



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 16-004

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

a. In the rule summary’s listing of statutory authority, the department should add a citation to s. 227.11 (2) (a), Stats.

b. Under s. PI 35.03 (5), the department requires both new private schools and other private schools participating in the Milwaukee program to annually submit a report to the department identifying which continuing eligibility standard or standards the school intends to meet. In addition, participating schools other than new private schools must report the criteria that the school will use to meet the standard or standards identified. New private schools are statutorily required to submit such information by August 1 of the school year preceding the year of participation in the Milwaukee program. [s. 119.23 (2) (ag) 3., Stats.]

Although all private schools participating in the Milwaukee program are required to annually meet at least one of the continuing eligibility standards, there is no statutory requirement that a private school other than a new private school report to the department in advance which standard or standards it intends to meet nor is there a statutory requirement that the school report the criteria that it will use to meet the standard or standards identified. [s. 119.23 (7) (a), Stats.]

An agency may not implement or enforce any standard, requirement, or threshold unless it is explicitly required or explicitly permitted by statute or by rule. [s. 227.10 (2m), Stats; s. 1.02 (2m) (c), Manual.] However, an agency may promulgate rules interpreting the provisions of a statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. [s. 227.11 (2) (a), Stats; s. 1.02 (2m) (b), Manual.] The department should

evaluate and explain whether requiring a private school other than a new private school to report in advance the standards it intends to meet and the criteria it will use to meet the standards identified is necessary to effectuate the purpose of the statute.

c. The department should review the income eligibility requirements under s. PI 35.05 (4), for compliance with s. 119.23 (2) (a) 1. b., Stats. It appears that a school is responsible for obtaining income documentation from the applicant and for submitting the information to the department. The department must then forward that information on to the Department of Revenue for an income eligibility determination. It does not appear to be the school's responsibility to make the determination.

d. The department should verify that its method for calculating the full-time equivalent for five-year-old kindergarten under s. PI 35.06 (6) (b) 2., is accurate. The calculation method described under s. 121.004 (7) (c) b., Stats., does not appear to require multiplication by 180 as is required under s. PI 35.06 (6) (b) 2. c. The department should also consider that public schools are no longer required to meet a 180-day requirement; rather, they must satisfy minimum number of instructional hour requirements under s. 121.02 (1) (f), Stats.

2. Form, Style and Placement in Administrative Code

a. In the listing of provisions treated in the proposed rule's introductory clause, the department should insert "ch." before "PI 35".

b. In the treatment clause for SECTION 1 of the proposed rule, the phrase "repealed and recreated" should replace the word "created".

c. The department should review and revise the subsection titles throughout proposed ch. PI 35. Some are formatted in solid capital letters while others are formatted in small capital letters. All subsection titles should be formatted in small capital letters. [s. 4.125 (5) (c), LRB Drafting Manual 2015-2016.] For example, in s. PI 35.03 (1), the title is formatted as "PRIVATE SCHOOL", but it should be formatted as "PRIVATE SCHOOL".

d. In s. PI 35.03 (2) (intro.), the word "Choice" should not be capitalized because it is not a proper noun. [s. 1.01 (4), Manual.]

e. It appears that s. PI 35.03 (3) (a) 3. should actually be designated as s. PI 35.03 (3) (b). The department should renumber the paragraphs following that unit as necessary.

f. In the note under s. PI 35.03 (4) (c), the document title "Notice of School's Intent to Participate" should not be capitalized because it is not a proper name. [s. 1.01 (4), Manual.] Alternatively, the document title could be placed in quotation marks.

g. In s. PI 35.05 (1) (c), the word "Size" should not be capitalized. [s. 1.01 (4), Manual.]

h. In s. PI 35.05 (1) (e), the citation should be changed from "s. 119.23 (1) (ag) (2), Stats." to "s. 119.23 (1) (ag) 2., Stats.", showing subd. "2." without parentheses and with a period. [s. 1.03 (2) (e), Manual.] Also, the word "given" should be inserted after the word "meaning". [s. 1.01 (7) (d), Manual.]

i. Section PI 35.05 (6) contains an internal cross-reference to s. PI 35.03 (3) (b). This cross-reference should be modified to reflect the renumbering suggested in comment 2. e., above.

j. The department should remove the extra space between “but” and “participated” in s. PI 35.05 (8) (d) 1.

k. The department should renumber the paragraphs under s. PI 35.06 (1). As drafted, there are two paragraphs labeled (a).

l. The department should renumber the paragraphs under s. PI 35.07 (3). As drafted, there are two paragraphs labeled (c).

m. Under s. PI 35.08 (3) (a) and (4) (b), the numbers “nineteen” and “fifteen” should be written as “19” and “15”. Generally, numbers are expressed using Arabic numerals. [s. PI 1.01 (5), Manual.]

n. In the note at the end of s. PI 35.07, the phrase “Enrollment Audit” should not be capitalized because it is not a proper name. [s. 1.01 (4), Manual.] Alternatively, the phrase could be placed in quotation marks. Also, it appears the word “form” should be inserted after that phrase.

o. In s. PI 35.08 (3) (b) 5., the title “elementary and secondary education act” should be capitalized because it is a proper name. [s. 1.01 (4), Manual.]

p. In s. PI 35.10 (1) (b), the word “Statement” should not be capitalized. [s. 1.01 (4), Manual.]

q. In the note at the end of s. PI 35.13, “Fiscal and Internal Control Practices Report” should not be capitalized because it is not a proper name. [s. 1.01 (4), Manual.] Also, it appears that the word “form” should be inserted after the phrase.

r. In the note at the end of s. PI 35.14, “Budget and Cash Flow Report” should not be capitalized because it is not a proper name. [s. 1.01 (4), Manual.]

s. In s. PI 35.15 (6) (b) (intro.), the word “State” should not be capitalized. [s. 1.01 (4), Manual.]

t. SECTION 2 of the proposed rule should be removed, and SECTION 3 should be renumbered SECTION 2.

u. A specific date should be given for the deadline to submit comments on the proposed rule. [s. 1.02 (2) (a) 13., Manual.]

3. Conflict With or Duplication of Existing Rules

The department should consider revising proposed ch. PI 35 so that it reflects how a school and students must apply and remain eligible for participation in the Milwaukee Parental Choice Program only, not all three parental choice programs. For example, the language about a school’s notice of intent to participate under s. PI 35.03 cites to requirements under ch. 119, Stats., that apply only to the Milwaukee Parental Choice Program, but also discusses a school’s intent to participate in the “private school choice programs” which the department has defined to mean all three programs. The department is proposing to promulgate an entirely separate rule chapter for the Wisconsin and Racine Parental Choice Programs. If it is the department’s intent to make it clear that a school may apply to participate in one or more of the programs at the same time, then the department should include a provision or sufficient cross-references in each rule chapter to that

effect, but should generally refer to the Milwaukee program under ch. PI 35 and to the Wisconsin and Racine programs under proposed ch. PI 48. See also comment 5. a., below.

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

a. In s. PI 35.03 (3) (a) 1., the department states that a school may meet its requirement to have a plan in place for ensuring the random selection of students by adopting the plan provided by the department, but does not provide any information about how to obtain that plan. The department should consider adding a note to provide applicant schools with information about how to access or obtain the plan. [s. 1.09 (1), Manual.]

b. Under s. PI 35.03, the department outlines the requirements that a school must meet in order to become and remain eligible for participation in the Milwaukee program, but there is no mention of the annual, nonrefundable auditor's fee that must be submitted no later than the date required for submittal of the school's notice of intent to participate. [s. 119.23 (2) (a) 3., Stats.] The department should include a provision in this section about the auditor's fee. This could be accomplished by inserting an internal cross-reference to s. PI 35.17, which addresses the auditor fee.

c. In s. PI 35.03 (5) (d), the department should clarify that the reference to s. 119.23 (7) (a) 3., Stats., is to the same requirement listed in s. PI 35.03 (5) (b) 3.

d. The department should consider adding a cross-reference in s. PI 35.03 (8) (a) and (b), to the hours of instruction requirements in s. 119.23 (2) (a) 8., Stats.

e. In s. PI 35.06 (1) (a), the department should consider adding a cross-reference to s. PI 35.03 (3).

f. In s. PI 35.09 (2) (b), the department should consider adding a cross-reference to s. PI 35.11 (2), regarding a school's trial balance.

g. Under s. PI 35.10 (1), (3), and (4), the department cross-references to ch. PI 49, which is created in a separate rule-making order currently under promulgation. The department may wish to note in the rule summary where the draft materials for ch. PI 49 may be accessed. Also, the department should be aware that s. PI 35.10 (1), (3), and (4) will not operate as intended if it is not promulgated concurrently with the treatment of ch. PI 49.

h. In s. PI 35.12 (1) (b), the department should review the cross-reference to s. PI 35.13 (1) for accuracy. It is possible that a more accurate cross-reference may be to s. PI 35.11 (2).

i. In s. PI 35.20 (3), the department could consider inserting an additional cross-reference to s. 119.23 (10), Stats., relating to an action by the State Superintendent to disqualify a person.

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

a. The department defines "Milwaukee parental choice program", "choice program", and "private school choice programs" and uses all three throughout proposed ch. PI 35. The use of such similar terms makes the proposed rule difficult to understand. As noted in comment 3., above, the department should generally refer to the Milwaukee Parental Choice Program throughout, and

the department should decide whether it will do this by referring to the “choice program” or to the “Milwaukee parental choice program”, which are currently defined to mean the same thing.

b. In the definition of “credit” in s. PI 35.02 (6), the department should insert “to” between “9” and “12” instead of “through”. [s. 1.01 (9) (d), Manual.]

c. The department should consider revising the definition of “first time participant” under s. PI 35.02 (11) for the sake of clarity. Specifically, the department could review pars. (b) and (c) to determine whether the phrase “or current school” could be removed from each.

d. The department should consider revising the definition of “4-year-old kindergarten outreach activities” in s. PI 35.02 (12) for the sake of clarity. One suggestion would be to change “has” to “have” because there appears to be some internal conflict in the definition between the use of plural nouns and singular verbs.

e. In the definition of “parent” in s. PI 35.02 (18), the department should clarify that the application mentioned is a student’s application for participation in a parental choice program. A comma should be inserted between “adoption” and “or” to conform to drafting style. [s. 2.05 (1m) (a), LRB Drafting Manual 2015-2016.]

f. The department should consider revising the definition of “significant academic progress” in s. PI 35.02 (24) (b). How satisfactory performance is to be documented so as to meet the definition may be a substantive provision that should be placed somewhere else in the rule. Generally, substantive provisions should not appear in a definition. [s. 1.01 (7) (b), Manual.] The department could move the definition to s. PI 35.03 (5) (b) because that appears to be the only place where the defined term is used. If a definition applies only to one subsection, it should appear only in that subsection. [s. 1.01 (7) (a), Manual.]

g. Under current law, both the choice school administrator and the school’s teachers must have a license from the department or at least a bachelor’s degree from a nationally or regionally accredited institution of higher education. [s. 119.23 (2) (a) 6., Stats.] However, the department is only requiring that the school provide documentation of the choice administrator’s credentials when submitting its notice of intent to participate in the Milwaukee program. The department should consider whether it should also require evidence of teacher credentials, and, if so, insert the requirement into the rule under s. PI 35.03.

h. In s. PI 35.03 (3) (a) 2., a school may include with the notice of intent to participate its own plan to ensure that students are randomly selected, but that plan must be approved by the State Superintendent. It is unclear whether the plan must be approved before it is submitted with the notice of intent to participate or whether it will be reviewed for approval after the notice of intent to participate is submitted. The process for approval of the plan should be specified.

i. The department should review and clarify s. 35.03 (4) (a) and (c). As drafted, the two paragraphs appear to be redundant.

j. The department should restructure s. PI 35.03 (5) to clarify which requirements apply to new private schools, which apply to all other private schools, and which to both. For example, the annual reporting requirement under s. PI 35.03 (5) (c), should apply to both, but it is not clear as drafted because the same language (a school participating in the choice program) is used in both

pars. (b) and (c). The department should also clarify whether both new private schools and other participating private schools or only other participating private schools need to comply with the provisions of s. 35.03 (5) (b). 1. to 4.

k. In s. PI 35.03 (5) (b) 1. b., the department should clarify the timeframe covered by “between the spring or fall and the spring administration of the standardized achievement test”.

l. The department should consider revising s. PI 35.03 (5) (b) (intro.). Currently, the paragraph references “the following standards” and “the continuing eligibility standards specified under s. 119.23 (7) (a), Stats.”. Referencing them separately makes them appear to be different, but they are the same requirements. The introductory material should also be rephrased so that it forms a complete sentence if read with each subunit, with a phrase such as “and including all of the following:”. [s. 1.03 (3), Manual.]

m. In s. PI 35.03 (5) (b) 1. b., “.08” should be changed to “0.08”. [s. 2.02 (1) (d), LRB Drafting Manual 2015-2016.]

n. In s. PI 35.03 (6), the department should reference “governing body member” instead of “board member” to reflect the terminology used under s. 119.23 (6m) (c), Stats.

o. In s. PI 35.03 (6) (b), the reference to “ss.” should be changed to “s.” because the citation is to two subsections under the same section. The abbreviation “s.” refers to a section, not a subsection. [s. 1.03 (1) (Example), Manual.]

p. In s. PI 35.03 (6) (c), the department should change the citation from “(6m) (b) 4.” to “(6m) (b)” because private schools are obligated to annually submit all of the information required under s. 119.23 (6m) (b), Stats., not just what is required under s. 119.23 (6m) (b) 4., Stats.

q. Section PI 35.04 (1) should be revised for clarity. It could be revised as follows:

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.

r. In s. PI 35.05 (1) (c), a comma should be inserted between “adoption” and “or” to conform to drafting style. [s. 2.05 (1m) (a), LRB Drafting Manual 2015-2016.]

s. The department could insert a definition for “designee” in s. PI 35.05 (1) (e) rather than rely upon the citation to s. 119.23 (1) (ag) 2., Stats., because the citation is part of the definition of “disqualified person”. As drafted, a reader may find it unclear whether the definition of “designee” under the proposed rule includes the status of a “disqualified person”.

t. The department should revise s. PI 35.05 (3), for clarity. It could be revised as follows:

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 statewide voter registration system, or any other source permitted by the department.

u. The department should consider making its statutory references under ss. PI 35.05 (5), PI 35.06 (8) (a) 1., and PI 35.07 (3) (n) more specific so that they only reference the applicable statutory subsection. Accordingly, the citations should be changed from “s. 118.14, Stats.”, to “s.

118.14 (1), Stats.”. The department should also consider adding that a student must attain the required age by September 1 in the year that the student seeks to attend school.

v. The department should review s. PI 35.05 (8) related to application corrections and the subsequent note related to an alternative residency form. Section PI 35.05 (8) does not include a reference to an alternative residency form, so it is unclear under the current draft what the alternative residency form is and when it would be used.

w. The department should consider revising s. PI 35.05 (8) (b) 1. for clarity. As drafted, the subdivision switches between past tense and present tense, which makes it difficult to understand. The department should also clarify what it means by “a different legal name for the parent”. Generally, a person may only have one legal name. Does the department mean that an application may include a nickname or an altered or shortened version of a legal name?

x. The department should clarify the timeframe within which a school must make application eligibility determinations under s. PI 35.06 (2). As drafted, it is unclear to which events or timeframes the phrase “whichever occurs first” applies. The provision could potentially be clarified by breaking it up into more sentences.

y. The department should clarify which person or entity is responsible for verifying student application eligibility in the online application system as required under s. PI 35.06 (2). Must the school or the department verify the applications in the online application system?

z. The department should reconsider whether it should use the term “pupil count report” in both s. PI 35.06 (7) and (8). As drafted, it appears that “pupil count report” means something slightly different in each subsection. If the two reports are actually different, it may be easier to understand if they were identified with different terms. The department should also clarify whether it will provide a form for the submission of information under s. PI 35.06. If it will provide a form, that information should be included as a note.

aa. In s. PI 35.07 (1), the department should clarify that it requires an enrollment audit twice a year after the enrollment count date. The department should also clarify whether a school may engage the same auditor who conducts the required annual financial audits or whether the school must engage a different auditor to conduct the enrollment audits.

bb. In s. PI 35.07 (3) (c), the department requires that an enrollment audit include testing of the school’s pupil enrollment software. The subsection suggests that the department will provide an auditor with a testing plan, but that an auditor may use a different plan if approved by the department. The department should provide the following information in this subsection: (1) that a test plan is required; (2) that a plan may be obtained from the department and how that plan may be obtained; and (3) by when and how an alternative plan must be submitted for approval.

cc. Paragraphs (e), (f), and (g) under s. PI 35.07 (3) appear to be very similar. The department should revise these paragraphs so that the distinctions between them are made clear.

dd. The department should clarify whether the list of academic summer school classes and laboratory periods that must be annually submitted under s. PI 35.08 (2) is for classes to be offered the following summer.

ee. Under s. PI 35.09 or PI 35.10, the department should mention that, along with submittal of an independent financial audit, a school must submit an auditor's statement assuring that the audit is free of material misstatements and a management letter prepared by the auditor.

ff. In s. PI 35.10 (1) (b), the department should clarify what it means by "statement of activities".

gg. The department should consider revising s. PI 35.11 (3) for the sake of clarity. As drafted, it is not clear whether a school has any freedom to refuse approval of recommending entry adjustments. Rather than saying that "a school shall approve" adjustments, the subsection could say that recommended adjustments must be approved before they are recorded. The phrase "adjusting entries" could also be changed to "entry adjustments".

hh. In s. PI 35.11 (4), the department should review whether "and" should appear between "PI 35.09" and "PI 35.10" instead of "or". If the "or" should remain, then the department should change the preceding "ss." to "s.".

ii. In s. PI 35.11 (7), the department should specify a section number in the reference to "s. PI 35" as necessary to accurately reflect the department's intent, or should remove that reference if intended to refer to the entire chapter, which is already accomplished by the phrase "of this chapter". [s. 1.07 (2) (Table), Manual.] Or, if the intent is to reference "ch. PI 48", the citation should be corrected to that chapter.

jj. In s. PI 35.12 (3), the department should review whether "and" should appear between "PI 35.09" and "PI 35.10" instead of "or". If the "or" should be replaced with "and", then the department should change the preceding "s." to "ss.". The department should also review whether working papers related to enrollment audits and fiscal reports should be kept for five years from the due date of the financial audit, as is currently required under the proposed rule for the report on fiscal and internal control audits.

kk. In s. PI 35.12 (4), the department should review whether "and" should appear between "PI 35.09" and "PI 35.10" instead of "or". If the "or" should be replaced with "and", then the department should change the preceding "s." to "ss.".

ll. The department should clarify its requirement for submittal of an auditor's peer review in s. PI 35.12 (5). Is a peer review part of standard auditing practice or is the department requiring a peer review that is not otherwise required of auditors?

mm. The department should consider revising s. PI 35.12 (6) for clarity. The subsection may be modified as follows:

An auditor engaged to complete the audits and agreed-upon procedure reports under this chapter or s. 119.23, Stats., shall be a firm licensed as a certified public accounting firm or an individual licensed as a certified public accountant by the accounting examining board under ch. 442, Stats.

nn. In s. PI 35.12 (7), the department should revise the reference to "s. PI 35" as necessary to accurately reflect the department's intent. See comment 5. ii., above.

oo. In s. PI 35.13 (1) (e), the department should insert a comma between “state” and “and local”. [s. 2.05 (1m) (a), LRB Drafting Manual 2015-2016.]

pp. The department should revise s. PI 35.13 (4) for clarity. Is the written document required for each employee? Is the document an agreement between the employee and the school? Does it need to be signed by specific parties?

qq. In s. PI 35.13 (5) (e), the department should change “were” to “are”.

rr. In s. PI 35.13 (12), the department should change “ss.” to “s.” and should change the citation to read “s. 119.23 (2) (a) 6. and (7) (b) 3., Stats.” because the citation is to the same statutory section.

ss. The department should consider whether s. PI 35.13 (13) regarding an auditor’s review of a management letter would be better placed under s. PI 35.09 or 35.10, related to the financial audit, or under s. PI 35.12, related to auditor requirements.

tt. The department should be cautious about combining the first-time participant and new private school requirements under one section because a new private school may not always be a first-time participant. The department should review s. PI 35.14 and make any necessary revisions to ensure that the distinctions between new private schools and first-time participants are clear. One suggested change would be to revise the title.

uu. The department should revise s. PI 35.15 (1) (intro.), for clarity. The introduction could be revised as follows:

Any of the following shall be indicators that a school does not meet the requirements under s. 119.23 (7) (am) 2m. b. or (7) (d) 2., Stats., or is not financially viable as a going concern:

vv. In s. PI 35.15 (1) (a), the department should insert a comma between “balance” and “or has a”. [s. 2.05 (1m) (a), LRB Drafting Manual 2015-2016.]

ww. In s. PI 35.15 (1) (d), the department should insert a comma between “payments” and “or withholdings payments”. [s. 2.05 (1m) (a), LRB Drafting Manual 2015-2016.]

xx. In s. PI 35.15 (2), the department should insert a comma between “revenue” and “or the Wisconsin”. [s. 2.05 (1m) (a), LRB Drafting Manual 2015-2016.]

yy. In s. PI 35.15 (6) (d) 4., the department should insert a comma between “interest” and “penalties”. [s. 2.05 (1m) (a), LRB Drafting Manual 2015-2016.]

zz. In s. PI 35.16 (2), the department should insert a comma between “contractor” and “uncompensated volunteer”. [s. 2.05 (1m) (a), LRB Drafting Manual 2015-2016.]

aaa. In s. PI 35.16 (3), the department should insert a comma between “contractor” and “uncompensated volunteer”. [s. 2.05 (1m) (a), LRB Drafting Manual 2015-2016.]

bbb. The department should consider revising s. 35.16 (5) (intro.), for clarity. The subsection could be revised as follows:

Each administrator, teacher, or teacher aid shall meet the requirements under s. 119.23 (2) (a) 6. a. and (7) (b) 3., Stats. A school shall obtain and retain the following documentation:

ccc. In s. PI 35.17 (2) and (3), the department may delete the word "payment".