



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 04-076

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]

2. Form, Style and Placement in Administrative Code

- a. In s. PI 35.046 (3) (b), “the” or “those” should replace “such.”
- b. In s. PI 35.047 (6) (a), “internal revenue service” should replace “Internal Revenue Service.” See s. PI 35.048 (1) (d).
- c. In s. PI 35.05 (3) (b) 2., “based” should replace “abased.”

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

- a. In s. PI 35.02 (9m), “s. Accy 1.202” should replace “Accy 1.202, Wis. Adm. Code.”
- b. In s. PI 35.04 (9) (a), it appears that “s. PI 35.046 (1) (a)” should replace “s. PI 36.048 (1) (a).”
- c. There are several incorrect cross-references in s. PI 35.04 (9). For example, in par. (a) 3., the reference should be to a particular provision in s. PI 35.04. In par. (a) 4., the two references to “s. PI 35.04 (4)” should just be to “sub. (4).” [See s. 1.07 (2), Manual.] The entire subsection should be reviewed for similar occurrences of this type of error.
- d. In s. PI 35.045 (4) (e), “s. PI 35.045 (1)” should be changed to “sub. (1).” In par. (h), “to” should replace “through.”

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In ss. PI 35.02 (9r), there should be a more specific reference to the government auditing standards, as there may be more than one version of the standards.

b. In s. PI 35.02 (10m), “an-arms” should replace “a-arms.” This change should be made throughout the rule.

c. Is the meaning of “related parties” clearly set out in “generally accepted auditing standards”? Also, the rule uses, but does not define “professional standards” in ss. PI 35.04 (9) (c) and 35.047 (14) (a). Is this term intended to be different from the defined terms defining “generally accepted auditing standards” and “generally accepted government auditing standards”? Further, it would be helpful to clarify not only which standards apply, but also how potential conflicts are to be handled in completing the audits.

d. Would it be more accurate under s. PI 35.04 (4) to refer to “copies of” all notices?

e. The last sentence of s. PI 35.04 (4) would be improved by adding “as” after “time” so that the phrase read “...until such time as a properly....”

f. Section PI 35.04 (9) (d) 6. is somewhat confusing in that it is not clear why nonparticipating pupils are selected or what procedures are to be followed if there are not 60 pupils in that category. In the third sentence, “the auditor shall” should be inserted before “extend.”

g. In s. PI 35.04 (9) (d) 9., a comma after the word “accuracy” would improve the clarity of the provision.

h. The department may wish to define the term “scope limitation” in s. PI 35.04 (9) (e), as it may be understood as an accounting term, but its meaning may not be clear in an educational context.

i. The rule currently and as proposed refers to various payments being made directly to the private school. [See, for example, s. PI 35.045 (1) (g) 3.] However, s. 119.23 (4) (b), Stats., provides that the superintendent “...shall pay to the parent or guardian...” a specified amount based on the level of private school’s cost. Although s. 119.23 (4) (c), Stats., permits the department to send aid installment checks directly to the school, that statute requires that the parent or guardian “restrictively endorse” the check for the use of the private school. Does the rule presume that this endorsement process will apply under the proposed rule? If so, the rule may require modification to clarify this aspect and may require amending the rule to provide a means by which this procedure can be accurately audited.

j. The rule uses the terms “choice program” and “program” and “Milwaukee parental choice” seemingly interchangeably. The clarity of the rule would be improved if one term were used throughout, or in the alternative, a definition were added indicating the various terms all referred to the same program.

k. Under s. PI 35.045 (1) (intro.) and s. PI 35.046 and other provisions of the rule, auditor's reports and financial reports appear to be required only after a year of operation. If this is the case, is there a need for the department to have at least minimal financial information prior to the operation of a new school?

l. Section PI 35.045 (1) (b) amends the current rule to require a statement of net program assets at the end of the "fiscal year," instead of the current "school year." It is not clear why this change is being made, particularly in light of the provision in s. PI 35.045 (1) (intro.) requiring an auditor's report based on the previous school year. The provision may also affect other reports and retention periods set out elsewhere in the rule.

m. It is not clear in s. PI 35.045 (4) (d) why the fair market value used in the paragraph may be determined no more than once every five years. If the fair market value changes in the interim, should a private school be permitted to use that figure, as long as it is determined by a licensed real estate appraiser?

n. It appears that the word "contains" could be deleted from s. PI 35.046 (1) (b) 4. to be consistent with the other subdivisions.

o. Under s. PI 35.046 (3) (a), subds. 2. and 3. have different maximum dollar levels (\$75,000 and \$10,000) for "significant" transactions, but the same percentage (1%) figure. It is not clear why this is being proposed or why the two categories could be combined into a single category.

p. The rule uses, but does not define "fiscal period" in s. PI 35.046 (3) (d). Is this period set by the private school or is it intended to be the "fiscal year"? [See comment 5. k.] This aspect of the rule should be reviewed and clarified.

q. The department may wish to consider providing for some exceptions to the requirement that all payments must be made within 30 days under s. PI 35.047 (3). How, for example, would a private school handle a disputed change? Although strict standards may be needed in this area, given the potential consequences under s. PI 35.048 (1) (c), this provision should be carefully reviewed to assure it reflects the intended result.

r. In s. PI 35.047 (5) (a), it appears that the word "pay" should be changed to "paying."

s. In s. PI 35.047 (6) (a), the phrase "is to be" could be replaced by "shall be" for clarity purposes. The department may wish to review the entire rule to assure that wherever possible the active voice is used in place of the passive voice. [See s. 1.01 (1), Manual.] The same comment applies to the use of "thereto."

t. The term "thereof" is used in several places in the rule [see, for example, ss. PI 35.047 (6) (f) and PI 35.05 (2) (c)]. In most cases, it is possible to use a direct reference and is a preferred drafting style. [See s. 1.01 (9) (c), Manual.]

u. Under s. PI 35.047 (13), how will it be determined if a private school is a "component unit of another organization"?

v. Under s. PI 35.048 (3), is it intended that a private school may notify the department five days after closure of the school? This seems to be a rather long period to permit notification if the school is not operating in the interim.

w. Under s. PI 35.05 (2) (d), how will audits completed concurrently and within time periods by an auditor who fails to provide audits of other schools be treated? Given the standard reporting times, this situation may arise and does not appear to be addressed by the rule.

x. The department may wish to consider an "initial applicability" provision to allow for a clear indication of when the rule will first apply.