



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-023

AN ORDER to repeal PI 35.02 (15); to renumber PI 35.02 (12), (13) and (14); to amend chapter PI 35 (title) and PI 35.01, 35.02 (8), (11) and (16), 35.025, 35.03 (1) (intro.) and (c) and Note, (2) (intro.), (3), (5) and (6) (a) and Note, 35.04 (1), (2), (5) (a) and (b), (6) (a) to (c), (7) (a) 2. and Note and (8), 35.043 (1) (c), (3) (a) and (b), (4) and (6) Note, 35.045 (1) (intro.), (c), (e) (intro.) and 3. and Note, (4) (b) and (5), 35.046 (1) (b), (2) (b) 2., 3., 4., and 6., and 35.05 (3) (a) and (b) 1.; and to create PI 35.02 (12), 35.03 (1) (d) and 35.04 (4m), relating to the Milwaukee parental choice program.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

02-11-02 RECEIVED BY LEGISLATIVE COUNCIL.

03-08-02 REPORT SENT TO AGENCY.

RS:JLK:ksm;thu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 02-023

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 September 1998.]

I. Statutory Authority

a. Section PI 35.02 (8) deletes the cross-reference to the definition of "pupils enrolled" in s. 121.004 (7) (a) to (cm), Stats., and creates a definition of "enrollment" or "pupils enrolled." The analysis to the rule indicates that the change in the definition is simply a technical modification. However, there is a substantive difference between the statutory definition cross-referenced in the current rule and the proposed definition.

Section PI 35.02 (8) (a) and (b) 1., respectively, indicate that a first grade pupil may be counted only if the pupil attains the age *required* under s. 118.14, Stats., for first grade admission and that a pupil enrolled in kindergarten may be counted only if the pupil attains the age *required* under s. 118.14, Stats., for kindergarten admission. In contrast, the cross-referenced definition in current s. PI 35.02 (8) (that is, s. 121.004 (7) (a) to (cm), Stats.) *also* provides that a first grade pupil or pupil enrolled in kindergarten may be counted if the pupil attains the age *permitted* under s. 120.12 (25), Stats., which authorizes school boards to prescribe standards for early admission to kindergarten and first grade.

Because s. 120.12 (25), Stats., applies to the Milwaukee Public Schools (MPS) under s. 119.04 (1), Stats., this appears to be a substantive change in the definition, for which there does not appear to be statutory authority. This may be a theoretical concern if the MPS board has not permitted (and in the future does not permit) early admission under s. 120.12 (25), Stats. However, it appears that the administrative rule would be out of compliance with the statutes if the MPS board currently (or in the future) permits early admission.

b. Section PI 35.03 (3) indicates that a temporary certificate of occupancy will not meet the health and safety requirements of that subsection. The statutes require that a choice school meet all of the health and safety laws or codes that apply to public schools. [See s. 119.23 (2) (a) 5., Stats.] Therefore, the proposed amendment to s. PI 35.03 (3) appears to be appropriate only if a temporary certificate of occupancy would not be permitted with respect to a public school. Is that the case?

2. Form, Style and Placement in Administrative Code

a. In s. PI 35.02 (8), the introduction should be renumbered as par. (a) and the remaining paragraphs and internal cross-references should be renumbered accordingly.

b. In s. PI 35.02 (11), "s." should be inserted immediately preceding the references to "PI 35.04 (6) (a)" and "PI 35.043 (1) (c)". [See s. 1.07 (2), Manual.]

c. Section PI 35.02 (16) changes the definition of "pupil attendance rate" to refer to "average attendance rate." This change means that the definitions are no longer in alphabetical order. Section PI 35.02 (16) should be shown as renumbered s. PI 35.02 (2m) and amended. [See s. 1.01 (7) (a), Manual.]

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

a. In s. PI 35.01, the amendment of the last sentence leaves two items in a series, rather than three items in a series. Therefore, the comma between the first two items should be eliminated and should be shown as overstruck because it is replaced by the addition of the word "and".

b. In s. PI 35.025, the phrase "in the program" should be changed to "in the choice program" in order to use the defined term. A similar comment applies to the last sentences of s. PI 35.03 (3) and (5) (b) 1. (intro.).

c. To be consistent with the statutes and the remainder of ch. PI 35, in s. PI 35.03 (1) (d), "student" should be changed to "pupil." A similar comment applies to ss. PI 35.03 (5) (b) 1. b. and 35.04 (4m).

d. Section PI 35.03 (5) (b) (intro.) would be more consistent with the statutes if it indicated that the school has met "at least" one of the following criteria, rather than indicating that it must meet one of the following criteria. [See s. 119.23 (7) (a) (intro.), Stats.] Similarly, "shall" could be deleted in the first sentence of s. PI 35.03 (5) (b) 1. (intro.).

REPORT TO
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE
MILWAUKEE PARENTAL CHOICE PROGRAM
PI 35, Wisconsin Administrative Code

Wisconsin Statutory Authority - s. 227.11(2)(a), Stats.

Federal Statutory Authority - None

Court Decisions Directly Relevant

Davis v. Grover, Dane County Cir. Ct. Case No. 90 CV 2576, (8-6-90)

Davis v. Grover, 166 Wis.2d 501, 480 N.W.2d 460 (1992)

Jackson v. Benson, 218 Wis.2d 835, 570 N.W. 602, Cert. Den. 119 S. Ct. 467 (1998)

Analysis of the Rule - Rule Effect - Reason for the Rule

2001 Act 16 modified provisions under s. 119.23, Stats., relating to the Milwaukee Parental Choice Program (MPCP). To reflect the statutory changes Chapter PI 35 would be modified to:

- Change the date a private school must annually submit notice of its intent to participate in the program from May 1 to February 1.
- Reduce payments from MPCP summer school by 60%.

Other changes would be made to better ensure that participating schools are safe and make it easier for parents to participate in the program, including:

- Creating optional open application periods for participating private schools starting in the 2002-03 school year.
- Changing the dates student applications are due at the department.
- Stating that submission of temporary permits would not meet the safety requirements of this program.

In addition, the following technical modifications would be made to Chapter PI 35:

- Define in rule, rather than by cross-reference to statute, "pupils enrolled" and "membership."
- Eliminate conflicting language related to the attendance standard that schools can meet to continue participation in the program in the following school year.
- Clarify the language related to counting students for the purpose of payment under the program and the requirement to return checks received by the school students not present on the count dates.
- Modify references to the name of the program in the rule to make it consistent with the statutory name of the program.

Agency Procedure for Promulgation

Notice to Legislative Council pursuant to s. 227.15, Stats., and proceeding under the ten day notice/hearing process pursuant to ss. 227.16 to 227.18, Stats.

Description of any Forms (attach copies if available)

Milwaukee Parental School Choice Program Notice of School's Intent to Participate
Milwaukee Parental School Choice Program Summer School Program Report

Name and Telephone Number of Agency Liaison(s)

Tricia Collins, Milwaukee Parental School Choice Consultant, 266-2853
Lori L. Slauson, Administrative Rules Coordinator, Policy and Budget, 267-9127

**PROPOSED ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
CREATING/AMENDING RULES**

The state superintendent of public instruction hereby proposes to repeal PI 35.02 (15); to renumber PI 35.02 (12), (13) and (14); to amend PI 35 (title), PI 35.01, PI 35.02 (8), (11) and (16), PI 35.025, PI 35.03 (1) (intro.), (c) and the note following, (2) (intro.), (3), (5), (6) (a) and the note following, PI 35.04 (1), (2), (5) (a) and (b), (6) (a) to (c), (7) (a) 2., the following note, and (8), PI 35.043 (1) (c), (3) (a) and (b), (4) and the note following (6), PI 35.045 (1) (intro.), (c), (e) (intro.) and 3. and the note following, (4) (b) and (5), PI 35.046 (1) (b), (2) (b) 2., 3., 4., and 6., and PI 35.05 (3) (a) and (b) 1.; and to create PI 35.02 (12), PI 35.03 (1) (d), and PI 35.04 (4m), relating to the Milwaukee parental choice program.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: s. 227.11 (2) (a), Stats.

Statute interpreted: s. 119.23, Stats.

2001 Act 16 modified provisions under s. 119.23, Stats., relating to the Milwaukee Parental Choice Program (MPCP). To reflect the statutory changes Chapter PI 35 would be modified to:

- Change the date a private school must annually submit notice of its intent to participate in the program from May 1 to February 1.
- Reduce payments from MPCP summer school by 60%.

Other changes would be made to better ensure that participating schools are safe and make it easier for parents to participate in the program, including

- Creating optional open application periods for participating private schools starting in the 2002-03 school year.
- Changing the dates student applications are due at the department.
- Stating that submission of temporary permits would not meet the safety requirements of this program.

In addition, the following technical modifications would be made to Chapter PI 35:

- Define in rule, rather than by cross-reference to statute, "pupils enrolled" and "membership."
- Eliminate conflicting language related to the attendance standard that schools can meet to continue participation in the program in the following school year.
- Clarify the language related to counting students for the purpose of payment under the program and the requirement to return checks received by the school students not present on the count dates.
- Modify references to the name of the program in the rule to make it consistent with the statutory name of the program.

SECTION 1. Chapter PI 35 (title) is amended to read:

Chapter PI 35

MILWAUKEE PARENTAL PRIVATE-SCHOOL CHOICE PROGRAM

SECTION 2. PI 35.01 is amended to read:

PI 35.01 Purpose. Under s. 119.23 (2) (a), Stats., any qualified pupil in grades kindergarten to 12 who resides within a city may attend, at no charge, any participating private school located in the city. Participation in the ~~private school~~ Milwaukee parental choice program is limited to 15% of the school district's membership as specified under s. 119.23 (2) (b), Stats. This chapter establishes approval criteria and requirements for private schools participating in the ~~private school~~ Milwaukee parental choice program, and requirements for receipt of state aid for those private schools under s. 119.23 (4), Stats., ~~and requirements for schools operating under ch. 119, Stats.~~

order — **SECTION 3.** PI 35.02 (15) is repealed.

SECTION 4. PI 35.02 (12), (13), and (14) are renumbered PI 35.02 (13), (14) and (15).

SECTION 5. PI 35.02 (12) is created to read:

PI 35.02 (12) "Milwaukee parental choice program" or "choice program" means the program established under s. 119.23, Stats.

SECTION 6. PI 35.02 (8), (11) and (16) are amended to read:

PI 35.02 (8) ^(a) "Enrollment" or "pupils enrolled" ^(b) has the meaning defined under s. 121.004 (7) (a) to (em), Stats. means the total number of pupils, as expressed by official enrollments, except as provided in pars. (d) to (c). If such total contains a fraction, it shall be expressed as the nearest whole number. ^(b) ^(a)

(a) A first grade pupil may be counted only if the pupil attains the age required under s. 118.14, Stats., for first grade admission.

(b) 1. A pupil enrolled in kindergarten may be counted only if the pupil attains the age required under s. 118.14, Stats., for kindergarten admission. A kindergarten pupil shall be counted as one-half pupil except that:

a. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for 5 days a week for an entire school year shall be counted as one pupil.

b. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for less than 5 days a week for an entire school year shall be counted as the result obtained by multiplying the number of hours in each day in which the pupil is enrolled by the total number of days for which the pupil is enrolled, and dividing the result by the product of the number of hours of attendance per day required of first grade pupils in the school district operating under ch. 119, Stats., multiplied by 180.

2. In subd. 1. a. and b., "full-day" means the length of the school day required of first grade pupils in the school district operating the 5-year-old kindergarten program under ch. 119, Stats.

(c) 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) 2., Stats., shall be counted as a 0.6 pupil if the program annually provides at least 87.5 additional hours of outreach activities.

(11) "Membership" has the meaning defined under s. 121.004 (5), Stats. means the sum of the average number of pupils enrolled in the Milwaukee parental choice program as reported under PI 35.04 (6) (a) and the summer average daily membership equivalent as defined under PI 35.043 (1) (c).

(16) "Pupil Average attendance rate" means the rate obtained by dividing the aggregate number of full-time equivalent days of actual pupils' attendance, by the aggregate number of full-time equivalent days on which school was held.

SECTION 7. PI 35.025 is amended to read:

PI 35.025 **Pupil assignment council requirements.** The pupil assignment council created under s. 119.23 (8), Stats., shall meet annually by April 15 to designate a date by which all private schools in the program must have at least one open enrollment period for choice program applicants for the school year beginning the following September. The pupil assignment council shall also recommend to the state superintendent a method for ensuring that pupils will be accepted on a random basis.

SECTION 8. PI 35.03 (1) (d) is created to read:

PI 35.03 (1) (d) The open application periods during which the private school will accept Milwaukee parental choice program student applications.

SECTION 9. PI 35.03 (1) (intro.), (c) and the note following, (2) (intro.), (3), (5), (6) (a) (intro.) and the note following are amended to read:

PI 35.03 (1) **NOTICE OF INTENT TO PARTICIPATE.** (intro.) By May February 1 each year a private school which intends to participate in the ~~private school~~ Milwaukee parental choice program the following school year shall submit to the state superintendent a notice of intent to participate. The notice of intent shall include all of the following:

(c) The number of pupils participating in the ~~private school~~ choice program for which the private school has space.

Note: The Notice of School's Intent to Participate Form may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

(2) **PROCEDURAL REQUIREMENTS.** (intro.) A private school that participates in the ~~private school~~ Milwaukee parental choice program shall do all of the following:

(3) **HEALTH AND SAFETY REQUIREMENTS.** The administrator of a school in the ~~private school~~ Milwaukee parental choice program shall ensure that the school is meeting the requirements of s. 119.23 (2), Stats., regarding health and safety laws and codes for schools by filing with the department a copy of the private school's current certificate of occupancy issued by the city of Milwaukee. The administrator shall submit the certificate of occupancy under this subsection to the department no later than August 1 prior to the first school year of participation in the choice program, or by no later than May 1 if the school is beginning participation in the choice program with summer school. The administrator shall file subsequent certificates of occupancy as issued by the city of Milwaukee. An administrator that files a copy of a temporary certificate of occupancy issued by the city of Milwaukee will not meet the requirements of this subsection. A private school that fails to meet the requirements of this subsection may not participate in the program.

(5) CONTINUING ELIGIBILITY. (a) A private school participating in the ~~private school~~ Milwaukee parental choice program shall submit a report to the department by October 15 each school year indicating the criteria to be used in meeting the continuing eligibility standards specified under s. 119.23 (7) (a), Stats.

(b) A private school participating in the ~~private school~~ Milwaukee parental choice program shall submit a report to the department by June 30 each school year providing evidence that the school has in that school year met one of the following criteria:

1. At least 70% of the pupils in the ~~private school~~ Milwaukee parental choice program shall advance one grade level each year. For pupils attending a ~~private school~~ Milwaukee parental choice program in grades 9 through 12, "advance one grade level" means a successful completion of at least 4 credits or the equivalent as approved by the state superintendent during each school year. For pupils attending a ~~private school~~ Milwaukee parental choice program in grades kindergarten through 8, each participating private school shall ensure that each pupil in the program who is advanced one grade level has met one of the following criteria:

a. Achievement of 70% of the instructional objectives specific to each grade level in reading, mathematics and language arts which are introduced during each semester of the current school year. Under this subparagraph, a private school shall do all of the following: establish written objectives and performance standards for reading, mathematics and language arts for each grade level in which pupils are enrolled in the ~~private school~~ Milwaukee parental choice program; document written criteria and methodology for evaluating pupil performance for each objective and document each pupil's performance using the evaluation method specified in this subparagraph in a written record and maintain these records for 3 years.

b. Achievement of at least .08 grade equivalent increase for each month between the spring or fall and spring administration of the standardized achievement test. Under this subparagraph, a private school shall do all of the following: report, by October 15, to the state superintendent the tests to be administered and the dates on which they will be administered, and maintain each student's answer sheets and score information for 3 years.

2. The private school's average attendance rate for pupils in the ~~private school~~ Milwaukee parental choice program is at least 90%. ~~The report required under sub. (5) (a) shall include the method used by the private school in determining the average attendance rate for pupils.~~

3. At least 80% of the pupils in the ~~private school~~ Milwaukee parental choice program demonstrate significant academic progress.

4. At least 70% of the families of pupils in the ~~private school~~ Milwaukee parental choice program meet parental involvement criteria established by the private school.

(6) (a) (intro.) A private school participating in the ~~private school~~ Milwaukee parental choice program may only charge pupils participating under the program fees that may be charged by public schools to indigent pupils. A private school under this subsection may charge reasonable fees for the following:

Note: All pupils participating under the ~~private school~~ Milwaukee parental choice program are indigent by definition under s. 119.23 (2) (a) 1., Stats., since the program is targeted exclusively to low-income pupils whose total family income does not exceed an amount equal to 1.75 times the poverty level. One available remedy for collecting a valid nonpaid fee is small claims court.

SECTION 10. PI 35.04 (4m) is created to read:

PI 35.04 (4m) Annually, by August 1, a private school under this section shall submit to the department a copy of the accepted student applications it received from February through July. The private school shall ensure the submitted student applications are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

SECTION 11. PI 35.04 (1), (2), (5) (a) and (b), (6) (a) to (c), (7) (a) 2., the following note, and (8) are amended to read:

(1) A private school that participates in the ~~private school~~ Milwaukee parental choice program shall accept pupils on a random basis in accordance with the method submitted under s. PI 35.03 (1) (a) and approved under s. PI 35.05 (5). A private school may give preference to siblings of pupils already enrolled in or accepted into the choice program at that private school.

(2) A private school under this section shall ~~establish open application periods for the following school year. The open application period shall be at least 14 days in length and may not begin prior to January 1. select which of the open application periods listed on the notice of intent to participate form it will accept Milwaukee parental choice program student applications. A private school may not amend, after February 1, the open application periods selected on its notice of intent to participate form for the following school year.~~

(5) (a) Submit to the department a copy of the accepted applications ~~that correspond to the class list submitted under par. (b) - it received during August.~~ The private school shall ensure the submitted applications are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

(b) Submit a class list of the ~~private school~~ choice program pupils, alphabetically by last name, and separated by grade level, that corresponds to the accepted applications submitted under ~~par. sub. (4m) and par. (a).~~

(6) (a) Annually by October 1 and February 1, submit to the department a membership report of the total number of pupils enrolled in the private school and the number of pupils enrolled in the ~~private school~~ Milwaukee parental choice program on the 3rd Friday of September and the 2nd Friday of January of the current school year. The membership report form shall be provided by the department.

(b) Submit to the department with the membership report under par. (a), a class list of the ~~private school~~ choice program pupils, alphabetically by last name, and separated by grade level. The class list shall correspond to the membership report under par. (a).

(c) Submit to the department with the membership report under par. (a), copies of any accepted applications for pupils included in the class list under par. (b) that were not previously reported under sub. (4m) and (5) (a). The private school shall ensure that the applications submitted under this paragraph are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

(7) (a) 2. The pupil is absent on the date specified but has attended for instruction at least one day during the school term prior to the date specified and attends for instruction at least one day after the date specified and has not enrolled in another private school or in a Wisconsin public school district during the period of absence.

Note: The pupil count report may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

(8) A private school under this section shall return to the department any checks received under s. 119.23 (4), Stats., for students that did not meet the requirements under (7) (a) or that are not cashed within 45 days of their receipt at the school.

SECTION 12. PI 35.043 (1) (c), (3) (a) and (b), (4) and the note following (6) are amended to read:

PI 35.043 (1) (c) "Membership" for summer school payments means the school's total minutes of enrollment of eligible choice program pupils in academic summer classes or laboratory periods necessary for academic purposes.

(3) (a) The pupil was enrolled in the ~~private school~~ Milwaukee parental choice program on the 2nd Friday of January in the school term immediately preceding that summer.

(b) The pupil's application has been accepted into the ~~private school~~ Milwaukee parental choice program at that private school in the school term immediately following that summer.

(4) The summer school payment due to the private school shall be calculated according to s. 119.23 (4m), Stats. To determine payment, the private school shall divide the school's total summer school minutes of enrollment for their choice program pupils by 48,600; round that quotient to the nearest whole number; ~~and~~ multiply the resulting whole number by the voucher amount calculated under s. 119.23 (4) (b) 2., Stats., for the school year immediately following the summer school; and multiply the result by 40%.

Note: The pupil count report and summer school membership report may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

SECTION 13. PI 35.045 (1) (intro.), (c), (e) (intro.) and 3. and the note following, (4) (b) and (5) are amended to read:

PI 35.045 (1) (intro.) Annually, by September 1 following a school year of operation under this program, a private school participating in the ~~private school~~ Milwaukee parental choice program shall submit, on a form provided by the department, a financial audit report accompanied by the auditor's opinion required under s. PI 35.046 (1) (a) containing the following information for the previous school year:

(c) Enrollment and full-time equivalent membership for all pupils and for pupils participating in the ~~private school~~ Milwaukee parental choice program.

(e) (intro.) The payment adjustment amount resulting from the private school's participation in the ~~private school~~ Milwaukee parental choice program during the previous school year. The payment adjustment amount shall be determined as follows:

3. The private school's membership of pupils participating in the ~~private school~~ Milwaukee parental choice program shall be multiplied by the lesser of the amount determined under s. 119.23 (4) (b) 2., Stats., or the private school's per pupil cost under s. 119.23 (4) (b) 1., Stats. If the result is greater than the amount of the ~~private school~~ choice program payments retained by the school, an adjustment payment shall be made to the private school within 60 days of the financial audit report certified by the department. If the result is less than the amount of the ~~private school~~ choice program payments retained by the private school, the private school shall refund the amount of any overpayment to the department within 60 days of notification.

Note: The Financial Reporting Form may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

(4) (b) Capital outlay items previously included in cost computations may not again be included as a cost by successor ownership of the school, nor upon purchase by or transfer to other private schools participating in the ~~private school~~ Milwaukee parental choice program.

(5) A private school participating in the ~~private school~~ Milwaukee parental choice program for the first time may include in cost calculations start-up costs incurred prior to the start of the fiscal period.

SECTION 14. PI 35.046 (1) (b), (2) (b) 2., 3., 4., and 6. are amended to read:

PI 35.046 (1) (b) Provide the auditor with a listing of all kindergarten through grade 12 pupils enrolled in the school by grade level and classroom. The listing provided under this paragraph shall identify pupils participating in the ~~private school~~ Milwaukee parental choice program.

(2) (b) 2. Verify enrollment reported on the membership report under s. PI 35.04 for all ~~private school~~ Milwaukee parental choice program pupils against the private school's official attendance records.

3. Select a sample of at least 60 ~~private school~~ choice program pupils included on the private school's official enrollment records and verification against classroom records. The sample shall include records from each classroom. If the private school has a ~~private school~~ Milwaukee parental choice program enrollment of less than 60 pupils, all such pupil records shall be tested. If an exception is identified the auditor shall extend the sample test in increments of 60 records until no additional exceptions are found or the official enrollment records for all ~~private school~~ choice program pupils have been verified against classroom records.

4. Select a sample of at least 60 other pupils identified as not participating in the ~~private school~~ Milwaukee parental choice program from classroom records and determine that selected pupils were included in reported membership enrollments under s. PI 35.04. The sample shall include records from each classroom. If an exception is identified the

auditor shall extend the sample test in increments of 60 records until no additional exceptions are found or all classroom records have been verified as properly included in reported enrollments.

6. Reconcile tuition revenues and tuition waiver pupils against listings of pupils identified as not participating in the private school Milwaukee parental choice program.

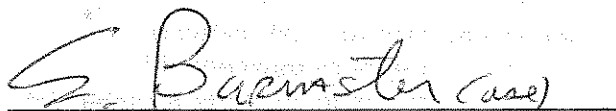
SECTION 15. PI 35.05 (3) (a) and (b) 1. are amended to read:

PI 35.05 (3) (a) The number of pupils for which the private school shall receive payment shall be determined by ~~s. 421.004 (7) and (8), Stats.~~ ss. PI 35.02 (8) and PI 35.043 (1) (c).

(b) 1. The September payment shall be based on the number of pupils receiving instruction at the beginning of the school year as indicated on the class list preliminary membership report and the accepted, eligible applications for those pupils submitted under s. PI 35.04 (5) and the amount per pupil determined under s. 119.23 (4), Stats., multiplied by 25%.

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 11th day of February, 2002



Elizabeth Burmaster
State Superintendent

FISCAL ESTIMATE FORM

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #
Introduction #
Admin. Rule # Chapter PI 35

Subject
Milwaukee Parental Private School Choice Program

Fiscal Effect (See below)

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation
 or affects a sum sufficient appropriation.

- Increase Costs - May be possible to Absorb
 Within Agency's Budget Yes No

 Decrease Costs

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Local: No local government costs (See below)

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG

SEG-S

Affected Ch. 20 Appropriations

s. 20.255 (2) (ac) and (fu)

Assumptions Used in Arriving at Fiscal Estimate:

Local and State

The rules make several modifications to the Milwaukee Parental Choice Program (MPCP). It is assumed the only rule modification that will have a fiscal effect is the reduction in the MPCP summer school payment made as a result of 2001 Wisconsin Act 16.

In FY02, prior to the enactment of Act 16, the MPCP summer school payment was calculated by multiplying the FTE summer school choice membership (158 FTE) by the per pupil payment of \$5,553 totaling approximately \$877,400. Act 16 requires the per pupil payment amount for summer school to be multiplied by 40%, reducing the summer school payment by 60%. For example, if the new calculation under Act 16, were applied to the FY02 summer school payment, \$350,900 (\$5,553 X 40% X 158 FTE) would have been paid. This amount is \$526,500 (60%) less than what was paid using the previous formula (\$877,400).

Under current law, 45% of the MPCP's cost is funded from a reduction in general equalization to Milwaukee Public Schools (MPS) and 55% from state general purpose revenue. MPS can replace the reduction in state aid with an increase in its property tax levy. Therefore, this provision:

- Could allow MPS to reduce its levy by \$236,925 (\$526,500 X 45%).
- Would allow the state to provide \$289,575 less in funding (\$526,500 X 55%).


Private Schools

As described above, Act 16 will reduce payments made to private schools offering MPCP summer school by 60%.

Agency

These rules will not have a fiscal effect on agency revenues or costs.

Long-Range Fiscal Implications:

<p>Prepared By: Lori Slauson 267-9127 Department of Public Instruction</p>	<p>Authorized Signature / Telephone No.  Michael Borrett (608) 266-2804</p>	<p>Date 1/29/02</p>
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Wisconsin Department of Public Instruction
 Milwaukee Parental Choice Program
SUMMER SCHOOL PROGRAM REPORT

MPSC-1804 (Revised 11-01)

Collection of this data is a requirement of s. 119.23, Wis. Stats., and Chapter PI 35,
 Wis. Adm. Code.

Refer to detailed instructions.
AT CLOSE OF SUMMER SCHOOL: Complete and submit the signed report by
 October 15, 2002 to:

**WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION
 MILWAUKEE PARENTAL CHOICE PROGRAM
 ATTN: TRICIA COLLINS, ADMINISTRATOR
 P.O. BOX 7841
 MADISON, WI 53707-7841**

School _____
 Address _____
 City _____ WI _____ ZIP _____

I. GENERAL INFORMATION

Summer School Dates Beginning _____ Ending _____ to _____
 Daily Hours _____ School Telephone: Area /No. _____
 Person in Charge Elementary _____ Person in Charge Secondary _____ Contact Person for this Report _____ Telephone: Area/No./Ext. _____

I CERTIFY that this report is true, that the summer school will be maintained at no tuition cost to MPCP students and that the school is in compliance with all regulations relating to summer school and the Milwaukee Parental Choice Program. Average Daily Membership (ADM) for state aids will be claimed only for classes approved for ADM.

Name of Administrator _____ Signature of Administrator _____ Date Signed _____

III. ADM EQUIVALENT COMPUTATION

9. Grade Level Choice Students	a. Total Pupil Minutes Subtotal of Section II, Col. 8b	b. ADM Equivalent Column 9a + 48,600*	c. FTE Count Payable Round Col. 9b total to nearest whole number	d. Amount Due To School Column 9c total x \$5,785 x 40%
				TOTAL

*Take the result out to two decimal points.
 Information reported on this report is subject to verification.



Wisconsin Department of Public Instruction
MILWAUKEE PARENTAL CHOICE PROGRAM
NOTICE OF SCHOOL'S INTENT TO PARTICIPATE
2002-2003 SCHOOL YEAR
MPS-PCP-2 (Rev.10/01)

INSTRUCTIONS: Submit completed and signed form, to arrive at DPI no later than **FEBRUARY 1, 2002**, to:

WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION
ATTN: TRICIA COLLINS
MILWAUKEE PARENTAL CHOICE PROGRAM
P.O. BOX 7841
MADISON, WI 53707-7841

Collection of this information is a requirement of s. 119.23, Wisconsin Statutes.

GENERAL INFORMATION <i>Type or Print</i>			
School Name		School Year	
		2002-2003	
Street Address for each school location <i>Street, City, State, ZIP Attach additional sheet if necessary.</i>			
Mailing Address <i>If different than above.</i>			Fax Area/No.
Administrator Name	Title	Telephone Area/No.	E-Mail Address

NOTICE OF INTENT

This notice of a school's intent to participate in the Milwaukee Parental Choice Program (MPCP) in the 2002-2003 school year is due at the Department of Public Instruction no later than February 1, 2002. The school administrator listed above is to sign at the end of the application, attesting to the school's agreement to comply with all the requirements of Wisconsin Statute 119.23 and Administrative Code PI 35 and the requirements listed here.

The School shall:

1. Submit a proposal to the Department of Public Instruction (DPI) with this notice of intent stating how, with the exception of continuing choice students at that private school and their siblings, pupils will be accepted on a random basis from a new pool of applicants each year.
2. Submit to the DPI with this notice, no later than February 1, 2002, the original letter from the State Superintendent regarding student rights in the Milwaukee Parental Choice Program, signed by the school administrator.
3. Provide free instruction to all pupils enrolled in the MPCP. Private schools participating in the program may only charge choice program pupils those fees that may be charged by public schools to indigent pupils. See PI 35.03(6) Wisconsin Administrative Code or contact the DPI for further information on allowable fees.
4. Have a representative on the Pupil Assignment Council.
5. Accept student applications only during established open application period(s) selected on page 3 of this form. Complete the open application period table on page 3 of this form.
6. Notify each applicant of acceptance or non-acceptance to the choice program, in writing, within 60 days after receiving the application. Retain all acceptance and nonacceptance notices given and all original applications, both accepted and nonaccepted. Submit to the DPI on or before June 30, 2003, the number of accepted and nonaccepted applications for the choice program in the 2002-2003 school year. See PI 35.04 Wisconsin Administrative Code or contact the DPI for further information on open application periods.
7. Submit, by August 1, 2002, a copy of accepted applications received through July 2002. Submit, by September 1, 2002, a copy of accepted applications received in August 2002, and an alphabetical listing by grade of the students that corresponds to the applications accepted through August. Submit, by October 1, 2002, a copy of accepted applications received during September 2002. Submit, by February 1, 2003, a copy of accepted applications received from October 2002 through January 2003.
8. Submit two membership reports [under PI 35.04(6)] to the Department showing enrollment in the choice program during the 2002-2003 school year. With the membership reports, submit to the DPI an alphabetical listing by grade of the students enrolled in the choice program and copies of the student applications corresponding with that list of choice students if not previously submitted.
9. Submit to the DPI financial and membership audits for the 2001-2002 school year by no later than September 1, 2002, as required by Wisconsin Statutes and Administrative Code PI 35.045. Refund the amount of any choice overpayment to the Department within 60 days of notification. Return to the DPI any checks received for choice pupils that are not cashed within 45 days of their receipt at the school.
10. Submit the certificate of occupancy issued by the City of Milwaukee no later than August 1 prior to the first school year of participation in the choice program, or by no later than May 1 if the school is beginning participation in the choice program with summer school.
11. Submit, by October 15, a summer school report if the school wishes to be considered eligible for state aid payments for choice pupils enrolled in academic summer classes or laboratory periods that are necessary for academic purposes. Submit, annually, information on the summer classes and laboratory periods to be offered during summer school for review by the state superintendent for payment under the choice program.

NOTICE OF INTENT (cont.)

12. Submit on or before October 15, PI-1207, which includes a statement of the enrollment on the 3rd Friday of September in the elementary and high school grades, under the administrator's jurisdiction. In addition, if the school wishes to be included in the DPI Private School Directory submit by July 1, PI-1281, the private school directory update form.

13. The School shall guarantee that:

At least one of the following standards is met in the 2002-2003 school year to allow the school to continue in the choice program in the 2003-2004 school year:

- a. At least 70 percent of the pupils in the program advance one grade level.
- b. The school's average attendance rate for pupils in the program is at least 90 percent.
- c. At least 80 percent of the pupils in the program demonstrate significant academic progress.
- d. At least 70 percent of the families of pupils in the program meet parent involvement criteria established by the school.

The school shall submit a report to the DPI by October 15, 2002, that indicates the criteria to be used in meeting the continuing eligibility standards that the school will meet in the 2002-2003 school year. The school guarantees it will meet the requirements for providing evidence that the school has met one of the standards. By June 30, 2003, the school shall submit documentation verifying that the standard or standards chosen have been met.

14. The School shall guarantee compliance with:

- a. Title VI of the Civil Rights Act of 1964 as amended, 42 U.S.C. 2000d et. seq., which prohibits discrimination on the basis of race, color or national origin.
- b. Wisconsin State Statute 118.165 regarding private schools which requires a school participating in the MPCP to meet the following requirements:
 - 1. The primary purpose of the program is to provide private or religious-based education.
 - 2. The program is privately controlled.
 - 3. The program provides at least 875 hours of instruction each school year.
 - 4. The program provides a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health.
 - 5. The program is not operated or instituted for the purpose of avoiding or circumventing the compulsory school attendance requirement under sec. 118.15(1)(a), Wis. Stats.
 - 6. The pupils in the institution's educational program, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation, or the institution is licensed as a child welfare agency under sec. 48.60(1), Wis. Stats.
- c. All health and safety laws or codes that apply to public schools which include, in part, subchapters I and IV of chapter 101 and chapter 145 Wis. Stats., and sec. 115.33 Wis. Stats.

AGREEMENT/SIGNATURES

The school agrees that compliance with these requirements constitutes a condition of receipt of funds under the above referenced program, and that this notice of intent to participate is binding upon the school, its successors, transferees, and assignees for the period during which the school is a participant in the program. The school assures that all contractors, subcontractors, subgrantees or others with whom it arranges to provide services or benefits to its students in connection with this program are not in violation of the stated statutes, regulations, guidelines, and standards. In the event of failure to comply, the school understands that its participation in the program can be terminated.

Please note that the provisions listed are subject to statutory and administrative rule change. I have read the notice and guarantee that the school will comply with all its provisions.

School Name

Administrator Name	Telephone Area/No.
Administrator Signature	Date Signed

—Continued on the next page.—

OPEN APPLICATION PERIODS FOR THE 2002-2003 SCHOOL YEARS

Check one or more boxes to indicate the open application period(s) your school will conduct for the 2002-2003 school year.

Beginning Dates	End Dates
<input type="checkbox"/> February 1	February 20
<input type="checkbox"/> March 1	March 20
<input type="checkbox"/> April 1	April 20
<input type="checkbox"/> May 1	May 20
<input type="checkbox"/> June 1	June 20
<input type="checkbox"/> July 1	July 20
<input type="checkbox"/> August 1	August 20
<input type="checkbox"/> September 1	September 14
<input type="checkbox"/> October 1	October 20
<input type="checkbox"/> November 1	November 20
<input type="checkbox"/> December 1	January 7

2002-2003 SCHOOL YEAR ESTIMATES

Grade Levels Served	1. Total Student Capacity (MPCP and Non-MPCP Students)	2. Total MPCP Students (MPCP Students Only)	3. Available MPCP Seats	
			a. Returning MPCP Students	b. New MPCP Students
4-year-old kindergarten				
5-year-old kindergarten				
Grade 1				
Grade 2				
Grade 3				
Grade 4				
Grade 5				
Grade 6				
Grade 7				
Grade 8				
Grade 9				
Grade 10				
Grade 11				
Grade 12				
Total				



State of Wisconsin Department of Public Instruction

Mailing Address: P.O. Box 7841, Madison, WI 53707-7841
125 South Webster Street, Madison, WI 53702
(608) 266-3390 TDD (608) 267-2427 FAX (608) 267-1052
Internet Address: www.dpi.state.wi.us

Elizabeth Burmaster
State Superintendent

January 29, 2002

Members of the Wisconsin Senate
State Capitol
Madison, WI 53702

Dear Senator:

Attached, pursuant to s. 227.24 (3), Stats., is a copy of emergency rules relating to the Milwaukee parental school choice program for your information.

2001 Wisconsin Act 16 modified provisions under s. 119.23, Stats., relating to the Milwaukee Parental Choice Program (MPCP). To reflect the statutory changes Chapter PI 35 is modified to:

- Change the date a private school must annually submit notice of its intent to participate in the program from May 1 to February 1.
- Reduce payments from MPCP summer school by 60%.

Other changes have been made to better ensure that participating schools are safe and make it easier for parents to participate in the program, including:

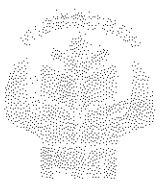
- Creating optional open application periods for participating private schools starting in the 2002-03 school year.
- Changing the dates student applications are due at the department.
- Stating that submission of temporary permits would not meet the safety requirements of this program.

In addition, the following technical modifications have been made to Chapter PI 35:

- Define in rule, rather than by cross-reference to statute, "pupils enrolled" and "membership."
- Eliminate conflicting language related to the attendance standard that schools can meet to continue participation in the program in the following school year.
- Clarify the language related to counting students for the purpose of payment under the program and the requirement to return checks received by the school students not present on the count dates.
- Modify references to the name of the program in the rule to make it consistent with the statutory name of the program.

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

In the past, private schools that intended to participate in the Milwaukee parental choice program were required to submit to the state superintendent a notice of intent to participate by May 1. 2001 Wisconsin Act 16 changed the submission date of the notice from May 1 to February 1. The rules allow a private school to choose from a variety of student application periods. The student application period chosen by the private school must be indicated on its notice. Because the notice is due at the department by February 1, emergency rules must be in place as soon as possible.



1000 Wisconsin Avenue, Suite 1000, Madison, WI 53703
608-266-2853 FAX 608-267-1127

If you have any questions on these emergency rules, or the proposed permanent rules, please contact Tricia Collins, Milwaukee Parental Choice Program Consultant, at (608) 266-2853 or Lori Slauson, Administrative Rules Coordinator, Policy and Budget, at (608) 267-9127.

Sincerely,

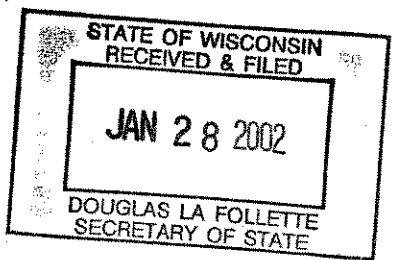
Anthony S. Evers
Deputy State Superintendent

As a result of the public hearing on the proposed permanent rules, the Department of Public Instruction has received many comments from interested parties. The Department is currently reviewing these comments and will be holding a public hearing on the proposed permanent rules in the near future. The Department is committed to transparency and public participation in the rule-making process. We will continue to provide updates on the progress of the rule-making process as they become available.

The Department of Public Instruction is currently reviewing the public comments received during the public hearing on the proposed permanent rules. The Department is committed to transparency and public participation in the rule-making process. We will continue to provide updates on the progress of the rule-making process as they become available. The Department is currently reviewing the public comments received during the public hearing on the proposed permanent rules. The Department is committed to transparency and public participation in the rule-making process. We will continue to provide updates on the progress of the rule-making process as they become available.

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CERTIFICATE



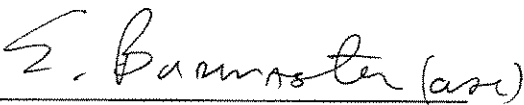
STATE OF WISCONSIN)
DEPARTMENT OF PUBLIC INSTRUCTION) SS

I, State Superintendent of the Department of Public Instruction and custodian of the official records of said Department, do hereby certify that the annexed emergency rule relating to the Milwaukee parental choice program was duly approved and adopted by this Department on the date of publication in the *Wisconsin State Journal*.

I further certify that said copy has been compared by me with the original on file in this Department and the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the official seal of the Department at General Executive Facility (GEF) 3, 125 South Webster Street, P.O. Box 7841, in the city of Madison, this 28th day of January, 2002.


Elizabeth Burmaster
State Superintendent
State Department of Public Instruction

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ADOPTING EMERGENCY RULES**

The state superintendent of public instruction hereby proposes to repeal PI 35.02 (15); to renumber PI 35.02 (12), (13) and (14); to amend PI 35 (title), PI 35.01, PI 35.02 (8), (11) and (16), PI 35.025, PI 35.03 (1) (intro.), (c) and the note following, (2) (intro.), (3), (5), (6) (a) and the note following, PI 35.04 (1), (2), (5) (a) and (b), (6) (a) to (c), (7) (a) 2., the following note, and (8), PI 35.043 (1) (c), (3) (a) and (b), (4) and the note following (6), PI 35.045 (1) (intro.), (c), (e) (intro.) and 3. and the note following, (4) (b) and (5), PI 35.046 (1) (b), (2) (b) 2., 3., 4., and 6., and PI 35.05 (3) (a) and (b) 1.; and to create PI 35.02 (12), PI 35.03 (1) (d), and PI 35.04 (4m), relating to the Milwaukee parental choice program.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: s. 227.11 (2) (a), Stats.

Statute interpreted: s. 119.23, Stats.

2001 Act 16 modified provisions under s. 119.23, Stats., relating to the Milwaukee Parental Choice Program (MPCP). To reflect the statutory changes Chapter PI 35 would be modified to:

- Change the date a private school must annually submit notice of its intent to participate in the program from May 1 to February 1.
- Reduce payments from MPCP summer school by 60%.

Other changes would be made to better ensure that participating schools are safe and make it easier for parents to participate in the program, including

- Creating optional open application periods for participating private schools starting in the 2002-03 school year.
- Changing the dates student applications are due at the department.
- Stating that submission of temporary permits would not meet the safety requirements of this program.

In addition, the following technical modifications would be made to Chapter PI 35:

- Define in rule, rather than by cross-reference to statute, "pupils enrolled" and "membership."
- Eliminate conflicting language related to the attendance standard that schools can meet to continue participation in the program in the following school year.
- Clarify the language related to counting students for the purpose of payment under the program and the requirement to return checks received by the school students not present on the count dates.
- Modify references to the name of the program in the rule to make it consistent with the statutory name of the program.

SECTION 1. Chapter PI 35 (title) is amended to read:

Chapter PI 35

MILWAUKEE PARENTAL PRIVATE SCHOOL CHOICE PROGRAM

SECTION 2. PI 35.01 is amended to read:

PI 35.01 Purpose. Under s. 119.23 (2) (a), Stats., any qualified pupil in grades kindergarten to 12 who resides within a city may attend, at no charge, any participating private school located in the city. Participation in the private

~~school Milwaukee parental~~ choice program is limited to 15% of the school district's membership as specified under s. 119.23 (2) (b), Stats. This chapter establishes approval criteria and requirements for private schools participating in the ~~private school Milwaukee parental~~ choice program, and requirements for receipt of state aid for those private schools under s. 119.23 (4), Stats., and requirements for schools operating under ch. 119, Stats.

SECTION 3. PI 35.02 (15) is repealed.

SECTION 4. PI 35.02 (12), (13), and (14) are renumbered PI 35.02 (13), (14) and (15).

SECTION 5. PI 35.02 (12) is created to read:

PI 35.02 (12) "Milwaukee parental choice program" or "choice program" means the program established under s. 119.23, Stats.

SECTION 6. PI 35.02 (8), (11) and (16) are amended to read:

PI 35.02 (8) "Enrollment" or "pupils enrolled" ~~has the meaning defined under s. 121.004 (7) (a) to (c), Stats.~~ means the total number of pupils, as expressed by official enrollments, except as provided in pars. (a) to (c). If such total contains a fraction, it shall be expressed as the nearest whole number.

(a) A first grade pupil may be counted only if the pupil attains the age required under s. 118.14, Stats., for first grade admission.

(b) 1. A pupil enrolled in kindergarten may be counted only if the pupil attains the age required under s. 118.14, Stats., for kindergarten admission. A kindergarten pupil shall be counted as one-half pupil except that:

a. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for 5 days a week for an entire school year shall be counted as one pupil.

b. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for less than 5 days a week for an entire school year shall be counted as the result obtained by multiplying the number of hours in each day in which the pupil is enrolled by the total number of days for which the pupil is enrolled, and dividing the result by the product of the number of hours of attendance per day required of first grade pupils in the school district operating under ch. 119, Stats., multiplied by 180.

2. In subd. 1. a. and b., "full-day" means the length of the school day required of first grade pupils in the school district operating the 5-year-old kindergarten program under ch. 119, Stats.

(c) 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) 2., Stats., shall be counted as a 0.6 pupil if the program annually provides at least 87.5 additional hours of outreach activities.

(11) "Membership" ~~has the meaning defined under s. 121.004 (5), Stats.~~ means the sum of the average number of pupils enrolled in the Milwaukee parental choice program as reported under PI 35.04 (6) (a) and the summer average daily membership equivalent as defined under PI 35.043 (1) (c).

(16) "Pupil Average attendance rate" means the rate obtained by dividing the aggregate number of full-time equivalent days of actual pupils' attendance, by the aggregate number of full-time equivalent days on which school was held.

SECTION 7. PI 35.025 is amended to read:

PI 35.025 **Pupil assignment council requirements.** The pupil assignment council created under s. 119.23 (8), Stats., shall meet annually by April 15 to designate a date by which all private schools in the program must have at least one open enrollment period for choice program applicants for the school year beginning the following September. The pupil assignment council shall also recommend to the state superintendent a method for ensuring that pupils will be accepted on a random basis.

SECTION 8. PI 35.03 (1) (d) is created to read:

PI 35.03 (1) (d) The open application periods during which the private school will accept Milwaukee parental choice program student applications.

SECTION 9. PI 35.03 (1) (intro.), (c) and the note following, (2) (intro.), (3), (5), (6) (a) (intro.) and the note following are amended to read:

PI 35.03 (1) **NOTICE OF INTENT TO PARTICIPATE.** (intro.) By May February 1 each year a private school which intends to participate in the ~~private school~~ Milwaukee parental choice program the following school year shall submit to the state superintendent a notice of intent to participate. The notice of intent shall include all of the following:

(c) The number of pupils participating in the ~~private school~~ choice program for which the private school has space.

Note: The Notice of School's Intent to Participate Form may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

(2) **PROCEDURAL REQUIREMENTS.** (intro.) A private school that participates in the ~~private school~~ Milwaukee parental choice program shall do all of the following:

(3) **HEALTH AND SAFETY REQUIREMENTS.** The administrator of a school in the ~~private school~~ Milwaukee parental choice program shall ensure that the school is meeting the requirements of s. 119.23 (2), Stats., regarding health and safety laws and codes for schools by filing with the department a copy of the private school's current certificate of occupancy issued by the city of Milwaukee. The administrator shall submit the certificate of occupancy under this subsection to the department no later than August 1 prior to the first school year of participation in the choice program, or by no later than May 1 if the school is beginning participation in the choice program with summer school. The administrator shall file subsequent certificates of occupancy as issued by the city of Milwaukee. An administrator that files a copy of a temporary certificate of occupancy issued by the city of Milwaukee will not meet the requirements of this subsection. A private school that fails to meet the requirements of this subsection may not participate in the program.

(5) **CONTINUING ELIGIBILITY.** (a) A private school participating in the ~~private school~~ Milwaukee parental choice program shall submit a report to the department by October 15 each school year indicating the criteria to be used in meeting the continuing eligibility standards specified under s. 119.23 (7) (a), Stats.

(b) A private school participating in the ~~private school~~ Milwaukee parental choice program shall submit a report to the department by June 30 each school year providing evidence that the school has in that school year met one of the following criteria:

1. At least 70% of the pupils in the ~~private school~~ Milwaukee parental choice program shall advance one grade level each year. For pupils attending a ~~private school~~ Milwaukee parental choice program in grades 9 through 12, "advance one grade level" means a successful completion of at least 4 credits or the equivalent as approved by the state superintendent during each school year. For pupils attending a ~~private school~~ Milwaukee parental choice program in grades kindergarten through 8, each participating private school shall ensure that each pupil in the program who is advanced one grade level has met one of the following criteria:

a. Achievement of 70% of the instructional objectives specific to each grade level in reading, mathematics and language arts which are introduced during each semester of the current school year. Under this subparagraph, a private school shall do all of the following: establish written objectives and performance standards for reading, mathematics and language arts for each grade level in which pupils are enrolled in the ~~private school~~ Milwaukee parental choice program; document written criteria and methodology for evaluating pupil performance for each objective and document each pupil's performance using the evaluation method specified in this subparagraph in a written record and maintain these records for 3 years.

b. Achievement of at least .08 grade equivalent increase for each month between the spring or fall and spring administration of the standardized achievement test. Under this subparagraph, a private school shall do all of the following: report, by October 15, to the state superintendent the tests to be administered and the dates on which they will be administered, and maintain each student's answer sheets and score information for 3 years.

2. The private school's average attendance rate for pupils in the ~~private school~~ Milwaukee parental choice program is at least 90%. The report required under sub. (5) (a) shall include the method used by the private school in determining the average attendance rate for pupils.

3. At least 80% of the pupils in the ~~private school~~ Milwaukee parental choice program demonstrate significant academic progress.

4. At least 70% of the families of pupils in the ~~private school~~ Milwaukee parental choice program meet parental involvement criteria established by the private school.

(6) (a) (intro.) A private school participating in the ~~private school~~ Milwaukee parental choice program may only charge pupils participating under the program fees that may be charged by public schools to indigent pupils. A private school under this subsection may charge reasonable fees for the following:

Note: All pupils participating under the ~~private school~~ Milwaukee parental choice program are indigent by definition under s. 119.23 (2) (a) 1., Stats., since the program is targeted exclusively to low-income pupils whose total family income does not exceed an amount equal to 1.75 times the poverty level. One available remedy for collecting a valid nonpaid fee is small claims court.

SECTION 10. PI 35.04 (4m) is created to read:

PI 35.04 (4m) Annually, by August 1, a private school under this section shall submit to the department a copy of the accepted student applications it received from February through July. The private school shall ensure the submitted

student applications are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

SECTION 11. PI 35.04 (1), (2), (5) (a) and (b), (6) (a) to (c), (7) (a) 2., the following note, and (8) are amended to read:

(1) A private school that participates in the ~~private school~~ Milwaukee parental choice program shall accept pupils on a random basis in accordance with the method submitted under s. PI 35.03 (1) (a) and approved under s. PI 35.05 (5). A private school may give preference to siblings of pupils already enrolled in or accepted into the choice program at that private school.

(2) A private school under this section shall ~~establish open application periods for the following school year. The open application period shall be at least 14 days in length and may not begin prior to January 1.~~ select which of the open application periods listed on the notice of intent to participate form it will accept Milwaukee parental choice program student applications. A private school may not amend, after February 1, the open application periods selected on its notice of intent to participate form for the following school year.

(5) (a) Submit to the department a copy of the accepted applications ~~that correspond to the class list submitted under par. (b).~~ it received during August. The private school shall ensure the submitted applications are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

(b) Submit a class list of the ~~private school~~ choice program pupils, alphabetically by last name, and separated by grade level, that corresponds to the accepted applications submitted under ~~par. sub. (4m) and par. (a).~~

(6) (a) Annually by October 1 and February 1, submit to the department a membership report of the total number of pupils enrolled in the private school and the number of pupils enrolled in the ~~private school~~ Milwaukee parental choice program on the 3rd Friday of September and the 2nd Friday of January of the current school year. The membership report form shall be provided by the department.

(b) Submit to the department with the membership report under par. (a), a class list of the ~~private school~~ choice program pupils, alphabetically by last name, and separated by grade level. The class list shall correspond to the membership report under par. (a).

(c) Submit to the department with the membership report under par. (a), copies of any accepted applications for pupils included in the class list under par. (b) that were not previously reported under ~~sub. (4m) and (5) (a).~~ The private school shall ensure that the applications submitted under this paragraph are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

(7) (a) 2. The pupil is absent on the date specified but has attended for instruction at least one day during the school term prior to the date specified and attends for instruction at least one day after the date specified and has not enrolled in another private school or in a Wisconsin public school district during the period of absence.

Note: The pupil count report may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

(8) A private school under this section shall return to the department any checks received under s. 119.23 (4), Stats., for students that did not meet the requirements under (7) (a) or that are not cashed within 45 days of their receipt at the school.

SECTION 12. PI 35.043 (1) (c), (3) (a) and (b), (4) and the note following (6) are amended to read:

PI 35.043 (1) (c) "Membership" for summer school payments means the school's total minutes of enrollment of eligible choice program pupils in academic summer classes or laboratory periods necessary for academic purposes.

(3) (a) The pupil was enrolled in the ~~private school~~ Milwaukee parental choice program on the 2nd Friday of January in the school term immediately preceding that summer.

(b) The pupil's application has been accepted into the ~~private school~~ Milwaukee parental choice program at that private school in the school term immediately following that summer.

(4) The summer school payment due to the private school shall be calculated according to s. 119.23 (4m), Stats. To determine payment, the private school shall divide the school's total summer school minutes of enrollment for their choice program pupils by 48,600; round that quotient to the nearest whole number; and multiply the resulting whole number by the voucher amount calculated under s. 119.23 (4) (b) 2., Stats., for the school year immediately following the summer school: and multiply the result by 40%.

Note: The pupil count report and summer school membership report may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

SECTION 13. PI 35.045 (1) (intro.), (c), (e) (intro.) and 3. and the note following, (4) (b) and (5) are amended to read:

PI 35.045 (1) (intro.) Annually, by September 1 following a school year of operation under this program, a private school participating in the ~~private school~~ Milwaukee parental choice program shall submit, on a form provided by the department, a financial audit report accompanied by the auditor's opinion required under s. PI 35.046 (1) (a) containing the following information for the previous school year:

(c) Enrollment and full-time equivalent membership for all pupils and for pupils participating in the ~~private school~~ Milwaukee parental choice program.

(e) (intro.) The payment adjustment amount resulting from the private school's participation in the ~~private school~~ Milwaukee parental choice program during the previous school year. The payment adjustment amount shall be determined as follows:

3. The private school's membership of pupils participating in the ~~private school~~ Milwaukee parental choice program shall be multiplied by the lesser of the amount determined under s. 119.23 (4) (b) 2., Stats., or the private school's per pupil cost under s. 119.23 (4) (b) 1., Stats. If the result is greater than the amount of the ~~private school~~ choice program payments retained by the school, an adjustment payment shall be made to the private school within 60 days of the financial audit report certified by the department. If the result is less than the amount of the ~~private school~~ choice program

payments retained by the private school, the private school shall refund the amount of any overpayment to the department within 60 days of notification.

Note: The Financial Reporting Form may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

(4) (b) Capital outlay items previously included in cost computations may not again be included as a cost by successor ownership of the school, nor upon purchase by or transfer to other private schools participating in the ~~private school~~ Milwaukee parental choice program.

(5) A private school participating in the ~~private school~~ Milwaukee parental choice program for the first time may include in cost calculations start-up costs incurred prior to the start of the fiscal period.

SECTION 14. PI 35.046 (1) (b), (2) (b) 2., 3., 4., and 6. are amended to read:

PI 35.046 (1) (b) Provide the auditor with a listing of all kindergarten through grade 12 pupils enrolled in the school by grade level and classroom. The listing provided under this paragraph shall identify pupils participating in the ~~private school~~ Milwaukee parental choice program.

(2) (b) 2. Verify enrollment reported on the membership report under s. PI 35.04 for all ~~private school~~ Milwaukee parental choice program pupils against the private school's official attendance records.

3. Select a sample of at least 60 ~~private school~~ choice program pupils included on the private school's official enrollment records and verification against classroom records. The sample shall include records from each classroom. If the private school has a ~~private school~~ Milwaukee parental choice program enrollment of less than 60 pupils, all such pupil records shall be tested. If an exception is identified the auditor shall extend the sample test in increments of 60 records until no additional exceptions are found or the official enrollment records for all ~~private school~~ choice program pupils have been verified against classroom records.

4. Select a sample of at least 60 other pupils identified as not participating in the ~~private school~~ Milwaukee parental choice program from classroom records and determine that selected pupils were included in reported membership enrollments under s. PI 35.04. The sample shall include records from each classroom. If an exception is identified the auditor shall extend the sample test in increments of 60 records until no additional exceptions are found or all classroom records have been verified as properly included in reported enrollments.

6. Reconcile tuition revenues and tuition waiver pupils against listings of pupils identified as not participating in the ~~private school~~ Milwaukee parental choice program.

SECTION 15. PI 35.05 (3) (a) and (b) 1. are amended to read:

PI 35.05 (3) (a) The number of pupils for which the private school shall receive payment shall be determined by ~~s. 121.004 (7) and (8), Stats.~~ ss. PI 35.02 (8) and PI 35.043 (1) (c).

(b) 1. The September payment shall be based on the number of pupils receiving instruction at the beginning of the school year as indicated on the ~~class list~~ preliminary membership report and the accepted, eligible applications for those pupils submitted under s. PI 35.04 (5) and the amount per pupil determined under s. 119.23 (4), Stats., multiplied by 25%.

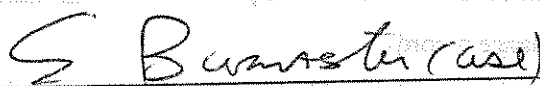
FINDING OF EMERGENCY

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

In the past, private schools that intended to participate in the Milwaukee parental choice program were required to submit to the state superintendent a notice of intent to participate by May 1. 2001 Wisconsin Act 16 changed the submission date of the notice from May 1 to February 1. The rules allow a private school to choose from a variety of student application periods. The student application period chosen by the private school must be indicated on its notice. Because the notice is due at the department by February 1, emergency rules must be in place as soon as possible.

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 28th day of January, 2002


Elizabeth Burmaster
State Superintendent

FISCAL ESTIMATE FORM

2001 Session

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB #
Introduction #
Admin. Rule # Chapter PI 35

Subject
Milwaukee Parental Private School Choice Program

Fiscal Effect (See below)
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs (See below)

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory
 3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG _____
 SEG-S

Affected Ch. 20 Appropriations
 s. 20.255 (2) (ac) and (fu)

Assumptions Used in Arriving at Fiscal Estimate:

Local and State
 The rules make several modifications to the Milwaukee Parental Choice Program (MPCP). It is assumed the only rule modification that will have a fiscal effect is the reduction in the MPCP summer school payment made as a result of 2001 Wisconsin Act 16.

In FY02, prior to the enactment of Act 16, the MPCP summer school payment was calculated by multiplying the FTE summer school choice membership (158 FTE) by the per pupil payment of \$5,553 totaling approximately \$877,400. Act 16 requires the per pupil payment amount for summer school to be multiplied by 40%, reducing the summer school payment by 60%. For example, if the new calculation under Act 16, were applied to the FY02 summer school payment, \$350,900 (\$5,553 X 40% X 158 FTE) would have been paid. This amount is \$526,500 (60%) less than what was paid using the previous formula (\$877,400).

Under current law, 45% of the MPCP's cost is funded from a reduction in general equalization to Milwaukee Public Schools (MPS) and 55% from state general purpose revenue. MPS can replace the reduction in state aid with an increase in its property tax levy. Therefore, this provision:

- Could allow MPS to reduce its levy by \$236,925 (\$526,500 X 45%).
- Would allow the state to provide \$289,575 less in funding (\$526,500 X 55%).

Private Schools
 As described above, Act 16 will reduce payments made to private schools offering MPCP summer school by 60%.

Agency
 These rules will not have a fiscal effect on agency revenues or costs.

Long-Range Fiscal Implications:

<p>Prepared By: Lori Slauon 267-9127 Department of Public Instruction</p>	<p>Authorized Signature/ Telephone No.  Michael Bormett (608) 266-2804</p>	<p>Date 1/29/03</p>
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State of Wisconsin
Department of Public Instruction

Mailing Address: P.O. Box 7841, Madison, WI 53707-7841
125 South Webster Street, Madison, WI 53702
(608) 266-3390 TDD (608) 267-2427 FAX (608) 267-1052
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APR 16 2001

John T. Benson
State Superintendent

Steven B. Dold
Deputy State Superintendent

April 9, 2001

Dear Colleague:

The Department of Public Instruction will hold a public hearing to consider the amending of Chapter PI 35, proposed permanent rules, relating to a building usage charge under the Milwaukee Parental Choice Program. The hearing will be held as follows:

DATE AND TIME

May 15, 2001
4:00 - 6:00 p.m.

LOCATION

Milwaukee
Milwaukee Area Technical College
700 W. State Street
Room S120

The hearing site is fully accessible to people with disabilities. If you require reasonable accommodation to access the meeting, please call Tricia Collins, Milwaukee Parental Choice Administrator, at (608) 266-2853 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

The administrative rule is available on the internet at <http://www.dpi.state.wi.us/dpi/dfm/pb/choicechrg.html>. For a copy of the proposed rule and the fiscal estimate, please contact Ms. Collins or Lori Slauson, Administrative Rules and Federal Grants Coordinator, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707. Written comments on the proposed rules received by Ms. Slauson at the above address no later than May 21, 2001, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

The proposed rules will provide an option for private schools participating in the Milwaukee Parental Choice Program to claim the cost for facilities provided by a related party. Because such costs are currently calculated in a variety of ways by participating private schools, this modification is needed for consistency. The building usage charge shall be charged annually at 10.5% of the appraised market value of the buildings, sites and improvements. If a private school chooses to use the building usage charge, the cost must be claimed on the financial information report that is submitted annually on September 1. Also, previous reports submitted for the 1998-1999, 1999-2000, and 2000-2001 school years must be amended to reflect the new cost calculation. A private school has until September 1, 2002, to claim a building usage charge.

The proposed rules will also delete the term "annually" when it requires a private school to "annually make an irrevocable election . . ." since it is not the intent nor current practice to make an irrevocable decision on an annual basis.

Sincerely,

Steven B. Dold
Deputy State Superintendent

Memorandum

STATE OF WISCONSIN
DEPARTMENT OF PUBLIC INSTRUCTION



DATE: January 17, 2002
TO: Senator Robson and Representative Grothman, Co-Chairs JCRAR
FROM: Lori L. Slauson, Administrative Rules and Federal Grants Coordinator
SUBJECT: Emergency Rules

Attached for your review are emergency rules relating to the Milwaukee parental choice program. The statement of emergency is included in the rule draft. The department will be submitting these rules as proposed permanent rules by the end of February.

The department will submit these emergency rules to be published in the Wisconsin State Journal on January 28, 2002. If you have any questions, please call me at 267-9127.

Thank you.

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
ADOPTING EMERGENCY RULES**

The state superintendent of public instruction hereby proposes to repeal PI 35.02 (15); to renumber PI 35.02 (12), (13) and (14); to amend PI 35 (title), PI 35.01, PI 35.02 (8), (11) and (16), PI 35.025, PI 35.03 (1) (intro.), (c) and the note following, (2) (intro.), (3), (5), (6) (a) and the note following, PI 35.04 (1), (2), (5) (a) and (b), (6) (a) to (c), (7) (a) 2., the following note, and (8), PI 35.043 (1) (c), (3) (a) and (b), (4) and the note following (6), PI 35.045 (1) (intro.), (c), (e) (intro.) and 3. and the note following, (4) (b) and (5), PI 35.046 (1) (b), (2) (b) 2., 3., 4., and 6., and PI 35.05 (3) (a) and (b) 1.; and to create PI 35.02 (12), PI 35.03 (1) (d), and PI 35.04 (4m), relating to the Milwaukee parental choice program.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: s. 227.11 (2) (a), Stats.

Statute interpreted: s. 119.23, Stats.

2001 Act 16 modified provisions under s. 119.23, Stats., relating to the Milwaukee Parental Choice Program (MPCP). To reflect the statutory changes Chapter PI 35 would be modified to:

- Change the date a private school must annually submit notice of its intent to participate in the program from May 1 to February 1.
- Reduce payments from MPCP summer school by 40%.

Other changes would be made to better ensure that participating schools are safe and make it easier for parents to participate in the program, including

- Creating optional open application periods for participating private schools starting in the 2002-03 school year.
- Changing the dates student applications are due at the department.
- Stating that submission of temporary permits would not meet the safety requirements of this program.

In addition, the following technical modifications would be made to Chapter PI 35:

- Define in rule, rather than by cross-reference to statute, "pupils enrolled" and "membership."
- Eliminate conflicting language related to the attendance standard that schools can meet to continue participation in the program in the following school year.
- Clarify the language related to counting students for the purpose of payment under the program and the requirement to return checks received by the school students not present on the count dates.

Modify references to the name of the program in the rule to make it consistent with the statutory name of the program.

SECTION 1. Chapter PI 35 (title) is amended to read:

Chapter PI 35

MILWAUKEE PARENTAL PRIVATE SCHOOL CHOICE PROGRAM

SECTION 2. PI 35.01 is amended to read:

PI 35.01 Purpose. Under s. 119.23 (2) (a), Stats., any qualified pupil in grades kindergarten to 12 who resides within a city may attend, at no charge, any participating private school located in the city. Participation in the private

school Milwaukee parental choice program is limited to 15% of the school district's membership as specified under s. 119.23 (2) (b), Stats. This chapter establishes approval criteria and requirements for private schools participating in the private school Milwaukee parental choice program, and requirements for receipt of state aid for those private schools under s. 119.23 (4), Stats., and requirements for schools operating under ch. 119, Stats.

SECTION 3. PI 35.02 (15) is repealed.

SECTION 4. PI 35.02 (12), (13), and (14) are renumbered PI 35.02 (13), (14) and (15).

SECTION 5. PI 35.02 (12) is created to read:

PI 35.02 (12) "Milwaukee parental choice program" or "choice program" means the program established under s. 119.23, Stats.

SECTION 6. PI 35.02 (8), (11) and (16) are amended to read:

PI 35.02 (8) "Enrollment" or "pupils enrolled" ~~has the meaning defined under s. 121.004 (7) (a) to (em), Stats.~~ means the total number of pupils, as expressed by official enrollments, except as provided in pars. (a) to (c). If such total contains a fraction, it shall be expressed as the nearest whole number.

(a) A first grade pupil may be counted only if the pupil attains the age required under s. 118.14, Stats., for first grade admission.

(b) 1. A pupil enrolled in kindergarten may be counted only if the pupil attains the age required under s. 118.14, Stats., for kindergarten admission. A kindergarten pupil shall be counted as one-half pupil except that:

a. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for 5 days a week for an entire school year shall be counted as one pupil.

b. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for less than 5 days a week for an entire school year shall be counted as the result obtained by multiplying the number of hours in each day in which the pupil is enrolled by the total number of days for which the pupil is enrolled, and dividing the result by the product of the number of hours of attendance per day required of first grade pupils in the school district operating under ch. 119, Stats., multiplied by 180.

2. In subd. 1. a. and b., "full-day" means the length of the school day required of first grade pupils in the school district operating the 5-year-old kindergarten program under ch. 119, Stats.

(c) 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) 2., Stats., shall be counted as a 0.6 pupil if the program annually provides at least 87.5 additional hours of outreach activities.

(11) "Membership" ~~has the meaning defined under s. 121.004 (5), Stats.~~ means the sum of the average number of pupils enrolled in the Milwaukee parental choice program as reported under PI 35.04 (6) (a) and the summer average daily membership equivalent as defined under PI 35.043 (1) (c).

(16) "Pupil Average attendance rate" means the rate obtained by dividing the aggregate number of full-time equivalent days of actual pupils' attendance, by the aggregate number of full-time equivalent days on which school was held.

SECTION 7. PI 35.025 is amended to read:

PI 35.025 Pupil assignment council requirements. The pupil assignment council created under s. 119.23 (8), Stats., shall meet annually by April 15 to designate a date by which all private schools in the program must have at least one open enrollment period for choice program applicants for the school year beginning the following September. The pupil assignment council shall also recommend to the state superintendent a method for ensuring that pupils will be accepted on a random basis.

SECTION 8. PI 35.03 (1) (d) is created to read:

PI 35.03 (1) (d) The open application periods during which the private school will accept Milwaukee parental choice program student applications:

SECTION 9. PI 35.03 (1) (intro.), (c) and the note following, (2) (intro.), (3), (5), (6) (a) (intro.) and the note following are amended to read:

PI 35.03 (1) NOTICE OF INTENT TO PARTICIPATE. (intro.) By ~~May~~ February 1 each year a private school which intends to participate in the ~~private school~~ Milwaukee parental choice program the following school year shall submit to the state superintendent a notice of intent to participate. The notice of intent shall include all of the following:

(c) The number of pupils participating in the ~~private school~~ choice program for which the private school has space.

Note: The Notice of School's Intent to Participate Form may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

(2) **PROCEDURAL REQUIREMENTS.** (intro.) A private school that participates in the ~~private school~~ Milwaukee parental choice program shall do all of the following:

(3) **HEALTH AND SAFETY REQUIREMENTS.** The administrator of a school in the ~~private school~~ Milwaukee parental choice program shall ensure that the school is meeting the requirements of s. 119.23 (2), Stats., regarding health and safety laws and codes for schools by filing with the department a copy of the private school's current certificate of occupancy issued by the city of Milwaukee. The administrator shall submit the certificate of occupancy under this subsection to the department no later than August 1 prior to the first school year of participation in the choice program, or by no later than May 1 if the school is beginning participation in the choice program with summer school. The administrator shall file subsequent certificates of occupancy as issued by the city of Milwaukee. An administrator that files a copy of a temporary certificate of occupancy issued by the city of Milwaukee will not meet the requirements of this subsection. A private school that fails to meet the requirements of this subsection may not participate in the program.

(5) **CONTINUING ELIGIBILITY.** (a) A private school participating in the ~~private school~~ Milwaukee parental choice program shall submit a report to the department by October 15 each school year indicating the criteria to be used in meeting the continuing eligibility standards specified under s. 119.23 (7) (a), Stats.

(b) A private school participating in the ~~private school~~ Milwaukee parental choice program shall submit a report to the department by June 30 each school year providing evidence that the school has in that school year met one of the following criteria:

1. At least 70% of the pupils in the ~~private school~~ Milwaukee parental choice program shall advance one grade level each year. For pupils attending a ~~private school~~ Milwaukee parental choice program in grades 9 through 12, "advance one grade level" means a successful completion of at least 4 credits or the equivalent as approved by the state superintendent during each school year. For pupils attending a ~~private school~~ Milwaukee parental choice program in grades kindergarten through 8, each participating private school shall ensure that each pupil in the program who is advanced one grade level has met one of the following criteria:

a. Achievement of 70% of the instructional objectives specific to each grade level in reading, mathematics and language arts which are introduced during each semester of the current school year. Under this subparagraph, a private school shall do all of the following: establish written objectives and performance standards for reading, mathematics and language arts for each grade level in which pupils are enrolled in the ~~private school~~ Milwaukee parental choice program; document written criteria and methodology for evaluating pupil performance for each objective and document each pupil's performance using the evaluation method specified in this subparagraph in a written record and maintain these records for 3 years.

b. Achievement of at least .08 grade equivalent increase for each month between the spring or fall and spring administration of the standardized achievement test. Under this subparagraph, a private school shall do all of the following: report, by October 15, to the state superintendent the tests to be administered and the dates on which they will be administered, and maintain each student's answer sheets and score information for 3 years.

2. The private school's average attendance rate for pupils in the ~~private school~~ Milwaukee parental choice program is at least 90%. ~~The report required under sub. (5) (a) shall include the method used by the private school in determining the average attendance rate for pupils.~~

3. At least 80% of the pupils in the ~~private school~~ Milwaukee parental choice program demonstrate significant academic progress.

4. At least 70% of the families of pupils in the ~~private school~~ Milwaukee parental choice program meet parental involvement criteria established by the private school.

(6) (a) (intro.) A private school participating in the ~~private school~~ Milwaukee parental choice program may only charge pupils participating under the program fees that may be charged by public schools to indigent pupils. A private school under this subsection may charge reasonable fees for the following:

Note: All pupils participating under the ~~private school~~ Milwaukee parental choice program are indigent by definition under s. 119.23 (2) (a) 1., Stats., since the program is targeted exclusively to low-income pupils whose total family income does not exceed an amount equal to 1.75 times the poverty level. One available remedy for collecting a valid nonpaid fee is small claims court.

SECTION 10. PI 35.04 (4m) is created to read:

PI 35.04 (4m) Annually, by August 1, a private school under this section shall submit to the department a copy of the accepted student applications it received from February through July. The private school shall ensure the submitted

student applications are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

SECTION 11. PI 35.04 (1), (2), (5) (a) and (b), (6) (a) to (c), (7) (a) 2., the following note, and (8) are amended to read:

(1) A private school that participates in the ~~private school~~ Milwaukee parental choice program shall accept pupils on a random basis in accordance with the method submitted under s. PI 35.03 (1) (a) and approved under s. PI 35.05 (5). A private school may give preference to siblings of pupils already enrolled in or accepted into the choice program at that private school.

(2) A private school under this section shall ~~establish open application periods for the following school year. The open application period shall be at least 14 days in length and may not begin prior to January 1. select which of the open application periods listed on the notice of intent to participate form it will accept Milwaukee parental choice program student applications. A private school may not amend, after February 1, the open application periods selected on its notice of intent to participate form for the following school year.~~

(5) (a) Submit to the department a copy of the accepted applications ~~that correspond to the class list submitted under par. (b)-~~ it received during August. The private school shall ensure the submitted applications are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

(b) Submit a class list of the ~~private school~~ choice program pupils, alphabetically by last name, and separated by grade level, that corresponds to the accepted applications submitted under ~~par. sub. (4m) and par. (a).~~

(6) (a) Annually by October 1 and February 1, submit to the department a membership report of the total number of pupils enrolled in the private school and the number of pupils enrolled in the ~~private school~~ Milwaukee parental choice program on the 3rd Friday of September and the 2nd Friday of January of the current school year. The membership report form shall be provided by the department.

(b) Submit to the department with the membership report under par. (a), a class list of the ~~private school~~ choice program pupils, alphabetically by last name, and separated by grade level. The class list shall correspond to the membership report under par. (a).

(c) Submit to the department with the membership report under par. (a), copies of any accepted applications for pupils included in the class list under par. (b) that were not previously reported under sub. (4m) and (5) (a). The private school shall ensure that the applications submitted under this paragraph are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

(7) (a) 2. The pupil is absent on the date specified but has attended for instruction at least one day during the school term prior to the date specified and attends for instruction at least one day after the date specified and has not enrolled in another private school or in a Wisconsin public school district during the period of absence.

Note: The pupil count report may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

(8) A private school under this section shall return to the department any checks received under s. 119.23 (4), Stats., for students that did not meet the requirements under (7) (a) or that are not cashed within 45 days of their receipt at the school.

SECTION 12. PI 35.043 (1) (c), (3) (a) and (b), (4) and the note following (6) are amended to read:

PI 35.043 (1) (c) "Membership" for summer school payments means the school's total minutes of enrollment of eligible choice program pupils in academic summer classes or laboratory periods necessary for academic purposes.

(3) (a) The pupil was enrolled in the ~~private school~~ Milwaukee parental choice program on the 2nd Friday of January in the school term immediately preceding that summer.

(b) The pupil's application has been accepted into the ~~private school~~ Milwaukee parental choice program at that private school in the school term immediately following that summer.

(4) The summer school payment due to the private school shall be calculated according to s. 119.23 (4m), Stats. To determine payment, the private school shall divide the school's total summer school minutes of enrollment for their choice program pupils by 48,600; round that quotient to the nearest whole number; and multiply the resulting whole number by the voucher amount calculated under s. 119.23 (4) (b) 2., Stats., for the school year immediately following the summer school; and multiply the result by 40%.

Note: The pupil count report and summer school membership report may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

SECTION 13. PI 35.045 (1) (intro.), (c), (e) (intro.) and 3. and the note following (4) (b) and (5) are amended to read:

PI 35.045 (1) (intro.) Annually, by September 1 following a school year of operation under this program, a private school participating in the ~~private school~~ Milwaukee parental choice program shall submit, on a form provided by the department, a financial audit report accompanied by the auditor's opinion required under s. PI 35.046 (1) (a) containing the following information for the previous school year:

(c) Enrollment and full-time equivalent membership for all pupils and for pupils participating in the ~~private school~~ Milwaukee parental choice program.

(e) (intro.) The payment adjustment amount resulting from the private school's participation in the ~~private school~~ Milwaukee parental choice program during the previous school year. The payment adjustment amount shall be determined as follows:

3. The private school's membership of pupils participating in the ~~private school~~ Milwaukee parental choice program shall be multiplied by the lesser of the amount determined under s. 119.23 (4) (b) 2., Stats., or the private school's per pupil cost under s. 119.23 (4) (b) 1., Stats. If the result is greater than the amount of the ~~private school~~ choice program payments retained by the school, an adjustment payment shall be made to the private school within 60 days of the financial audit report certified by the department. If the result is less than the amount of the ~~private school~~ choice program

payments retained by the private school, the private school shall refund the amount of any overpayment to the department within 60 days of notification.

Note: The Financial Reporting Form may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

(4) (b) Capital outlay items previously included in cost computations may not again be included as a cost by successor ownership of the school, nor upon purchase by or transfer to other private schools participating in the ~~private school~~ Milwaukee parental choice program.

(5) A private school participating in the ~~private school~~ Milwaukee parental choice program for the first time may include in cost calculations start-up costs incurred prior to the start of the fiscal period.

SECTION 14. PI 35.046 (1) (b), (2) (b) 2., 3., 4., and 6. are amended to read:

PI 35.046 (1) (b) Provide the auditor with a listing of all kindergarten through grade 12 pupils enrolled in the school by grade level and classroom. The listing provided under this paragraph shall identify pupils participating in the ~~private school~~ Milwaukee parental choice program.

(2) (b) 2. Verify enrollment reported on the membership report under s. PI 35.04 for all ~~private school~~ Milwaukee parental choice program pupils against the private school's official attendance records.

3. Select a sample of at least 60 ~~private school~~ choice program pupils included on the private school's official enrollment records and verification against classroom records. The sample shall include records from each classroom. If the private school has a ~~private school~~ Milwaukee parental choice program enrollment of less than 60 pupils, all such pupil records shall be tested. If an exception is identified the auditor shall extend the sample test in increments of 60 records until no additional exceptions are found or the official enrollment records for all ~~private school~~ choice program pupils have been verified against classroom records.

4. Select a sample of at least 60 other pupils identified as not participating in the ~~private school~~ Milwaukee parental choice program from classroom records and determine that selected pupils were included in reported membership enrollments under s. PI 35.04. The sample shall include records from each classroom. If an exception is identified the auditor shall extend the sample test in increments of 60 records until no additional exceptions are found or all classroom records have been verified as properly included in reported enrollments.

6. Reconcile tuition revenues and tuition waiver pupils against listings of pupils identified as not participating in the ~~private school~~ Milwaukee parental choice program.

SECTION 15. PI 35.05 (3) (a) and (b) 1. are amended to read:

PI 35.05 (3) (a) The number of pupils for which the private school shall receive payment shall be determined by s. ~~121.004 (7) and (8), Stats. ss. PI 35.02 (8) and PI 35.043 (1) (c).~~

(b) 1. The September payment shall be based on the number of pupils receiving instruction at the beginning of the school year as indicated on the ~~class list~~ preliminary membership report and the accepted, eligible applications for those pupils submitted under s. PI 35.04 (5) and the amount per pupil determined under s. 119.23 (4), Stats., multiplied by 25%.

FINDING 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. The facts constituting the emergency are as follows:

In the past, private schools that intended to participate in the Milwaukee parental choice program were required to submit to the state superintendent a notice of intent to participate by May 1. 2001 Wisconsin Act 16 changed the submission date of the notice from May 1 to February 1. The rules allow a private school to choose from a variety of student application periods. The student application period chosen by the private school must be indicated on its notice. Because the notice is due at the department by February 1, emergency rules must be in place as soon as possible.

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 _____ day of _____, 2002

Elizabeth Burmaster
State Superintendent