ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ADOPTING EMERGENCY RULES

The scope statement for this rule, SS 088-16, was published in Register No. 730A1, on October 3, 2016, and approved by State Superintendent Tony Evers, on October 13, 2016. Pursuant to *Coyne v. Walker*, the Department of Public Instruction is not required to obtain the Governor's approval for the statement of scope for this rule. Coyne v. Walker, 2016 WI 38.

The State Superintendent of Public Instruction hereby proposes an order to repeal ss. 49.03 (5) (d), PI 49.04 (5), PI 49.05 (5) and (c) 2. a. and b. and (d); to renumber and amend ss. PI 49.05 (5) (c) 2. (intro.), PI 49.09 (3) (a) 3. and (b) 3. and (5); to repeal and recreate s. PI 49.05 (5) (a) and (b) and (7) (b); to amend ss. PI 49.02 (18), PI 49.03 (6) (intro.) and (a) 3., PI 49.05 (4) (intro.) and (c) 2. and (5) (c) (intro.), PI 49.05 (7) (a), PI 49.07 (4) (b) 1., and PI 49.09 (5) (title); and to create ss. PI 49.02 (5m) and (9m), PI 49.03 (e) and (7) and (7) (note), PI 49.05 (4) (note) and (7) (c) and (d), PI 49.07 (3) (r) and (s) and (t), and PI 49.09 (3) (a) 3. a. and b. and (b) 3. a. and b.; relating to revisions to the Special Needs Scholarship Program.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 115.7915, Stats.

Statutory authority: s. 115.7915 (10), Stats.

Explanation of agency authority:

Under s. 115.7915 (10), Stats., the Department is required to promulgate rules to implement and administer the Special Needs Scholarship Program, including rules relating to: (a) eligibility and participation of eligible schools; (b) calculation and distribution of scholarships; and (c) application and approval procedures for students and eligible schools.

Related statute or rule: ss. 118.60 and 119.23, Stats., and ch. PI 35 and ch. PI 48

Plain language analysis:

The proposed rule seeks to make the following changes to the current administrative rules governing the Special Needs Scholarship Program:

- Specify that individuals designated by the special needs scholarship program administrator may assist in the processing of student applications.
- Clarify the role of the special needs scholarship administrator as being the person who has the authority to process pupil applications and submit reports and forms required under s. PI 49 and s. 115.7915, Stats.
- Specify that the Intent to Participate form must identify the special needs scholarship program administrator.
- Modify the individualized education program ("IEP") and services plan verification process as follows:
    - Provide clarification on what the individualized education program and services plan date requirements are for students applying under section 9134 (6q) of 2015 Act 55.
    - Add that if the resident school district did not create the IEP or services plan, the local education agency that created the IEP or services plan must complete the verification.
    - Indicate that the notification that a pupil has been accepted into the special needs scholarship program shall be sent within seven days of the school receiving the IEP from the local education agency in response to the verification request or notification from the department of if the pupil met the IEP or services plan requirement.
    - Remove references to transfer requests from the IEP/services plan verification section.
    - Specify that the school's auditors determine that the school and parent have agreed to the services to be provided to each student.

- Specify that the school's auditors would verify that the statutorily required student reevaluations are completed and that students are properly identified as partial scholarship pupils.
- Current administrative rule requires that the department net any amount owed from a school from the next special needs scholarship program payment. The revised rule specifies that if the payment is insufficient to pay the full amount owed, the school shall pay the difference within 60 days of the certification letter.
- Clarify the financial audit submission requirements.
- Clarify the calculation of offsetting fundraising revenue in the calculation of net eligible education expenses.
- Clarify how students may transfer to a different participating school and that auditors shall verify the transfer requests meet the requirements.
- Clarify that a school must be accredited for all grades that are available for special needs scholarship program pupils.
- Specify that schools which do not meet the accreditation requirement of the program must annually, by March 1, submit the special needs scholarship program private school requirements form for review by the state superintendent.
- Remove two administrative rule provisions because they were only applicable to 2016.

Summary of, and comparison with, existing or proposed federal regulations: N/A

Comparison with rules in adjacent states: N/A

Summary of factual data and analytical methodologies:

2015 Wisconsin Act 55 created the Special Needs Scholarship Program ("Program"), which first became effective in the 2016-17 school year. Utilizing its authority under s. 115.7915 (10), Stats., the Department promulgated emergency rules for the Program (Emergency Rule 1619) that are currently in effect. CHR 16-005 is the permanent rule that implements the Program and is currently pending publication for a November 1, 2016 effective date at the time of the filing of this rule. Based on feedback from participating schools and school districts and items identified during the first year implementation of the Program, modifications to the current rule are needed to better assist schools and the Department in the administration of the Program. Without a rule, the Department will administer the Program according to the permanent rules that will go into effect November 1.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A

Anticipated costs incurred by private sector: N/A

Effect on small business:

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Agency contact person: (including email and telephone)

Carl Bryan
Budget and Policy Analyst
Wisconsin Department of Public Instruction
adminrules@dpi.wi.gov
(608) 267-9127

Place where comments are to be submitted and deadline for submission:

Comments should be submitted to Carl Bryan, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, WI 53707-7841 or at adminrules@dpi.wi.gov. The Department will publish a hearing notice in the *Administrative Register* which will provide information on the deadline for the submission of comments.

SECTION 1. PI 49.02 (5m) is created to read:

PI 49.02 (5m) "Designee" means an individual who is designated to assist in processing pupil applications by the special needs scholarship program administrator on a form provided by the department.

SECTION 2. PI 49.02 (9m) is created to read:

PI 49.02 (9m) "Local education agency" means a school district or the operator of a charter school under s. 118.40 (2r) or (2x), Stats.

SECTION 3. PI 49.02 (18) is amended to read:

PI 49.02 (18) "Special needs scholarship program administrator" means the person ~~designated as such on~~who has the ~~notice of intent~~authority to ~~participate form~~process pupil applications and submit reports and forms required under this chapter and s. ~~PI 49.03 (3)~~115.7915, Stats.

SECTION 4. PI 49.03 (3) (e) is created to read:

PI 49.03 (3) (e) The name of the special needs scholarship program administrator.

SECTION 5. PI 49.03 (5) (d) is repealed.

SECTION 6. PI 49.03 (6) (intro.) and (a) 3. are amended to read:

PI 49.03 (6) ACCREDITATION REQUIREMENTS. (intro.) A school participating in the special needs scholarship program shall be accredited by an accrediting agency under s. 115.7915 (2) (c), Stats., for all of the grades the school makes available to special needs scholarship program pupils. Annually by August 1, a school participating in the special needs scholarship program shall provide to the department a letter from the school's accrediting agency under s. 115.7915 (2) (c), Stats., stating that the school is accredited as of the date of the letter. The letter shall meet all of the following requirements:

(a)

3. The grades accredited by the agency.

SECTION 7. PI 49.03 (7) and (7) (Note) are created to read:

PI 49.03 (7) STATE SUPERINTENDENT APPROVAL. Annually by March 1 preceding the school year of participation, a school seeking approval as a private school by the state superintendent under s. 115.7915 (2) (c), Stats., shall submit to the department a special needs scholarship program private school requirements form demonstrating the school meets all of the requirements under s. 118.165 (2), Stats.

Note: The special needs scholarship program private school requirements form may be obtained at no charge from the Wisconsin department of public instruction's webpage at http://dpi.wi.gov/sms/special-needs-scholarship.

SECTION 8. PI 49.04 (5) is repealed.

SECTION 9. PI 49.05 (4) (intro.) and (c) 2. are amended to read:

PI 49.05 (4) APPLICATION ELIGIBILITY DETERMINATION. (intro.) Within 21 days of receiving an application under sub. (3), ~~a school~~the special needs scholarship program administrator or designee shall do all of the following:

(c)

2. The application under sub. (3) is determined eligible but the school does not have space available for the ~~student~~pupil. The school shall state in the letter the pupil's place on the school's waiting list.

SECTION 10. PI 49.05 (4) (note) is created to read:

Note: The student application designee authorization form may be obtained at no charge from the Wisconsin department of public instruction's webpage at http://dpi.wi.gov/sms/special-needs-scholarship.

SECTION 11. PI 49.05 (5) (a) and (b) are repealed and recreated to read:

PI 49.05 (5) (a) An applicant may submit a transfer request for a pupil to transfer to a different school participating in the special needs scholarship program on a form provided by the department. A pupil that has been determined to no longer be a child with a disability under s. 115.7915 (4m) (e) 1. , Stats., may not transfer under this subsection to a different school participating in the special needs scholarship program.

(b) A transfer request shall be considered received under s. 115.7915 (3) (b), Stats., when an applicant has submitted all of the following to the school:
1. A transfer request form.
2. Residency documentation.
3. Individualized education program or services plan.

SECTION 12. PI 49.05 (5) (c) (intro.) is amended to read:

PI 49.05 (5) (c) (intro.) Within 21 days of receiving a transfer request under par. (b), ~~a school~~the special needs scholarship program administrator or designee shall do all of the following:

SECTION 13. PI 49.05 (5) (c) 2. (intro.) is renumbered PI 49.05 (5) (c) 2. and amended to read:

PI 49.05 (c) 2. Notify an applicant in writing if ~~one of the following occurs:~~the transfer request was accepted or not accepted. The school shall state in its letter the reason or reasons why the transfer request is ineligible if the transfer request is determined ineligible. If the transfer request is determined eligible but the school does not have space available for the pupil, the school shall state in the letter the pupil's place on the school's waiting list.

SECTION 14. PI 49.05 (5) (c) 2. a. and b. and (d) are repealed.

SECTION 15. PI 49.05 (7) (a) is amended to read:

PI 49.05 (7) (a) ~~A~~Except as provided in par. (d), a pupil shall have an individualized education program or services plan in effect at the time an applicant submits an application under sub. (3)~~ or a transfer request under sub. (5)~~.

SECTION 16. PI 49.05 (7) (b) is repealed and recreated to read:

PI 49.05 (7) (b) (intro.) Upon the request of the department, the local education agency that developed a pupil's individualized education program or services plan shall verify that the pupil meets the requirement under par. (a) or (d) and send a copy of the individualized education program to the private school. The department shall make the request if all of the following apply:
1. The pupil's resident school district responded to the verification request under s. 115.7915 (4) (b), Stats., that it did not have record that the pupil met the requirement under par. (a) or (d).
2. The pupil's individualized education program or services plan was developed by a local education agency that is different than the pupil's resident school district.

SECTION 17. PI 49.05 (7) (c) and (d) are created to read:

PI 49.05 (7) (c) The special needs scholarship program administrator or designee shall notify an applicant in writing if an application submitted under sub. (3) was determined eligible or ineligible. If the application is determined ineligible, the letter shall state the reason or reasons why the application is ineligible. The letter shall be sent within 7 days of the school receiving one of the following: 1. A copy of the pupil's individualized education program from the local education agency in response to a request under s. 115.7915 (4) (b), Stats., or par. (b).
2. Notification from the department that a pupil has an individualized education program or service plan that meets the requirements under par. (a) or (d).
3. Notification from the department that a pupil does not have an individualized education program or services plan that meets the requirements under par. (a) or (d).

(d) If an applicant is applying to the special needs scholarship program under section 9134 (6q) of 2015 Act 55, a pupil shall have an individualized education program or services plan that was developed or had an implementation date between July 1, 2011, and June 30, 2016.

SECTION 18. PI 49.07 (3) (r) and (s) and (t) are created to read:

PI 49.07 (3) (r) Verify that any reevaluations required under s. 115.7915 (2) (h), Stats., have been completed and that the school properly identified partial scholarship pupils on the pupil count report under s. PI 49.06 (5) (b) 3.
(s) Verify that the school has a written agreement with each parent specifying the services that will be provided to each special needs scholarship program pupil. The auditor shall ensure the school and the parent entered into the agreement by the count date.
(t) Verify that any transfer request that has not been counted on a previous count date under s. PI 49.06 (5) (b), meets the requirements of s. PI 49.05.

SECTION 19. PI 49.07 (4) (b) 1. is amended to read:

PI 49.07 (4) (b) 1. If the school is currently eligible to receive special needs scholarship program payments, the department shall reduce the payments made under s. 115.7915 (4m), Stats., by the amount owed. If reducing a payment made under s. 115.7915 (4m), Stats., is insufficient to pay the amount owed, the school shall pay the remaining amount within 60 days of the date of the certification letter.

SECTION 20. PI 49.09 (3) (a) 3. is renumbered PI 49.09 (3) (a) 3. (intro.) and amended to read:

PI 49.07 (3) (a) 3. (intro.) Subtract ~~fundraising revenue, up to the non-administrative fundraising expenses in subd. 1. In this subdivision, administrative expenses include expenses for school personnel, copying, mailing, or capital assets used for other school purposes.~~the lesser of the following:

SECTION 21. PI 49.09 (3) (a) 3. a. and b. are created to read:

PI 49.09 (3) (a) 3. a. Fundraising revenue.

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

SECTION 22. PI 49.09 (3) (b) 3. is renumbered PI 49.09 (3) (b) 3. (intro.) and amended to read:

PI 49.09 (3) (b) 3. (intro.) Subtract ~~fundraising revenue, up to the non-administrative fundraising expenses in subd. 1. In this subdivision, administrative expenses include expenses for school personnel, copying, mailing, or capital assets used for other school purposes.~~the lesser of the following:

SECTION 23. PI 49.09 (3) (b) 3. a. and b. are created to read:

PI 49.09 (3) (b) 3. a. Fundraising revenue.

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

SECTION 24. PI 49.09 (5) (title) is amended to read:

PI 49.09 (5) ~~FINAL~~ FINANCIAL AUDIT SUBMISSION.

SECTION 25. PI 49.09 (5) is renumbered PI 49.09 (5) (a) and (b) and amended to read:

PI 49.09 (5) (a) If a school ceases to participate or is barred from participation in the special needs scholarship program under s. 115.7915, Stats., it shall submit to the department the financial audit for the final school year in which it participated.

(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.

SECTION 26. STATEMENT OF EMERGENCY

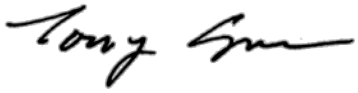
The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

2015 Wisconsin Act 55 created the Special Needs Scholarship Program (herein referred to as "Program"). Section 115.7915 (10), Stats., requires the Department to promulgate administrative rules related to student and school application processes. Unless these modifications are in place, the Department may be prevented from efficiently implementing and administering this Program and schools and applicants may not have clear guidance on Program requirements. The promulgation of emergency rules will help ensure implementation of the Program remains consistent through the completion of the permanent rule making process.

SECTION 27. EFFECTIVE DATE:

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

Dated this 27th day of October, 2016



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Tony Evers, PhD
State Superintendent