☞ **03hr_SC-EEE_sb0363_pt01**

☞ **Details: See also SB406**

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2003-04
(session year)

Senate
(Assembly, Senate or Joint)

Committee on Education, Ethics and Elections...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

Senate

Record of Committee Proceedings

Committee on Education, Ethics and Elections

Senate Bill 363

Relating to: the Milwaukee Parental Choice Program and granting rule-making authority.

By Senators Moore, Jauch, Carpenter, Coggs, Erpenbach, Hansen, Robson, Chvala, Decker, Wirch, Breske, M. Meyer and Plale; cosponsored by Representatives Jeskewitz, Hines, Sinicki, Morris, Colon, Taylor, Turner, Cullen, J. Lehman, Richards, Zepnick, Pocan, Berceau and Miller.

December 30, 2003 Referred to Committee on Education, Ethics and Elections.

February 25, 2004 **PUBLIC HEARING HELD**

Present: (5) Senators Ellis, Stepp, Jauch, Robson and Hansen.
Absent: (2) Senators S. Fitzgerald and Reynolds.

Appearances For

- Representative Christine Sinicki
- Rep. Lena Taylor
- Bob Anderson, Wisconsin Council on Children and Families

Appearances Against

- None.

Appearances for Information Only

- Deputy State Superintendent Tony Evers, Wisconsin Department of Public Instruction
- John Huebscher, Wisconsin Catholic Conference, Madison, WI 53703

Registrations For

Ellen Lindgren, Middleton-Cross Plains Area School District
Mary Kay Baum, Madison Area Urban Ministry
Joe Wieser, New Holstein School District
Michael Walsh, Wisconsin Education Association Council, Madison, WI
Sheri Kraus, Wisconsin Association of School Boards
Joe Quick, Madison Metropolitan School District, Madison, WI
John Forester, School Administrators Alliance, Madison, WI 53704
Rev. Sue Larsen, Lutheran Office for Public Policy in Wisconsin

Registrations Against
None.

March 11, 2004 Failed to pass pursuant to Senate Joint Resolution 1.

Michael Boerger
Committee Clerk

A QUALITY EDUCATION FOR EVERY CHILD

New Wisconsin Promise

SB 363
SB 406

Sen. Ellis
118 South

State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent

Date: February 19, 2004

To: Senator Mary Panzer, Senate Majority Leader
Senator Jon Erpenbach, Senate Minority Leader
Senator Mike Ellis, Chair, Senate Education, Ethics, and Elections Committee
Representative John Gard, Assembly Speaker
Representative Jim Kreuser, Assembly Minority Leader
Representative Luther Olsen, Chair, Assembly Education Committee
Representative Scott Jensen, Chair, Assembly Education Reform Committee

From: Elizabeth Burmaster, State Superintendent E. Burmaster (aap)

Subject: Milwaukee Parental Choice Program

On December 29, 2003, I wrote you expressing my desire and recommendations to add meaningful accountability and quality control measures to the Milwaukee Parental Choice Program (MPCP) to ensure safe and healthy educational environments for MPCP students.

Today, I write to express concerns regarding Mandella School of Science and Math, a private school participating in the Milwaukee Parental Choice Program, and my continued support for pending legislation concerning the MPCP. Recent information we have received and news accounts about Mandella report financial mismanagement, questionable facilities, untrained teachers, and crowded classrooms, among other charges. This state of affairs is more than troubling and gives greater urgency to my request for more accountability of MPCP.

Current legislative proposals, which closely mirror my recommendations to provide the oversight necessary to protect the health, safety, and welfare of MPCP students, would enable the Department of Public Instruction to deal with the problems at Mandella School. However, all three proposals being considered have different versions of how background checks are done.

I know we all understand the necessity of these checks. We cannot let the differences in these competing proposals result in no change in program operational accountability. I urge you to do whatever you can to find a compromise that protects children in this program.

jwj
cc: Senator Gwen Moore
Senator Jeff Plale
Senator Alberta Darling
Senator Bob Jauch

Mailing Address: P.O. Box 7841, Madison, WI 53707-7841 • **Street Address:** 125 South Webster Street, Madison, WI 53702
Telephone: (608) 266-3390 • **Toll Free:** (800) 441-4563 • **FAX:** (608) 267-1052 • **TDD:** (608) 267-2427
Internet Address: www.dpi.state.wi.us


FORWARD

WOMEN AND POVERTY
PUBLIC EDUCATION INITIATIVE
3782 N. 12th street
Milwaukee, WI 53206
(414) 265-3925

February 23, 2004

TO: Members of the Senate Education, Ethics, and Election Committee
FROM: Jean Verber, Administrative Coordinator
RE: Choice School Hiring Legislation

I am writing to express support for legislation that provides protections and accountability for Choice School hires. We strongly believe that Choice Schools should be held to the same standards as public schools, especially when the safety and protection of our children are involved.

The bill we have reviewed that appears consistent with public school protections is SB 363. We urge your support of that bill.

We are opposed, however, to SB 406 which, we believe, discriminates in expanding the boundaries of those to be included in the bill. While we want children to be protected from anyone with a history of harming or abusing others, especially children, we do not think it fair to include other unrelated offenses.

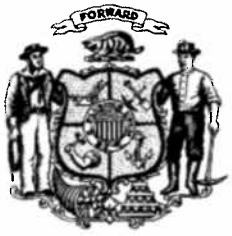
WPPEI works daily with women struggling to make the transition from welfare to work. Some of these women do have prior records and have served their time. When these prior actions do not hold potential threat or harm to children, we believe these persons should have the opportunity to start over, serve the community, and move on. This becomes all the more urgent in our current job market that already offers few options for employment.

This kind of undue severity need not be imposed more heavily on Choice Schools.

For these reasons, we urge you to support SB 363 and to OPPOSE SB 406.

Thank you.

WISCONSIN STATE LEGISLATURE



WISCONSIN COUNCIL ON CHILDREN & FAMILIES
Voices For Wisconsin's Children

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www.wccf.org
A Member of the National Association of Child Advocates

TO: Senate Committee on Education, Ethics, and Elections

FROM: Bob Andersen

RE: SB 363 and SB 406, relating to the Milwaukee Parental Choice Program and granting rule-making authority.

DATE: February 25, 2004

The Wisconsin Council on Children and Families is in favor of SB 363 and opposed to SB 406. While both bills include some important provisions relating to accountability in Milwaukee Parental Choice Program, SB 406 adds provisions that would be unnecessarily detrimental to the employment of Wisconsin's residents.

While SB 363 extends current law that applies to public school teachers to apply to Choice school teachers as well, SB 406 goes far beyond that in unnecessarily denying people employment that is essential for their livelihood. Under current law, section 115.31 (2g) of the statutes, the Superintendent of Public Instruction is required to revoke the license of teachers who have committed felonies under Chapter 940 and 948 of the statutes within the previous 6 years. While we believe it is better to follow the "substantial relationship" test is disqualifying people from employment, as described below, unfortunately, section 115.31 (2g) is the law. Making its provisions apply to instructional staff in Choice schools, as does SB 363, makes the practice more uniform.

The problem with SB 406 is that it goes beyond the equitable treatment of SB 363 in two critically important ways: (1) it automatically disqualifies *all other employees* of Choice schools for the same criminal violations in the previous six years; and (2) it allows Choice schools to *automatically* refuse to hire or to fire any employee *for any other felony*, without regard for whether there is *any* relationship between the circumstances of the offense and the circumstances of the job.

We believe that current law strikes the right balance between the right of people in society to be protected and the right of people to be employed for their own subsistence.

1. **Current Law Allows Employers, Including Schools, to Discriminate Against Employees on the Basis of Conviction Records, Where the Circumstances of the Offense Substantially Relate to the Circumstances of a Particular Job.**

Under current law, a public or private employer may refuse to hire someone, or may terminate the person's employment, on the basis of ***any conviction record***, if there is a ***substantial relationship*** between the ***circumstances*** of that ***offense*** and the ***circumstances of the particular job***. This is perceived to be a better approach than looking only at the conviction, because looking at the circumstances involved in the crime is far more revealing for an employer than looking only at what a person was convicted of -- especially where the person was convicted of a lesser offense. Current law does ***not require*** an employer to hire a person with a conviction record; it simply does not allow an employer to ***automatically*** reject an applicant who has checked a box on an application marked "felony conviction," for example. ***SB 406 would allow these employers to automatically reject*** an applicant or fire an employee with any felony record, for simply having check a box marked "felony conviction." Over the years, a great number of crimes have been reclassified as felonies -- resulting in 5 different classes of felonies today. As heading #8 below reveals, the number of felonies that exist today would allow these employers to automatically reject applicants or fire employees who have been convicted of a host of offenses which may well bear no relationship to the circumstances of their particular jobs.

2. **Automatically Denying Jobs to Applicants Based on Felony Records Frustrates State Efforts to Put its Residents to Work, Contributes to Recidivism, and Endangers State Residents' Safety and Property.**

If SB 406 were to be enacted, these employers would still be able to hire an applicant with a felony record, of course. However, the enactment of this bill would promote a policy for these employers statewide that would deny employment to people based solely on their felony convictions. This frustrates the goal of the state in ensuring that its residents are engaged in gainful employment. It frustrates the goals and success of W-2, because many W-2 participants have felony convictions in their past, especially since the definition of felonies has been broadened. In addition, without employment, people are driven to commit crimes to support themselves. Numerous studies have shown that employment is one of the most important factors in combating recidivism. When people are driven to commit new crimes, more residents of the state become the victims of crime.

3. **Current Law is not a Burden on Employers**

According to an article in the August 28, 1999 edition of the *Milwaukee Journal Sentinel*, the records of the Equal Rights Division indicate that from January 1, 1997

to August 26, 1999, a total of ***131*** claims of discrimination based on arrest or conviction records were filed. Of those, only ***22*** were shown to have probable cause -- meaning that the claims would go any further. Of those, in only ***2*** claims was it shown that the action of the employer was in violation of the law. In other words, in almost all claims there is always some "substantial relationship between the circumstance of the offense and the circumstances of the job." For example, in one of the few court decisions to come out of the statute, the Supreme Court found that there was a "substantial relationship" between a record of armed robbery and a job as a bus driver, so as to entitle the employer to refuse the job to the applicant on that basis alone. Similarly, LIRC and county court decisions have held that convictions involving drug trafficking are substantially related to jobs as a district agent for an insurer, youth counselor for emotionally disturbed juveniles, a school bus driver, a home health aid, a paper mill machine operator, and a door to door salesman.

With this stark reality as a background, anecdotal claims of inconvenience for employers or of cases that are contrived by lawyers to extort money from employers become difficult to imagine.

4. **The Value of Current Law, Then, is Simply to Prevent Employers from Establishing Application Forms that Automatically Reject Applicants who Check a Box Marked "Felonies."**

Under current law, these employers can easily refuse to hire someone for "other reasons," or because they want to hire someone else. They simply cannot say they are refusing to hire someone because of a "felony conviction" alone.

5. **Employment of Ex-Offenders Becomes an Even More Serious Problem with the Large Increase in the Prison Population and the Subsequent Release of Those Prisoners; Effect on African Americans is Especially Profound**

The New York Times published a story on March 15, 2001, describing how the prison population soared in the 1990's nationally from 1.2 million to 2 million inmates. The article discussed how society will now be confronted with a new challenge as tens of thousands of those inmates are being released from prison. The challenge will be to reintegrate those ex-offenders into society. All of the studies that have been conducted in the past show the importance of meaningful employment in the rehabilitation of these ex-offenders.

The article went on to cite the findings of Princeton University Department of Economics Professors Bruce Western, Jeffrey Kling, and David Weiman in their January 2001 publication entitled, "The Labor Consequences of Incarceration." This study is the most recent in a line of studies that have been conducted over the past

several years on the effects of arrest, conviction and incarceration on the employment opportunities of ex-offenders. The study found that the treatment of ex-offenders has a profound effect on African-American males. On a typical day two years ago, Professor Western was quoted as saying, 29% of young African American male high school dropouts ages 22-30, were employed, while 41% (up from 26% in 1990) were in prison. He said that ex-offenders who do get jobs start work making 10-30% less than other African American high school dropouts.

Professor Western also said that, without adequate jobs, these ex-offenders are unable to pay court costs that come out of their convictions, restitution to victims, and child support for their families. Professor Western was quoted to say that "we know that employment discourages crime, and because their employment opportunities are poor, they're more likely to commit crime again."

6. **Current Law is a Codification of Decisions of the U.S. Supreme Court, Federal and State Courts, the Equal Employment Opportunities Commission (EEOC) and the State Equal Rights Division (ERD), Holding that Discrimination Against Minorities on the Basis of Conviction Record, in the Absence of Business Necessity, Constitutes Race Discrimination. The Enactment of SB 406 Will Not Change This Law.**

The U.S. Supreme Court ruled in Griggs v. Power Co., 401 U.S. 424 (1971), that discrimination based on circumstances which have a "disparate effect" on persons because of their race or national origin, ***is in fact*** discrimination based on ***race or national origin*** and is prohibited by Title VII of the Civil Rights Act of 1964, in the absence of a showing of "business necessity" in a particular case. This decision was followed by a number of federal and state court decisions, and decisions of the EEOC and ERD, in ruling that discrimination based on criminal record for minorities is in fact discrimination based on race or national origin, in violation of Title VII of the Civil Rights Act of 1964. This is so, because minorities have a greatly disproportionate record of convictions. The logic, then, is that to refuse employment or to take other adverse job treatment of a minority because of a record of conviction, without an adequate business reason, is in fact an adverse treatment of an employee because of race or national origin. It is racial discrimination in violation of Title VII and in violation of Wisconsin's statutory prohibition against discrimination based on race.

The "disparate impact" theory is still the law of the land. In April, 2002, the U.S. Supreme Court dismissed an appeal in an age discrimination case challenging the "disparate impact" theory, Adams v. Florida Power Corporation, No. 01-584. While there was no explanation given by the court for its dismissal, it was a dismissal of a case that the court had earlier approved for appeal and had even heard arguments on.

In any event, the dismissal of the case means that the "disparate impact" theory is still the law.

7. **Other States' Laws**

Several states fair employment agencies and courts have issued decisions based on "disparate effect." Some have included "disparate effect" in their administrative rules or statutes, e.g. Iowa. In addition, at least the following several states have created special laws -- either by statute or by administrative action of Human Rights Commissions -- prohibiting discrimination based on conviction:

Hawaii prohibits both private and public employers from discriminating because of any court record, unless a criminal conviction record bears a rational relationship to the duties and responsibilities of a particular job.

Illinois Commission Guidelines have the force of law and similarly applies to all employers:

> "Use of such criteria [arrest or conviction information] operates to exclude members of minority groups at a higher rate than others, since minority members are arrested and convicted more frequently than others. Such criteria are therefor unlawfully discriminatory unless the user can demonstrate in each instance that the applicant's record renders him unfit for the particular job in question." An applicant may be disqualified for a job based on a conviction if "(I) state or federal law requires the exclusion or (ii) the nature of the individual's convictions considered together with the surrounding circumstances and the individual's subsequent behavior reveals the individual as objectively unfit for the job." [emphasis added]

New York statutes prohibit discrimination by any employer based on the applicant or employee having committed a criminal offense, ***without allowing employers any exception***.

Washington prohibits discrimination by any employer on the basis of conviction records, except for those related to a particular job which are ***less than 7 years old***, under regulations issued by the Washington State Human Rights Commission.

Minnesota provides that consideration of a criminal record by a private employer cannot be an absolute bar to employment and that the job-relatedness of the crime must be considered, under the administrative policies set forth in the Minnesota Department of Human Rights Pre-Employment Inquiry Guide. The guide is not an

administrative rule, but the effect is the same, since it would be risky to ignore it, because it is the state agency's interpretation of state law.

Colorado's Civil Rights Commission similarly has issued a pre-employment guide which provides that it may be a discriminatory practice for an employer to even make any inquiry about a conviction or court record that is not substantially related to job. While this is not expressed as a mandate, again, it would be risky to ignore it, since it is an interpretation of state law by the state agency.

Ohio's Civil Rights Commission pre-employment guide similarly advises employers that even any inquiry into convictions of applicants for jobs is unlawful, ***without any reference to "substantial relationship***."

Connecticut statutes prohibit state employers from discriminating based on conviction record, unless the employer considers ***all*** of the following: (1) the relationship of the crime to the job; (2) the rehabilitation of the applicant or employee; and (3) the time that has elapsed since the conviction or release of the applicant from prison or jail.

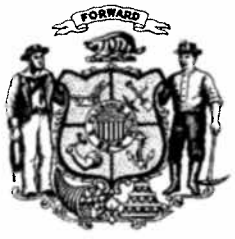
Florida statutes prohibit a state or municipal employer from discriminating based on a conviction record, unless the crime is (1) either a felony or first degree misdemeanor and (2) is ***directly related*** to the employment position sought. In other words, an applicant may not be discriminated against for having committed a lesser misdemeanor, even if it is directly related to the job.

8. **Limiting the Repeal of the Prohibition to Only Felony Convictions, Still Extends the Repeal to a Broad Range of Conduct, Especially as More Crimes Have Become Classified as Felonies over the Years**

Section 939.50 of the statutes now lists five different classes of felonies. The following offenses are now felonies: possession of controlled substances (which accounts for the great majority of criminal offenses); operating a vehicle without the consent of the driver; removal of a part of a vehicle without the owner's consent; issuance of a check for more than $1,000 with insufficient funds in an account; forgery; property damage to a public utility; stalking with the use of public records or electronic information; threat to accuse another of a crime; theft of property in excess of $1,000; threat to communicate derogatory information; receiving or forwarding a bet; receiving or concealing stolen property of a value in excess of $1,000; distribution of obscene materials; solicitation of prostitution; conducting an unlawful lottery; bribery; bribing a public official; possession of burglary tools with the intent to enter a room or building designed to keep valuables; providing special privileges to a public official in return for favorable

treatment; cohabitation with another by a married person; failure to pay child support for 120 days; action by a public official to take advantage of office to purchase property at less than full value; interference with the custody of a child for more than 12 hours; perjury; false swearing; destruction of public documents subject to subpoena; making a communication to influence a juror; fraud on a hotel or restaurant owner in excess of $1,000; transferring real or personal property known to be subject to a security interest; threatening to impede the delivery of an article or commodity of a business; damage to mortgaged property in excess of $1,000; threatening to influence a public official to injure a business; falsification of records by an officer of a corporation; destruction of corporate books by an officer of the corporation; fraudulent use of credit cards; theft of telecommunications services, cellular telephone services, or cable TV services for the purpose of financial gain; modifying or destroying computer data to obtain property; adultery; incest; theft of library materials of a value in excess of $1,000; criminal slander of title of real or personal property; flag desecration; theft of trade secrets; retail theft of a value in excess of $1,000; intentional failure of a public official to perform a ministerial duty; providing false information to a law enforcement officer; and providing false information to an officer of the court.


WISCONSIN STATE LEGISLATURE


FORWARD

WISCONSIN CATHOLIC CONFERENCE

TESTIMONY ON SB 363 AND SB 406
(REGULATION OF SCHOOLS IN THE PARENTAL CHOICE PROGRAM)
Presented by John Huebscher, Executive Director
February 25, 2004

The Wisconsin Catholic Conference appreciates the opportunity to provide informational testimony on these two proposals.

We strongly support the proposition that schools participating in the Milwaukee Parental Choice program, like any schools, should be able to assure the public that they are financially sound and physically safe. We believe that Catholic schools are able to give those assurances now.

As to the specifics in the bills:

Fiscal accountability. We support the provisions related to fiscal accountability. Our schools already undergo annual audits. This bill adds no unreasonable burden in this regard. We assume that DPI will continue to work with us in good faith to address any administrative details that may arise.

Background checks. We support the provisions regarding background checks. The Archdiocese has done these for instructional staff for at least five years. Like all dioceses, the Archdiocese is in the midst of requiring background checks for all paid and volunteer staff as part of our response to the problems of sexual misconduct in our ranks. We hope that the bill, if enacted, will accept such checks done in the last year so it is not necessary to repeat the process for those whose backgrounds were recently verified. As to going forward, we can live with annual checks if need be though checks at regular intervals may be more practical for all.

Enforcement. On the question of enforcement, we are comfortable granting DPI the authority to remove a school from the program for serious violations. However, we anticipate that it would take more than being late with a report due to human error to incur such a drastic penalty. Thus we think SB 406 is preferable in this regard.

Discrimination in hiring. As to the matter of denying employment to persons convicted of crimes, we much prefer SB 363.

Our position on employment of rehabilitated offenders is the same today as it was when the Legislature considered AB 41 last year.

Using the same analysis that we applied to AB 41, we find that SB 363 is consistent with current law and therefore offers a preferable approach to this issue. SB 406 on the other hand, is broader than necessary to achieve its goals.

131 W. Wilson Street • Suite 1105 • Madison, WI 53703 • Tel 608/257-0004 • Fax 257-0376
E-MAIL: office@wisconsincatholic.org • WEBSITE: http://www.wisconsincatholic.org

Section 7 of SB 363 tracks current law governing instructional staff in public schools. It does this by applying the provisions of section 118.19 of the Statutes to choice schools. This section provides that if an applicant has been convicted of a felony (Class A, B, C or D) under Chapter 940 (which addresses crimes against life and bodily security) or Chapter 948 (which addresses crimes against children) until six years have passed since the conviction and the person establishes by clear and convincing evidence that he/she is entitled to a license

Unfortunately, SB 406 goes beyond this. Section 6 of that bill applies the provisions of 118.19 to all staff, not merely instructional staff. Section 7 goes farther yet. It gives choice schools discretion not available to other schools to deny gainful employment to rehabilitated offenders even when their crimes are unrelated to the position they are seeking or to the life and security of our children.

While this may be popular we cannot overlook the impact of these provisions on people of color.

Though less than ten percent of our state's population, minorities account for nearly half of our prison population. Indeed, Wisconsin leads the nation in the percentage of its African-American population that is incarcerated. Further, unemployment among African-American men is still more than double that of white men. In light of all this, we cannot support a provision that will have such a disparate impact on employment prospects for racial minorities, perhaps in some cases the parents of the very children we are trying to help in the Choice program.

We believe current law in this area has served us well. Wisconsin's violent crime rate is well below the national average. Indeed, a 1999 report by U.S. Department of Justice ranks Wisconsin 42nd in its rate of violent crime. Clearly, the fact that a felon can't be denied a job unless his or her crime relates to the position has not made Wisconsin a more dangerous place to work or live. Rather, one can argue that our crime rate is lower because our laws make it easier for ex-offenders to support themselves upon completion of their sentence.

Some may argue that current law places a burden on schools as employers. Two diocesan attorneys tell me this is not the case. The "substantially related" provision of current law gives Catholic schools the ability to discern who should or should not be hired.

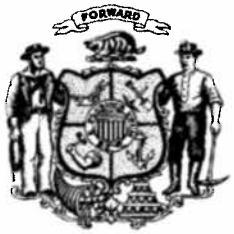
More to the point, discrimination that serves to deny people the chance to "earn their daily bread" should always have to meet a certain burden of proof.

Catholic schools have a good reputation for accountability and safety. Neither that reputation nor the value of social justice is served by giving some schools the ability to deny a job to law abiding people who have paid for their past mistakes. Nor is anyone served if otherwise helpful legislation is vetoed because it goes too far beyond current law in this area.

For these reasons we prefer the approach of Senate Bill 363 on the matter of conviction record.

Thank you for your consideration.


WISCONSIN STATE LEGISLATURE


FORWARD

A QUALITY EDUCATION FOR EVERY CHILD

New Wisconsin Promise

State of Wisconsin
Department of Public Instruction

Elizabeth Burmaster, State Superintendent

Senate Committee on Education, Ethics and Elections
Wednesday, February 25, 2004
Room 201 SE Capitol

Department of Public Instruction
Testimony on Senate Bills 363 and 406

My name is Tony Evers and I am the Deputy State Superintendent at the Department of Public Instruction. With me today is Tricia Collins, the administrator of the Milwaukee Parental Choice Program (MPCP).

On behalf of the State Superintendent of Public Instruction, thank you Chairman Ellis and members of the Committee for the opportunity to be here today to testify on Senate Bills 363 and 406.

In early November, after working with interested parties on all sides, the State Superintendent presented an initial outline for operational accountability for the MPCP. She asked the legislature to consider additional statutory language that would better protect student health, safety and welfare and provide fiscal and administrative accountability measures. Many of the provisions she mentioned in

Mailing Address: P.O. Box 7841, Madison, WI 53707-7841 • **Street Address:** 125 South Webster Street, Madison, WI 53702
Telephone: (608) 266-3390 • **Toll Free:** (800) 441-4563 • **FAX:** (608) 267-1052 • **TDD:** (608) 267-2427
Internet Address: www.dpi.state.wi.us

her plan are included in the bills before you today and we are happy to appear before you to support accountability for the choice program. Changes to the program are long overdue and need to be passed now. Participating children and their families should not have to wait any longer for minimal accountability provisions to added to the program.

Whether you support or oppose the choice program, two facts remain: there are over 13,000 students currently attending schools in the program and the program is lacking meaningful quality control measures. Wisconsin parents, taxpayers and most of all, students in the choice program are owed the common sense quality control measures included in these bills. News accounts of financial mismanagement, substandard facilities, untrained teachers, among other charges give greater urgency to the State Superintendent's call for more accountability for the choice program and the authority to remove substandard schools. Under current law, the Department does not have the authority to investigate such concerns or to remove schools that pose an immediate threat to the health or safety of its students.

Our first efforts must be to make sure students are safe. The 13,000 students in the program deserve to be attending safe and healthy schools. The students deserve to

be in structurally safe and healthy buildings. They deserve to be taught by quality teachers. In addition, these students deserve to be attending schools that are financially sound and viable. The new financial accountability provisions in these bills will require sound fiscal practices, financial viability and fiscal training. Further, there would be clear consequences for failure to comply with the program requirements.

These bills do differ slightly in two main areas: (1) DPI's authority to immediately terminate a private school's participation in the program; and (2) background checks. Under SB 363, DPI would be authorized to immediately terminate a private school's participation in the program if the school fails to provide a copy of its certificate of occupancy, evidence of financial viability, proof of participation in approved fiscal management training or a notarized statement that the school will conduct criminal background checks. Under SB 406, it is possible that DPI would need to wait until the following year to terminate a school that does not timely comply with these requirements. This could actually be considered a step back from current law and rule which permit the State Superintendent to deem a school ineligible if it does not timely submit a certificate of occupancy. We believe it is in the best interests of the students that these minimal health, safety and fiscal requirements should be met before a school opens and students are enrolled. For

these reasons, we believe SB 363 better addresses the concerns we all share regarding the choice program.

The State Superintendent also feels strongly that every student deserves a qualified teacher. Private schools in Wisconsin, unlike public schools, are not required to have licensed and certified teachers or conduct background checks. Both bills would require background checks for teachers at participating choice schools. While we understand the competing views on background checks, we do feel that SB 363's provision on this issue is more consistent with present state law for all other employers. More importantly, we believe the voices of groups who have a substantial interest in the success of the MPCP, such as the Wisconsin Catholic Conference, must be heard. It is our understanding that the Conference believes that the SB 406 version of background checks is troubling in that it may have components that create biases that are unintended. Additionally, other major groups who have been active in the debate about the MPCP, such as the Milwaukee Journal Sentinel and the Milwaukee Common Council, have indicated that SB 363's background check provisions are preferred because they will work better for their community.

We hope the Legislature will not allow the competing versions of these bills to turn into a political battle of civil rights versus accountability. Rather the State Superintendent urges all parties to work together to provide the accountability needed now that will mitigate against further shameful and hurtful events currently occurring in the MPCP from happening in the future.

The current staffing level for the program, a consultant and financial specialist, has not changed since 1998-99. Since that time, the number of schools participating in the program has increased by 23 and the number of students participating in the program has increased by 7,573 (more than double the student population as compared to the 1998-99 school year.) Payments under the program have increased from approximately $28 million dollars to $78 million dollars paid in the form of over 52,950 individual student checks this year alone. In our original fiscal note, the department requested an additional position for the program. In retrospect, we believe that we underestimated the number of positions needed to properly administer this program. We believe that the department could adequately serve the needs of the programs' families and schools with not one, but two additional staff members.

The State Superintendent thanks you for bringing forth legislation and urges you to continue to work together to pass meaningful accountability provisions. She and her staff remain available to work with you on these issues.

Thank you again for the opportunity to testify on these bills. Ms. Collins and I would be happy to try and answer any questions you may have.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Wisconsin Council of Religious & Independent Schools

Archdiocese of Milwaukee

Association of Christian Schools International

Christian Schools International

Diocese of Green Bay

Diocese of LaCrosse

Diocese of Madison

Diocese of Superior

Lutheran Church Missouri Synod North Wisconsin District

Lutheran Church Missouri Synod South Wisconsin District

Wisconsin Association of Independent Schools

Wisconsin Conference of Seventh Day Adventists

Wisconsin Evangelical Lutheran Synod Northern Wisconsin District

Wisconsin Evangelical Lutheran Synod Western Wisconsin District

Wisconsin Evangelical Lutheran Synod Southeastern Wisconsin District

February 25, 2004

To: Senator Mike Ellis, Chairperson Senate Committee on Education, Ethics and Elections and Members of the Committee

From: Judd Schemmel, Executive Director Wisconsin Council of Religious and Independent Schools

Re: SB 363 and 406, Accountability legislation related to the Milwaukee Parental Choice Program – Testimony for information

We appreciate the opportunity to offer informational testimony on the proposals before you designed to help ensure the Milwaukee Parental Choice Program is a strong, safe, and meaningful education option for low-income families residing in Milwaukee.

Of the Council's 740 member K-12 schools, 56 participate in the MPCP. While we firmly believe that all 56 of our participating schools, and the vast majority of all MPCP schools, offer a sound curriculum, strong financial oversight, and a healthy setting for personal, spiritual and social growth, recent events have demonstrated this is not the case in every choice school.

The Council supports the work of the Senate to implement added measures of oversight to ensure the safety and well being of students attending a choice school. We are testifying for informational purposes solely because we do not have complete consensus within our participating jurisdictions as to how this is best accomplished.

There is agreement among our four participating jurisdictions regarding the proposed financial reporting obligations and demonstrations of sound fiscal practices of choice schools.

On the issue of background checks, the sentiment of our jurisdictions is toward conducting a background check on all employees at the time of hire. This is already being done in many schools and will be emerging as a standard practice with volunteers serving in our Catholic schools.

We do have a jurisdiction with nine schools participating in the MPCP that feels the breadth and depth of any required background checks mirror the breath and depth of the background checks performed by the DPI when licensing educators. In addition, in regard to the possibility of requiring a background check on all current employees within 120 days of enacting legislation in this area, our jurisdictions have expressed hope that an exclusion would be put in place for faculty on whom a background check has already been performed through the Department of Public Instruction.

Wisconsin Council of Religious and Independent Schools
437 S. Yellowstone Dr., Suite 205, Madison, WI 53719 • Phone: (608) 204-0790 • Fax: (608) 204-0796
Email: judd.schemmel@wcris.org • Web Site: www.wcris.org

Background checks can lead to hiring and firing decisions. It's in this area, and specifically the level of flexibility to be granted MPCP schools in firing or not hiring employees, that we have a legitimate internal difference of opinion.

All of our participating jurisdictions agree that certain felony convictions, such as crimes against children, should preclude employment in a school. Expanded flexibility that permits schools to fire or not hire based on any felony conviction is a concern to some in our organization that feel such flexibility may have a disproportionate adverse impact on young men of color. There is also a concern that the expanded flexibility will be a barrier to those who have made a mistake in the past and are seeking full inclusion back into the working world and society. Conversely, segments of our member jurisdictions believe its important for schools have the flexibility to look at the background of each person seeking employment with them and to determine if any previous felony conviction should preclude employment in a school setting.

Lastly, on the issue of DPI authority to suspend and/or terminate a schools participation in the choice program, our schools support the concept of immediate termination in circumstances where the safety or well being of students is at risk. We think it will be important to set clear parameters as to when this most definitive action can be taken. On the matter of failure to meet filing deadlines or issuing reports after prescribed dates, it is our hope a measured approach of sanctions would be in place leading up to and including suspension of payments during a current school year and termination from the program in the following school year.

We believe in educational options for low-income families. We also believe that the Milwaukee Parental Choice Program is meeting this need and providing exceptional educations for thousands of students. We've all heard the adage, "A chain is only as strong as its weakest link." We support the Senate's effort to ensure that each link the choice program chain is a strong and vibrant educational community.

I'd be happy to address any questions the committee members may have.


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STATE REPRESENTATIVE
LENA C. TAYLOR
WISCONSIN STATE ASSEMBLY
18TH DISTRICT

Testimony of State Representative Lena Taylor on Senate Bills 363 and 406
On Behalf of State Senator Gwendolynne Moore
Senate Committee on Education, Ethics and Elections
February 25, 2004

Thank you for allowing me the opportunity to speak on behalf of Senator Moore, author of Senate Bill 363 (SB 363). Senator Moore apologizes for her absence today. She is unable to be here due to a previous engagement. I would like to acknowledge that as a Representative of the 18th Assembly District where several Milwaukee Parental Choice Program (MPCP) schools are located, I am also speaking today as a representative of a community that will be impacted by these legislative proposals, as an attorney and also as a concerned citizen and mother.

I would like to thank Chairman Ellis and the members of the Senate Committee on Education, Ethics and Elections for holding this public hearing to discuss solutions to recent reports highlighting the lack of health, safety and financial accountability currently existing in the Choice Program.

I ask the committee to support SB 363 in its' amended form. The bill provides Wisconsin's State Superintendent with the statutory authority to ensure that MPCP schools meet health, safety and financial accountability. Some schools have exploited a fault in our MPCP system: lack of health and safety, lack of financial regulation and accountability. Senator Moore's number one priority has been to ensure that all schools are safe, healthy and financially secure facilities where children can learn and grow. That is why Moore quickly authored several amendments during this legislative session that make MPCP schools more accountable, and when those amendments were rejected she authored SB 363. Examples of recent allegations of misuse regarding Mandella School of Math and Science and Alex's Academics of Excellence taken from the ***Milwaukee Journal Sentinel include***:

Mandella School of Math and Science:

1) Owing the state almost $330,000 for "inappropriately" cashing more than 200 checks;
2) Using proceeds of voucher payments to purchase two used Mercede-Benz cars;
3) Allegedly not paying teachers since November of 2003;
4) Allegedly not paying rent since October of 2003;
5) A Milwaukee judge ordered Mandella School of Science and Math closed last week.

Alex's Academy of Excellence:

1) The former CEO and founder was a convicted rapist;
2) Teachers were reportedly observed using illegal drugs in the school;
3) Teachers were not being paid for their services;
4) And the school has been evicted for not paying rent.

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SB 363 differs from other introduced operational accountability proposals as it also ensures that a MPCP school is prohibited from discriminating in employment based on conviction record unless the circumstances of the offense substantially relate to the circumstances of the particular job. As amended, **Senator Moore's bill does not require any additional accountability standards that are not also required of public schools.**

I ask that the committee oppose to Senate Bill 406, authored by Senator Plale, as his legislation **exceeds** accountability measures already required of public schools and weakens the Fair Employment Act (FEA) by allowing MPCP schools to refuse or terminate the employment of individuals who have been convicted of **any felony** within the past 6 years. Sen. Plale has taken a divisive route by including provisions of his bill that would weaken the FEA and far exceed the current accountability measures required of public schools. He has included provisions of 2003-05 Assembly Bill 41, which sought to allow an educational agency to refuse to employ or to terminate an individual from employment solely based on a felony conviction. While AB 41 passed the Senate and Assembly, Governor Doyle ultimately vetoed the bill. The Assembly's attempt to override the Governor's veto failed.

Under Wisconsin's current FEA, no employer, public or private, may engage in employment discrimination based on an individual's conviction record unless there is a substantial relationship between the circumstances of that conviction and the circumstances of the particular job. For example, a bank is allowed to deny employment to a person convicted of embezzlement for a banking position, but a school could not refuse to hire that same person for a janitorial position due to the embezzlement conviction.

I ask that committee members consider the practicality of SB 406. Effective February 1, 2004, Wisconsin has 540 felonies. Examples of the myriad of non-violent felonies include theft of cable television service (a second or subsequent offense); theft of farm-raised fish (second or subsequent violation); possession of a fish with a value exceeding $1000 in violation of statutes; possession of clams with a value exceeding $1000 in violation of statutes; and unauthorized release of animals lawfully confined without consent. Furthermore, a felony conviction remains on one's record for life.

During the original 1977 deliberations over the FEA, **ex-offenders who are unable to find jobs are more likely to return to a life of crime.** If the state were to allow employers to discriminate against prospective employees who have a conviction record, then in effect, the state would be encouraging recidivism.

A great deal of evidence points to potential **racial bias in the criminal justice system**. The August 1999 report by Wisconsin's Criminal Penalties Study Committee found a "shocking" racial disparity in Wisconsin's prisons. "[There is a] need to address the racial problems in our society and criminal justice system, which have resulted in a prison population that is 57% minority, and the imprisonment of 3% of all African-Americans living in Wisconsin. These are social ills that can no longer be ignored," wrote committee chair Thomas Barland in an October 2, 1999, editorial in the Milwaukee Journal-Sentinel.

Because minorities have a disproportionate record of convictions, this legislation will promote the underemployment of blacks and Hispanics and further suppress their ability to become active and contributing members of their families and the larger community. Moreover, **if a job-seeking person-of-color has a felony conviction on his or her conviction record, this legislation provides the employer an opportunity to deny that individual a job even if the real reason for denying employment is based on skin-color and not on the conviction itself.**

Current efforts to weaken the FEA with respect to conviction records use exaggerated claims, which state that current law unfairly protects ex-offenders over employers. In fact, according to recent information compiled by the state's Equal Rights Division they receive over 4,000 complaints of employment discrimination each year. ***Of those 4,000 complaints, 264 cases included an allegation related to conviction record discrimination, last year. Only one case in 2003 involved a school and the department found in favor of the school district.*** **Therefore, it would be misleading to state that current law favors ex-offenders over employers in these cases.**

Ex-offenders have paid their dues to society by spending time on probation, in prison and on parole, and/or through fines. By allowing employers to discriminate based on past felony convictions, the state would be denying the reality that offenders can be rehabilitated and at some point, finish paying his or her "debt to society." Current law already allows for employers to consider a person's conviction record in their hiring and firing decisions if that conviction record substantially relates to the job at hand.

Some political operatives in the legislature are using this lack of fiscal irresponsibility and lack of oversight in MPCP schools to further partisan politics by encroaching on equitable employment opportunities. They have attempted for the past three sessions to weaken the FEA. This is the newest "back-door" approach toward achieving their goal. **If Senate Bill 406 were adopted, these provisions could be expanded to include all employment venues in future biennium, permanently weakening the FEA.**

PLEASE SUPPORT SB 363 and OPPOSE SB 406!


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COMPARISON OF OPERATIONAL ACCOUNTABILITY BILLS

Safeguard Measure	Moore's SB 363	Plale's SB 406	Jensen's AB 836
Certificate of Occupancy	o Requires MPCP schools to submit certificate of occupancy issued by city of Milwaukee. o Gives DPI authority to terminate **immediately** a MPCP's participation if they do not provide certificate.	o Requires MPCP schools to submit certificate of occupancy issued by the city of Milwaukee. o Gives DPI authority to terminate a MPCP's participation in the **succeeding year** if they do not provide certificate.	Same as SB 406
Fiscal Management	o Requires that MPCP schools show proof of participating in DPI approved fiscal management training and evidence of fiscal practice. o Gives DPI authority to terminate **immediately** a MPCP's participation if they do not provide proof.	o Requires that MPCP schools show proof of participating in DPI approved fiscal management training and evidence of fiscal practice. o Gives DPI authority to terminate a MPCP's participation in the **succeeding year** if they do not provide proof.	Same as SB 406
DPI Authority	Authorizes DPI to: o Prohibit schools' participation in MPCP if school misrepresents information in above points, or fails to refund any overpayments made to the school; o Immediately terminate a schools' participation if conditions are an imminent threat to the health and safety of pupils; o Notify parents when a school is barred from the MPCP; Withhold payment from a school if the school violates the laws of MPCP.	Same	Same as SB 406
Background Checks	o Requires MPCP schools to annually conduct background checks on all **instructional staff** (professional employees who have as part of their responsibilities have direct contact with pupils or supervise those with close contact to pupils). o Prohibits MPCP schools from employing as instructional staff any individual convicted of a	o Requires MPCP schools to annually conduct background checks on **all** future staff (including cooks and janitors) when they are first hired, **not every year**. o Allows MPCP schools to terminate or refuse employment of **any individual** with **any felony** conviction that occurred within the past 6 years.	o Requires MPCP schools to annually conduct background checks on **all** future staff (including cooks and janitors) when they are first hired, **not every year**. o Allows MPCP schools to terminate or refuse employment of **any individual** with **any felony** or

Background Checks, Continued	crime related between the circumstances of that conviction and the MPCP job that occurred within the past 6 years. o Gives DPI authority to **immediately** terminate a school's participation if the school fails to provide a statement that they will perform background checks. o **** Provides that convictions for the specified crimes also includes convictions for an equivalent crime in another state, country, or U.S., (not just under WI law);*** o ****Changes the requirement that background checks be required annually to prior to being employed and at least once every 5 years thereafter (which is required of public teachers);*** o ****Provides a 120-day period after the effective date of the bill for schools to complete checks of existing instructional staff;*** o ****The MPCP must submit a statement that the appropriate background checks have been conducted by 8/1 (or by 5/1 for summer school conversions) or will be conducted prior to the schools participation in the MPCP;*** o ****Modifies the check procedure to require non-residents be fingerprinted and that DOJ submit these prints to the FBI (a national check requirement).***	o Gives DPI authority to terminate a school's participation in the **succeeding year** if the school fails to provide a statement that they will perform background checks. o Provides a 120-day period after the effective date of the bill for schools to complete checks of existing instructional staff.	**misdemeanor** conviction at any time. There is no look back. o Gives DPI authority to terminate a school's participation in the **succeeding year** if the school fails to provide a statement that they will perform background checks. o Provides a 120-day period after the effective date of the bill for schools to complete checks of existing instructional staff.

**** Refers to Senator Moore's amendment to SB 363.***


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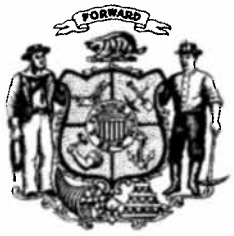
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Choice funds used to buy 2 Mercedes

Mandella principal says $65,000 expense is legitimate

By SARAH CARR
scarr@journalsentinel.com

Posted: Feb. 16, 2004

The principal of the troubled Mandella School of Science and Math used proceeds from state voucher payments last October to buy two Mercedes-Benz cars for about $65,000.

David A. Seppeh, who started the school two years ago, bought two used Mercedes less than two weeks after Mandella officials picked up a stack of checks in Madison totaling about $642,000, state documents show.

Seppeh said the $65,000 he spent on the cars was a legitimate transaction because he has invested thousands of dollars of his own money over the last two and a half years. He added that most of the state money was spent on expenses more directly related to the school, such as to buy five buses.

Mandella owes the state almost $330,000 for more than 200 checks Mandella officials acknowledge they "inappropriately" cashed. Many of those checks, worth about $1,500 a piece, were made out to families whose children never attended Mandella. Mandella has also failed to pay many of its employees - or its landlord - since October, and is scheduled for an eviction hearing today.

Mandella School

Photo/Karen Sherlock

"I don't think anyone tells me I cannot buy a car after my wife and I put 2 and a half years of our labor into this."

- David Seppeh

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The YWCA, which owns Mandella's building at 4610 W. State St., placed locks on the school entrance Monday, pending the results of the hearing.

"The YWCA's responsibility is to protect the hard asset," said John Yingling, a financial adviser. "Certainly we have a lot of compassion for the school, and would like them to be successful."

Mandella participates in the city's voucher program, which allows private schools to receive public funds to educate children from low-income families. All Mandella students qualify for the vouchers.

tests
Poll: Backing for lifting voucher caps found

Recent Coverage
2/12/04: School struggles to maintain order
1/28/04: School may close after funds denial
1/20/04: School cashed state checks inappropriately
12/11/03: Voucher school may be in financial trouble

Seppeh bought one of the Mercedes, a 2000 Model CL-K convertible, for about $45,000 and had it titled in the school's name, according to state Department of Motor Vehicles records. Seppeh said he paid $43,000 for the vehicle.

The license plate on the convertible is "SLEONE," after Sierra Leone, the African country Seppeh is from.

The second car, a 1998 four-door, was purchased on Oct. 14 for about $20,000, DMV records show. Seppeh said he gave the 1998 Mercedes last month to Gregory Goner, the former assistant principal, as payment for money that was owed to him. Goner has since sold the car.

Goner criticized Seppeh for keeping the convertible. "He's still got the Mercedes, and the school has suffered," Goner said. "There were a lot more important matters that we could have tended to that would have been sufficient to delay the purchasing of that type of luxurious vehicle."

Ron Hendree, Mandella's chief operating officer, says Goner was fired. Goner said he resigned.

Seppeh said he and his wife have put more than $200,000 into the school over the last two years and that the school owes him nearly $68,000.

He said he deliberately put the money into cars.

It's "better to put it on a car than into a house because I can sell a car if I need money badly, which is precisely what I did," Seppeh said.

He also thought buying a house might subject him to greater criticism.

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"If I bought a house, they are going to say, 'He used the money for the students to buy a house.' "

Many of the school's teachers have quit, complaining that they were not paid and that the school had no formal curriculum. When asked about the curriculum, Seppeh said it emphasized science and math, but offered few details.

During a recent visit, the quality of the teaching appeared to be sporadic. Students in one classroom worked on a math lesson. But in other classrooms, students appeared to be hanging out with teacher's aides more than studying. Seppeh gave a combined math and civics lesson to high school students, during which he made an algebra mistake.

He contends that he earned whatever he got from running the school.

"I don't think anyone tells me I cannot buy a car after my wife and I put 21/2 years of our labor into this," he said.

"I've been in the country all these years," he said. "I'm not a crook. Everything I work for here, I work for."

From the Feb. 17, 2004 editions of the Milwaukee Journal Sentinel

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Editorial: The Mandella School stain

From the Journal Sentinel

Posted: Feb. 17, 2004

If it's not one alarming thing, it's another at the Mandella School of Science and Math, an enrollee in the state's pioneering voucher program. The latest development is the revelation that, as the school tottered near financial insolvency, the principal bought two used Mercedes-Benz automobiles with $65,000 in voucher proceeds.

That disclosure comes atop these other woes, as reported by the Journal Sentinel: Former employees say the school lacks an overall curriculum plan. Staff turnover is high, and teachers appear to be in short supply. The school seems chaotic. Former staff members and parents have protested against the school. The school "inappropriately" cashed about $330,000 worth of state voucher checks made out to families, many of whose children never even attended the school.

Foes of private-school choice are seizing on Mandella as proof that the program is bad. Never mind that Mandella is the exception, not the rule. Still, this troubled school does illustrate the need for more accountability in the program, a point we have often made.

In fact, more accountability is in the offing. Choice proponents sat down with state education officials to reach some accommodation, now reflected in two similar bills in the Legislature. One provision would require a private school to submit to the state Department of Public Instruction evidence of financial viability before it is allowed to participate in the program and evidence of sound fiscal practices yearly thereafter. Also, the school's administrator would be required to attend an approved fiscal management training program.

These provisions likely would have sufficed to avert trouble at Mandella. The Legislature should pass the proposed accountability measures before another Mandella School hurts kids, parents, staff

members, taxpayers and the cause of private-school choice.

Also on the school choice accountability front, the Public Policy Forum has conducted a survey showing that 92% of voucher schools regularly administer standardized tests. A favorite criticism of the program is that there's no way to tell how students are doing. Well, standardized tests offer such a way. Trouble is, as the local think tank notes, the schools by and large don't publish the results. They should.

Transparency would improve accountability for academic results, but more steps are needed. The public needs to know how well students fare in the voucher program compared with how well they would have fared in the public schools. Unfortunately, Gov. Jim Doyle vetoed an excellent tool for making that comparison: a 12-year longitudinal study of voucher students and public-school students, with interim results to be reported intermittently.

Yes, as Doyle notes, participation was voluntary for choice schools. But nearly all schools were sure to participate - enough to produce a valid study of the choice program as a whole. Doyle should drop the excuses and sign on to the study.

From the Feb. 18, 2004 editions of the Milwaukee Journal Sentinel

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Alvaro Garcia-Velez
Basimah Abdullah
Speak at the hearing
would like to be called
together -