

Report From Agency
FINAL REPORT
CLEARINGHOUSE RULE 09-074
CHAPTER PI 35
MILWAUKEE PARENTAL CHOICE PROGRAM FEE

Analysis by the Department of Public Instruction

Statute interpreted: Section 119.23 (2) (a) 3., Stats., and SECTION 9139 (4) of the nonstatutory provisions of 2009 Wisconsin Act 28.

Statutory authority: Sections 119.23 (2) (a) 3. and (11) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 119.23 (2) (a) 3., Stats., requires the department to, by rule, set the fee charged to private schools participating in the Milwaukee Parental Choice Program (MPCP) at an amount such that the total fee revenue covers the costs of employing one full-time auditor to evaluate the financial information submitted by the private schools.

Section 119.23 (11), Stats., requires the department to promulgate rules to implement and administer the MPCP.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

Related statute or rule: N/A

Plain language analysis:

2009 Wisconsin Act 28, the 2009-11 biennial budget bill, made several modifications to the Milwaukee parental choice program under s. 119.23, Stats. Several of the modifications require that the department develop rules to implement the statutory provisions. One of those modifications requires the department to develop a rule to establish a nonrefundable fee to cover the cost of employing one full-time DPI auditor for the program. Each private school intending to participate in the program in the 2010-11 school year must pay the fee no later than February 1.

The rules:

- Require the department to establish the nonrefundable fee by December 1, 2009, for the 2010-11 school year and annually thereafter for subsequent school years.
- Set the nonrefundable fee by establishing a fee formula.
- Require that the private schools pay the nonrefundable fee to the department by cashier's check by February 1, 2010 for the 2010-11 school year and annually thereafter for subsequent school years.
- Allows the state superintendent to bar a private school from participating in the choice program if the private school fails to pay the nonrefundable fee.

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

Comparison with rules in adjacent states:

Illinois, Iowa, Michigan, and Minnesota do not have rules relating to private school voucher programs.

Summary of factual data and analytical methodologies:

Because the cost of employing a full-time auditor to evaluate the financial information submitted by the private schools may change from year to year, the rules include a formula whereby a fee will be set annually. The fee should not change significantly from year to year but the formula will allow for flexibility if needed when establishing the fee.

2009 Wisconsin Act 28 requires the private schools to pay the fee by February 1 of the school year previous to the school year in which they plan to participate (see s. 119.23 (2) (a) 3., Stats.).

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

Anticipated costs incurred by private sector: N/A

Effect on small business:

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

Agency contact person: (including email and telephone)

Robert Soldner, Director, School Management Services, (608) 266-7475, robert.soldner@dpi.wi.gov.

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

The department provided this information in the hearing notice published in the *Administrative Register* on September 30, 2009.

A public hearing to consider the proposed rule was conducted by the department on October 26, 2009, in Milwaukee. Persons were asked to register in favor, generally in favor (except for . . .), against, generally against (except for . . .), or for information only.

Milwaukee Hearing, October 26, 2009

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Basimah Abdullah	Clara Mohammed School		X	
Shelina Harvey	Calvary's Christian Academy		X	
Tom Jiardini	Self		X	

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
William A. Koehn	St. Coletta Day School		X	
Sr. Gabrielle Kowalski	St. Coletta Day School		X	
Daniel Kuntz	Milwaukee Seventh Day Adventist School		X	
Titilola O. Salaico	Mustard Seed International School		X	
Tracey Sparrow	Self	X		
Jose F. Vasquez	Child Development Center of St. Joseph			X

The following persons submitted written testimony:

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Alan M. Schulman	Wolfgang Ritter CPA			X

Summary of public comments relative to the rule, the agency's response to those comments, and changes made as a result of those comments:

Comments – Some individuals testified against having to pay a fee to fund a state auditor position.

Discussion – The rules are implementing state law (s. 119.23 (2) (a) 3., Stats.) that requires the department to set a fee to employ one full-time auditor.

Changes – None.

Comments – Other individuals understood the need for a state auditor position and thought it reasonable to charge participating schools to fund the position. However, individuals representing smaller participating private schools suggested the fee be set on a sliding scale that would charge less to small schools and more to larger schools with more participating MPCP pupils. One suggestion was to charge a flat fee per school and also a fee per pupil.

Discussion – Section 119.23 (2) (a) 3., Stats., requires the department to set a nonrefundable fee “at an amount such that the total fee revenue covers the costs of employing one full-time auditor . . .” The department has interpreted this provision to be one standard fee to be paid by each school. The fee is intended to cover the costs of employing one full-time auditor to evaluate the financial information submitted by the private schools. An auditor’s review of the financial information does not change in proportion to the number of students enrolled at the private school. The same financial information reports are required of all the participating private schools.

Changes – None.

Comments – How was the auditor fee calculated? Specifically, how was the \$111,400 cost for the nine month period (October 1, 2009-June 30, 2010) and the \$146,200 cost for the 12 month period (July 1, 2010-June 30, 2011) determined?

Discussion – The Office of State Employment Relations (OSER) publishes minimum and maximum salaries that can be paid upon appointment for each state employee position classification. In this case, the MPCP auditor position was classified as an auditor (school finance). The minimum salary that can be paid upon appointment is \$53,793; the maximum is \$88,758. The department determined the person hired would likely not be entry-level. Instead s/he would be paid a salary between those amounts (\$64,699 for 9 months in FY10 and \$86,266 for 12 months in FY11). The department averaged the salaries of persons currently in the auditor (school finance) classification to estimate the salary of this new position. The department also covers its overhead costs by adding IT costs, an estimated level of fixed costs and variable costs, and a fringe benefit rate of 42.99% to each position. Based on the assumed salary and the various costs added to the salary, the department estimated the auditor position would cost approximately \$111,400 in FY10 and \$146,200 in FY11.

Changes – N/A.

Comments – Move the February 1 fee payment due date back six weeks for ease of payment.

Discussion – The February 1 due date is set in statute under s. 119.23 (2) (a) 3., Stats., and cannot be changed by the rule.

Changes – None.

Comments – There is a concern that this fee will cause a significant economic impact to the small schools as they are considered small businesses.

Discussion – While the payment of two fees required in FY10 (for school participation in FY10 and FY11), will have a fiscal effect on participating private schools, it should become more manageable as the fee is paid once per year. The fee should not have a significant fiscal effect on a participating private school. If it does, the private school has the option of not participating in the program and thereby not paying the fee.

Changes – None.

Comments – Review future due dates so that they do not occur on weekends and/or holidays as this November 1, 2009 (Sunday) did.

Discussion – The November 1, 2009, due date was a one-time date established in the emergency rule. The February 1 payment due date is established in statute (as discussed above) and cannot be changed.

Changes – None.

Comments – Allow the use of regular checks and not require cashier's checks. The Department of Revenue (DOR) accepts regular checks from businesses to pay their taxes. Why this requirement?

Discussion – The DOR does require cashier's checks at times to ensure a check will clear. Personal checks do not always clear, and the department does not want to spend the auditor's time following up on a possible bad check.

Changes – None.

Changes to the analysis or the fiscal estimate: None.

Responses to Clearinghouse Report:

5. Clarity, Grammar, Punctuation and Plainness:

a. Recommendation accepted, changes made.

b. The emergency rules make it clear that applicants must pay the fee by November 1, 2009 for the 2009-10 school year and by February 1, 2010, for the 2010-11 school year. If the initial applicability section in the permanent rule says the rule first applies to private schools applying to participate in the 2011-12 school year, applicants may be confused and think they don't have to meet both of the fee provisions under the emergency rule. Therefore, an initial applicability section will not be added at this time.

FINAL REGULATORY FLEXIBILITY ANALYSES

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.