choice program payments, the department shall reduce the payments made under s. 119.23 (4) and (4m), Stats., by the amount owed. If reducing a payment made under s. 119.23 (4) and (4m), 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 choice program payments, the school shall refund the department within 60 days of the date of the notice to the school of the amount due.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16; correction in (intro.) made under s. 35.17, Stats., Register July 2016 No. 727; CR 19-120: am. (1) to (4), cr. (5) Register May 2020 No. 773, eff. 6-1-20.

**PI 35.20 Department authority.** (1) **INQUIRIES.** Except as provided under s. 119.23, Stats., the department may make inquiries to ascertain the accuracy and completeness of information

contained in audits or reports required under s. 119.23, Stats., or 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) **DISQUALIFIED PERSON.** The department may disqualify a person under s. 119.23 (1) (ag), Stats., whether the individual is compensated or uncompensated.

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

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16.

**PI 35.21 Request for a hearing on department action.** (1) **WHO MAY REQUEST.** A person or school adversely affected by an action of the department under this chapter or s. 119.23, Stats., 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.

(4) **TRANSCRIPT.** (a) Upon filing a written request with the department, any party in a contested case hearing may obtain a written transcript of the hearing. Except as provided in par. (b), the department shall charge the requesting party the actual cost to produce the transcript.

(b) The department may provide a written transcript free of charge to a requesting party if the requesting party demonstrates, to the department's satisfaction, that the requesting party is indigent and has a legal need for the transcript.

**History:** CR 16-004: cr. Register July 2016 No. 727, eff. 8-1-16.