

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Committee for
Review of
Administrative Rules
(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
-
- Committee Hearings ... CH
-
- Committee Reports ... CR
-
- Executive Sessions ... ES
-
- Hearing Records ... HR
-
- Miscellaneous ... Misc
- 97hr_JCR-AR_Misc_pt24a
- Record of Comm. Proceedings ... RCP
-

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PI 35

Emergency Rule Extension



State of Wisconsin
Department of Public Instruction

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John T. Benson
State Superintendent

Steven B. Dold
Deputy State Superintendent



November 20, 1998

The Honorable Robert Welch, Co-Chair
Joint Committee for the Review of Administrative Rules
One East Main, Room 201
Madison, WI 53702

The Honorable Glenn Grothman, Co-Chair
Joint Committee for the Review of Administrative Rules
125 W, State Capitol
Madison, WI 53702

Dear Gentlemen:

The Department of Public Instruction is submitting this letter as a petition to extend for 60 days the effective period of the emergency rule relating to the Milwaukee parental school choice program.

1995 Wisconsin Act 27 made several modifications to the Milwaukee parental school choice program, including:

- Allowing private religious schools to participate in the program.
- Expanding maximum participation to 15% of the Milwaukee school district's membership.
- Allowing siblings of pupils accepted on a random basis to be given preference in accepting applications.
- Requiring quarterly payments to be made by check to parents rather than made to the private schools.
- Requiring the participating private schools to be subject to uniform financial accounting standards established by the department and to annually submit to the department an independent financial audit of the private school.
- Forbidding a private school from requiring that a pupil participate in any religious activity if the pupil's parent or guardian submits a written request that the pupil be exempt from such activities.
- Eliminating the requirement that no more than 65% of the private school's enrollment consist of pupils attending under the private school choice program.
- Eliminating the reporting of comparable data by the school district and the participating private schools.
- Eliminating the financial or performance evaluation audits, as required by the state superintendent.

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made under 1995 Wisconsin Act 27. Therefore, the department is promulgating rules to implement the provisions under the Act. These rules were promulgated as emergency rules effective August 5, 1998.

The proposed permanent rules make several modifications to the Milwaukee parental school choice program, including:

- Allowing private religious schools to participate in the program.
- Requiring the pupil assignment council to meet annually by April 15 to designate a date by which random selection of pupils will be determined for those private schools that receive more applications than spaces available for enrollment.
- Developing private school financial reporting requirements.
- Determining costs allowed to be claimed by private schools and reimbursed by the department.
- Developing private school financial audit requirements.
- Developing payment adjustments to be made at the end of the school year by the private schools or the department.
- Eliminating the reporting of comparable data by the school district and the participating private schools relating to pupils' daily attendance, drop out rates, suspensions and expulsions.
- Eliminating specific parental involvement activities to be included in a private school's parental involvement plan.
- Eliminating specific parental involvement activities to be reported by the school district.
- Eliminating the requirement that private schools administer specific achievement tests to pupils and report the results of those achievement tests to the department.

Finally, several pre-existing requirements have been repealed and recreated in different sections reorganizing the rule to align it with the new provisions under the Act.

The emergency rules will expire January 1, 1999. The proposed permanent rules were submitted to the Legislative Council Rules Clearinghouse on August 12, 1998. The department held a public hearing on October 13, 1998, in Milwaukee. Notice of rules in final draft form were submitted to the presiding officers of each house of the legislature on October 29, 1998. We hope to have permanent rules in place by March 1, 1999.

We are requesting this extension to ensure that procedures relating to program participation remain in place during the legislative review period of the proposed permanent rules. If you have any questions relating to this request, please contact Charlie Toulmin, Milwaukee Parental School Choice Consultant, 266-2853. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "John T. Benson" followed by a stylized flourish.

John T. Benson
State Superintendent

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

The state superintendent of public instruction hereby repeals PI 35.02(2), (6) and (8), PI 35.03(3) and (4), and PI 35.05(6), renumbers PI 35.02(1), (3), (4), (5), (7), (9), (10) to (13) and (14) to (17), amends PI 35.01, PI 35.03(1)(a), PI 35.05(7), repeals and recreates PI 35.03(1)(c) and PI 35.03(2), PI 35.04, PI 35.05(2), and PI 35.05(3)(b) and creates PI 35.025, PI 35.02(1), (2), (4), (8), (9), (11), (12) and (19), PI 35.045, and PI 35.046, relating to the Milwaukee parental school choice program.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

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

Statute interpreted: s. 119.23, Stats.

1995 Wisconsin Act 27 made several modifications to the Milwaukee parental school choice program, including

- Allowing private religious schools to participate in the program.
- Expanding participation to 15% of the Milwaukee school district's membership.
- Allowing siblings of pupils accepted on a random basis to be given preference in accepting applications.
- Requiring quarterly payments to be made by check to parents rather than made to the private schools.
- Requiring the participating private schools to be subject to uniform financial accounting standards established by the department and to annually submit to the department an independent financial audit of the private school.
- Forbidding a private school from requiring that a pupil participate in any religious activity if the pupil's parent or guardian submits a written request that the pupil be exempt from such activities.
- Eliminating the requirement that no more than 65% of the private school's enrollment consist of pupils attending under the private school choice program.
- Eliminating the reporting of comparable data by the school district and the participating private schools.
- Eliminating the financial or performance evaluation audits, as required by the state superintendent.

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made under 1995 Wisconsin Act 27. Therefore, the department is promulgating emergency rules to implement the provisions under the Act in time for the 1998-99 school year. These emergency rules will be promulgated as proposed permanent rules.

The emergency rules make several modifications to the Milwaukee private school choice program, including:

- Allowing private religious schools to participate in the program.
- Requiring the pupil assignment council to meet annually by April 15 to designate a date by which random selection of pupils will be determined for those private schools that receive more applications than spaces available for enrollment.
- Developing private school financial reporting requirements.
- Determining costs allowed to be claimed by private schools and reimbursed by the department.
- Developing private school financial audit requirements.
- Developing payment adjustments to be made at the end of the school year by the private schools or the department.
- Eliminating the reporting of comparable data by the school district and the participating private schools relating to pupils' daily attendance, drop out rates, suspensions and expulsions.
- Eliminating specific parental involvement activities to be included in a private school's parental involvement plan.

- Eliminating specific parental involvement activities to be reported by the school district.
- Eliminating the requirement that private schools administer specific achievement tests to pupils and report the results of those achievement tests to the department.

Finally, several pre-existing requirements have been repealed and recreated in different sections reorganizing the rule to align it with the new provisions under the Act.

1 **SECTION 1.** PI 35.01 is amended to read:

2 PI 35.01 PURPOSE. Under s. 119.23(2)(a), Stats., any qualified pupil in grades kindergarten to 12 who
3 resides within a city may attend, at no charge, any participating ~~nonsectarian~~ private school located in the city.
4 Participation in the private school choice program is limited to ~~1.5%~~ of the school district's membership as specified
5 under s. 119.23(2)(b), Stats. This chapter establishes approval criteria and requirements for private schools
6 participating in the private school choice program, requirements for receipt of state aid for those private schools
7 under s. 119.23(4), Stats., and requirements for schools operating under ch. 119, Stats.

8 **SECTION 2.** PI 35.025 is created to read:

9 PI 35.025 PUPIL ASSIGNMENT COUNCIL REQUIREMENTS. The pupil assignment council created
10 under s. 119.23(8), Stats., shall meet annually by April 15 to designate a date by which random selection of pupils
11 will be determined for those private schools that receive more applications than spaces available for enrollment. The
12 pupil assignment council shall also recommend to the state superintendent a method for ensuring that pupils will be
13 accepted on a random basis.

14 **SECTION 3.** PI 35.02 (2), (6) and (8) are repealed.

15 **SECTION 4.** PI 35.02(1), (3), (4), (5), (7), (9), (10) to (13), and (14) to (17) are renumbered PI 35.02(3),
16 (5), (6), (7), (10), (13), (14) to (18) and (20) to (23), respectively.

17 **SECTION 5.** PI 35.02(1), (2), (4), (8), (9), (11), (12), and (19) are created to read:

18 PI 35.02(1) "Accrual basis" means revenues are recorded when earned and expenditures are recorded as
19 soon as they result in liabilities for benefits received, notwithstanding that the receipt of the revenue or the payment
20 of the expenditure may take place, in whole or in part, in another accounting period.

21 (2) "Auditor" means a person licensed as a certified public accountant by the accounting examining board
22 under ch. 442, Stats.

23 (4) "Capital outlay" means expenditures for items having a useful life greater than one year.

24 (8) "Enrollment" or "pupils enrolled" has the meaning defined under s. 121.004(7)(a) to (cm), Stats.

25 (9) "Fiscal period" means the school year as defined under s. 115.001(13), Stats.

26 (11) "Membership" has the meaning defined under s. 121.004(5), Stats.

27 (12) "Offsetting revenue" means revenues that reduce school expenditures used for per pupil cost
28 computations.

1 (19) "School term" has the meaning defined under s. 115.001(12), Stats.

2 SECTION 6. PI 35.03(1)(a) is amended to read:

3 PI 35.03(1)(a) The private school's proposed method for ensuring that pupils will be accepted on a random
4 basis which ensures that, except for continuing pupils and their siblings, pupils will be accepted on a random
5 selection ~~shall be taken~~ basis from a new pool of applicants each school year. Waiting lists from previous school
6 years may not be carried over and used from one year to the next.

7 SECTION 7. PI 35.03(1)(c) is repealed and recreated to read:

8 PI 35.03(1)(c) The number of pupils participating in the private school choice program for which the private
9 school has space.

10 SECTION 8. PI 35.03(2) is repealed and recreated to read:

11 PI 35.03(2) PROCEDURAL REQUIREMENTS. A private school that participates in the private school
12 choice program shall do all of the following:

13 (a) Submit to the department by June 30 each school year information demonstrating compliance with s.
14 119.23(7)(a), Stats.

15 (b) Appoint a representative to the pupil assignment council under s. 119.23(8), Stats.

16 (c) Pay all costs incurred in the administration, scoring and reporting of results of the academic achievement
17 tests if used to meet the requirement under s. 119.23(7)(a)3, Stats.

18 (d) Ensure that test security is maintained for all academic achievement tests administered under par. (c).

19 (e) Meet all of the requirements specified under ss. PI 35.04, PI 35.045 and PI 35.046.

20 SECTION 9. PI 35.03(3) and (4) are repealed.

21 SECTION 10. PI 35.04 is repealed and recreated to read:

22 PI 35.04 ENROLLMENT. (1) The private school that participates in the private school choice program
23 shall accept pupils on a random basis in accordance with the method reviewed under s. PI 35.03(1)(a). The private
24 school may give preference to siblings of pupils accepted on a random basis.

25 (2) The private school under this section shall notify each applicant and the applicant's parent or guardian of
26 acceptance or nonacceptance, in writing, within 60 days after receiving the application. The private school shall
27 retain all notices given under this section and all original applications, both accepted and nonaccepted, submitted
28 under this chapter.

29 (3) Annually, by September 1 or within 5 days after classes begin, the private school under this section shall
30 do all of the following:

31 (a) Submit to the department a copy of the accepted applications that correspond to the class list submitted
32 under par. (b). The private school shall ensure the submitted applications are complete, accurate and signed by the
33 parent or guardian as proof of enrollment required under s. 119.23(4), Stats.

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

3 (4) The private school under this section shall do all of the following:

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

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

11 (c) Submit to the department with the membership report under par. (a), copies of any accepted applications
12 for pupils included in the class list under par. (b) that were not previously reported under sub. (3)(a). The private
13 school shall ensure that the applications submitted under this paragraph are complete, accurate and signed by the
14 parent or guardian as proof of enrollment required under s. 119.23(4), Stats.

15 (5)(a) The private school may include a pupil on its membership report under sub. (4)(a) only if one of the
16 following occurs:

17 1. The pupil is in attendance for instruction on the date specified, or

18 2. The pupil is absent on the date specified but has attended at least one day during the school term prior to
19 the date specified and attends at least one day after the date specified and has not enrolled in another private school
20 participating in the private school choice program or in a Wisconsin public school district during the period of
21 absence.

22 (b) If a pupil who is eligible to be included in the official enrollment under sub. (5)(a)2. returns following the
23 filing of the membership report, an amended report shall be filed with the department.

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

26 SECTION 11. PI 35.045 and 35.046 are created to read:

27 PI 35.045 FINANCIAL REPORTING REQUIREMENTS AND DETERMINING COSTS. (1) Annually,
28 by September 1, a private school participating in the private school choice program shall submit, on a form provided
29 by the department, a financial audit report accompanied by the auditor's opinion required under s. PI 35.046(1)(a)
30 containing the following information for the previous school year:

31 (a) Revenues and expenditures for all programs of the private school and the amount attributable to
32 kindergarten through grade 12 educational programs.

33 (b) Asset and liability balances at the start and end of the school year.

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

3 (d) Per pupil cost related to kindergarten through grade 12 educational programming computed on a full-time
4 equivalent membership basis.

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

7 1. The private school's educational programming cost shall be reduced by the following offsetting revenues:

8 a. Fees charged pupils for books and supplies used in classes and programs.

9 b. Rentals for school buildings.

10 c. Food service revenues.

11 d. Governmental financial assistance revenues.

12 e. Interest earnings and other income resulting from investment of debt proceeds.

13 2. The private school's per pupil cost shall be determined by dividing the net eligible educational
14 programming cost determined under subd. 1. by the membership for all pupils enrolled in kindergarten through grade
15 12 educational programs.

16 3. The private school's membership of pupils participating in the private school choice program shall be
17 multiplied by the lesser of the school district's per pupil aid eligibility or the private school's per pupil cost. If the
18 result is greater than the amount of the private school choice payments retained by the school, an adjustment payment
19 shall be made to the private school. If the result is less than the amount of the private school choice payments
20 retained by the private school, the private school shall refund the amount of any overpayment to the department.

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

23 (2) The accrual basis of accounting shall be used in reporting the information required under this section
24 except as follows:

25 (a) Debt proceeds are included in revenue when received.

26 (b) Long-term debt principal and interest payments are included in expenditures when payments are due.

27 (c) Summer school program revenues and expenditures are reported in the fiscal year corresponding to the
28 pupil membership used for program payment purposes.

29 (d) Withdrawals as salary compensation by individuals with a proprietary interest in the private school shall
30 be included in expenditures only when identified as such on the private school's records and made by check on or
31 before June 30.

32 (e) Acquisition of capital outlay items are reported in expenditures when acquired.

1 (3)(a) Costs requiring allocation between kindergarten through grade 12 educational programming and other
2 programs of the private school shall be made using one or more of the following allocation bases the private school
3 considers most appropriate:

- 4 1. Instruction costs may be allocated based on either pupil full-time equivalency or time spent.
- 5 2. Student support service costs may be allocated based on either pupil full-time equivalency or time spent.
- 6 3. Administration costs may be allocated based on direct program expenditures, time spent, or full-time
7 equivalent employees.
- 8 4. Accounting costs may be allocated based on either the number of transactions or time spent.
- 9 5. Facility operation and maintenance costs may be allocated based on floor space operated, space occupied
10 over time, or labor hours.
- 11 6. Pupil transportation costs may be allocated based on miles driven, pupil miles driven or driver hours.

12 (b) The following may not be included in kindergarten through grade 12 educational programming cost:

- 13 1. Contributed services.
- 14 2. Fund raising.
- 15 3. Scholarship awards and financial support for pupils to attend the private school, including payments to
16 parents or others on behalf of pupils.
- 17 4. Debt principal and interest payments to the private school's owners, sponsoring organization, or as a
18 result of internal financing from other funds of the school. Borrowing from an endowment fund or from individuals
19 serving on a board of directors or in an advisory capacity who do not have a proprietary interest in the school are not
20 subject to the requirements under this subdivision. The interest rate on such borrowings may not exceed the
21 published prime rate on the borrowing date.

22 (4)(a) The private school shall, for the purpose of computing per pupil cost, charge off non-debt financed
23 capital outlay expenditures as follows:

- 24 1. The private school shall annually make an irrevocable election to either charge off all expenditures in
25 each of the following categories entirely as a school year cost or amortize the expenditure over future periods as
26 follows:
 - 27 a. Media may be amortized over 5 years or 20% annually. Under this subparagraph, media includes
28 consumable instructional and administrative items that are expected to serve their principal purposes for more than a
29 year and includes text and reference books, audio-visual materials, and computer software.
 - 30 b. Equipment and furnishings may be amortized over 5 years or 20% annually. Under this subparagraph
31 furnishings includes desks, chairs, and freestanding lockers. Only the additional cost difference between the
32 allowance granted for equipment traded in and the value of new equipment acquired shall be eligible for inclusion in
33 cost calculation.

1 c. Buildings, sites and improvements may be amortized over 16 years or 6.25% annually. Under this
2 subparagraph improvements include sidewalks, installed playground equipment, landscaping and building
3 components such as lighting fixtures, built-in lockers, heating, ventilating and wiring systems. Only the difference
4 between the amount previously included in cost and the value of the new building acquired shall be eligible for
5 inclusion in cost calculation, if buildings are replaced.

6 d. Leasehold improvements may be amortized over the remaining lease period.

7 2. A private school may elect to charge off in accordance with par. (a), the fair market value of existing
8 items in each category as of July 1, 1996, or at the date first participating in the program or re-entering the program.
9 The value of items not so elected to be charged off as a cost may not be eligible for inclusion in cost in future fiscal
10 periods.

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

14 (c) The private school shall maintain, indefinitely, documentation regarding capital outlay values,
15 expenditures and their use in per pupil cost computation.

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

18 PI 35.046 FINANCIAL AUDIT REQUIREMENTS. (1) A private school under this chapter shall provide
19 and pay for an independent auditor's opinion regarding the information required under s. PI 35.045 as follows:

20 (a) Employ an auditor to provide an audit opinion stating that the private school's financial report is free
21 from material misstatement and the private school's per pupil cost and any payment adjustment is fairly presented.

22 (b) Provide the auditor with a listing of all kindergarten through grade 12 pupils enrolled in the school by
23 grade level and classroom. The listing provided under this paragraph shall identify pupils participating in the private
24 school choice program.

25 (c) Deposit all receipts and pay all disbursements from a public depository account or accounts maintained
26 solely for the private school's purposes unless the operating organization's financial accounting system provides for
27 separate identification of the school's revenue and expenditure transactions.

28 (d) Maintain a record of all receipts using a sequential numbering system.

29 (e) Furnish all other financial and pupil records the auditor considers necessary to provide the audit opinion.

30 (2)(a) The auditor employed sub. (1) shall develop a written audit program identifying the steps and
31 procedures followed in conducting the audit. The audit program shall include all the procedures specified in
32 paragraphs (b) and (c) and such other procedures the auditor considers necessary to fulfill professional
33 responsibilities. The auditor shall retain working papers relating to the audit under this subsection for at least 3 years
34 from the date specified under s. PI 35.045(1)(intro.).

1 (b) The auditor shall perform the following procedures in auditing the private school's enrollment:

2 1. Verify totals used to compile reported enrollments and tracing totals to classroom records.

3 2. Verify enrollment reported on the membership report under s. PI 35.04 for all private school choice
4 program pupils against the private school's official attendance records.

5 3. Select a sample of at least 60 private school choice pupils included on the private school's official
6 enrollment records and verification against classroom records. The sample shall include records from each classroom.

7 If the private school has a private school choice program enrollment of less than 60 pupils, all such pupil records
8 shall be tested. If an exception is identified the auditor shall extend the sample test in increments of 60 records until
9 no additional exceptions are found or the official enrollment records for all private school choice pupils have been
10 verified against classroom records.

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

16 5. If the private school is reporting pupils enrolled in a 4-year-old kindergarten program as permitted by
17 s. 121.004(7)(cm), Stats., verify that the 4-year-old kindergarten program included at least 87.5 hours of outreach
18 activities as documented by teacher logs.

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

21 7. If the private school has operated a summer school program, the auditor shall review for clerical accuracy
22 documentation maintained by the school supporting summer school membership reports filed with the department.

23 (c) The auditor shall perform the following procedures in auditing the private school's financial records:

24 1. Ensure that the financial report is free from material misstatement by performing procedures as required
25 under subd. 2. and such other procedures, that in the auditor's judgment, provide reasonable assurance that the report
26 does not contain misapplications of accounting requirements, departures from fact, or other errors or omissions, that
27 in the aggregate, would result in reported net eligible educational programming cost under s. PI 35.045(1)(e)1
28 exceeding the following acceptable variance limitations:

29 a. For costs less than \$100,000, the variance limitation shall be 4% of the reported costs.

30 b. For costs of at least \$100,000 but less than \$1,000,000, the variance limitation shall be 2% of the
31 reported costs.

32 c. For costs of at least \$1,000,000 but less than \$3,000,000, the variance limitation shall be 1.5% of the
33 reported costs.

1 d. For costs of at least \$3,000,000 but less than \$5,000,000, the variance limitation shall be 1% of the
2 reported costs.

3 e. For costs of at least \$5,000,000 but less than \$10,000,000, the variance limitation shall be .7% of the
4 reported costs.

5 f. For costs at least \$10,000,000, the variance limitation shall be .5% of the reported costs.

6 2. Consider account balances equal to at least 75% and individual transactions equal to at least 20% of the
7 variance limitation amount determined under subd. 1. as being significant and shall perform procedures considered
8 necessary to conclude such items do not contain misstatements whose effect, when aggregated with misstatements in
9 other balances and transactions, would exceed the variance limitation amount.

10 3. Determine that fees charged pupils are allowed as specified under s. PI 35.03(6)(a).

11 4. Confirm the private school's cash and investment account balances with depositories.

12 5. Prepare or obtain and examine a reconciliation of confirmed cash and investment account balances to the
13 private school's accounting records. The reconciliation shall include the following:

14 a. Depository balances at the beginning of the fiscal period reconciled to the private school's accounting
15 records.

16 b. Receipts per depository statements reconciled to the private school's accounting records.

17 c. Disbursements per depository statements reconciled to the private school's accounting records.

18 d. Depository balances at the end of the fiscal period reconciled to the private school's accounting records.

19 4. Prepare or obtain and examine a reconciliation of payroll withholdings to remittances to authorized
20 agencies or taxing authorities.

21 (d) The auditor shall respond directly to inquiries from the department concerning information accompanying
22 the auditor's opinion and permit the department, upon request, to review audit workpapers. The auditor shall notify
23 the private school of any such inquiries or requests and the auditor's response thereto.

24 **SECTION 12.** PI 35.05(2) is repealed and recreated to read:

25 PI 35.05(2) The department shall collect audits under s. PI 35.046, including membership eligibility of any
26 or all of the private schools participating under this chapter.

27 **SECTION 13.** PI 35.05(3)(b) is repealed and recreated to read:

28 PI 35.05(3)(b) The amount per pupil to be paid to the private school shall be determined as specified in s.
29 119.23(5)(a), Stats. No aid may be paid to a private school for a pupil unless the private school has provided the
30 information required under ss. PI 35.03(1), PI 35.04, PI 35.045 and PI 35.046. The payment schedule is as follows:

31 1. The September payment shall be based on the number of pupils receiving instruction at the beginning of
32 the school year as indicated on the class list submitted under s. PI 35.04(3)(b) and the July 1 estimated amount per
33 pupil as determined under s. 121.15(4), Stats., multiplied by 25%.

1 2. The November payment shall be based on the number of pupils reported on the membership report
2 submitted on October 1 under s. PI 35.04(4)(a) and the October 15 amount per pupil as determined under s.
3 121.15(4), Stats., that the school district will receive in the current school year, multiplied by 50%, less the
4 September payment.

5 3. The February payment shall be based on the number of pupils reported on the membership report
6 submitted on February 1 under s. PI 35.04(4)(a) and the October 15 amount per pupil as determined under s.
7 121.15(4), Stats., that the school district will receive in the current school year, multiplied by 25%.

8 4. The May payment shall be based on the number of pupils reported on the membership report submitted
9 on February 1 under s. PI 35.04(4)(a) and the October 15 amount per pupil as determined under s. 121.15(4), Stats.,
10 that the school district will receive in the current school year, multiplied by 25%.

11 5. Any payment adjustment shall be made as specified under s. PI 35.045(1)(e) after the department has
12 received and reviewed the audit opinion under s. PI 35.046(1)(a).

13 **SECTION 14.** PI 35.05(6) is repealed.

14 **SECTION 15.** PI 35.05(7) is amended to read:

15 PI 35.05(7) The state superintendent shall ensure that test security is maintained ~~on all school district~~
16 ~~achievement tests administered under sub. (6) if any achievement tests are administered under s. 119.23(7)(a)3.~~

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. A statement of the facts constituting the emergency is:

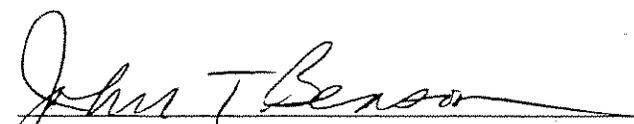
On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wisconsin Act 27.

Since the provisions under the Act (including allowing the participation of religious schools) are to be implemented during the 1998-99 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as provided for under the Act. The requirements established under this rule were discussed with the private schools participating under the program during the 1996-97 school year. The schools indicated an acceptance of these provisions.

These emergency rules will be promulgated as proposed permanent rules.

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 5th day of August, 1998


John T. Benson
State Superintendent

PI 38

Emergency Rule Extension



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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John T. Benson
State Superintendent

Steven B. Dold
Deputy State Superintendent



November 20, 1998

The Honorable Robert Welch, Co-Chair
Joint Committee for the Review of Administrative Rules
One East Main, Room 201
Madison, WI 53702

The Honorable Glenn Grothman, Co-Chair
Joint Committee for the Review of Administrative Rules
125 W, State Capitol
Madison, WI 53702

Dear Gentlemen:

The Department of Public Instruction is submitting this letter as a petition to extend for 60 days the effective period of the emergency rule relating to the peer review and mentoring program.

1997 Wisconsin Act 237 created s. 115.405, Stats., which establishes a grant for peer review and mentoring. Under s. 115.405(2), Stats., the state superintendent shall allocate \$500,000 annually, for one-year grants that allow a participating CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28(7) and 118.192, Stats., to implement peer review and mentoring programs.

The proposed rules establish application requirements and criteria for awarding grants under the peer review and mentoring program.

A grant application under this program must be developed with significant input from teachers. A grant recipient may not use funds awarded to supplant or replace funds otherwise available for the program and must provide a match of 20 percent.

The grant award period begins the 1998-99 school year. Since the timelines would be too stringent to implement this grant program by September 1, 1998, the department required applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. Applications submitted in subsequent years will be due May 1 with grant periods of July 1 to June 30.

These rules were promulgated as emergency rules effective August 15, 1998 and will expire January 11, 1999. The proposed permanent rules were submitted to the Legislative Council Rules Clearinghouse on August 12, 1998. The department held a public hearing on October 20, 1998, in Madison. Notice of rules in final draft form were submitted to the presiding officers of each house of the legislature on October 29, 1998. We hope to have permanent rules in place by March 1, 1999.

We are requesting this extension to ensure that procedures relating to grant program participation remain in place during the legislative review period of the proposed permanent rules. If you have any questions relating to this request, please contact Peter Burke, Director Teacher Education, Licensing and Placement, 266-1879. Thank you for your consideration of this request.

Sincerely,

John T. Benson
State Superintendent

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

The state superintendent of public instruction hereby proposes to create ch. PI 38, relating to grants for peer review and mentoring.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: ss. 115.405(3) and 227.11(2)(a), Stats.

Statute interpreted: s. 115.405, Stats.

1997 Wisconsin Act 237 created s. 115.405, Stats., which establishes a grant for peer review and mentoring. Under s. 115.405(2), Stats., the state superintendent shall allocate \$500,000 annually, for one-year grants that allow a participating CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28(7) and 115.192, Stats., to implement peer review and mentoring programs.

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A grant application under this program must be developed with significant input from teachers. A grant recipient may not use funds awarded to supplant or replace funds otherwise available for the program and must provide a match of 20 percent.

The grant award period begins the 1998-99 school year. Since the timelines would be too stringent to implement this grant program by September 1, 1998, the department is requiring applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. Applications submitted in subsequent years will be due May 1 with grant periods of July 1 to June 30.

SECTION 1. Chapter PI 38 is created to read:

CHAPTER PI 38

GRANTS FOR PEER REVIEW AND MENTORING

PI 38.01 PURPOSE. Under s. 115.405, Stats., the state superintendent shall award grants to eligible applicants for peer review and mentoring programs. This chapter sets forth criteria and procedures for awarding grants under this program.

PI 38.02 DEFINITIONS. In this chapter:

- (1) "CESA" means a cooperative educational service agency created under ch. 116, Stats.
- (2) "Initial educator" means an individual who has successfully completed an institution of higher education's approved program and who is licensed by the department of public instruction for the first time.
- (3) "Mentor" means an educator and colleague who primarily provides support and assistance to initial educators, will have input into the confidential formative assessment of the initial educator and is not to be considered as part of the formal evaluation process.

(4) "State superintendent" means the state superintendent of public instruction for the state of Wisconsin.

PI 38.03 GRANTS FOR PEER REVIEW AND MENTORING. (1) **ELIGIBILITY.** Annually, by November 1, 1998, and by May 1 in subsequent years, eligible applicants may apply to the state superintendent to fund a peer review and mentoring program described under sub. (4). Eligible applicants include the following:

- (a) A CESA.
- (b) A consortium consisting of 2 or more school districts.
- (c) A consortium consisting of 2 or more CESAs.
- (d) A combination of pars. (a) to (c).

(2) **APPLICATION REQUIREMENTS.** An application submitted under sub. (1) shall be developed with significant input from teachers and shall include the following information:

- (a) Signatures, names and titles of individuals who developed the grant application.
- (b) A list of school districts and CESAs that will participate in the program.
- (c) A description of the proposed program including the rationale, goals and objectives.
- (d) A description of how the proposed program will assist initial educators and enhance instruction.
- (e) A description of the program activities to be completed during the duration of the program, with a timetable for completion of each major activity.
- (f) A description of how the program will enhance pupil achievement.
- (g) A description of the evaluation plan including the indicators used to measure the achievement of the program goals and objectives.
- (h) A description of the applicant's capacity to continue the program after the grant period is complete.
- (i) A description of how the grant award will be allocated, including how the applicant will match at least 20% of the grant awarded as required under s. 115.405(1), Stats. The matching funds may be in the form of money or in-kind services or both.

(3) **ASSURANCES.** A grant recipient under this chapter shall provide for all of the following:

- (a) An assurance that the grant awarded under this chapter will not be used to supplant or replace funds otherwise available for professional development.
- (b) An assurance that program information and related materials under this chapter will be made available to interested schools and other educational institutions at a reasonable cost.

(4) **PROGRAM COMPONENTS.** A one-year grant of not more than \$25,000 may be made to fund a comprehensive peer review and mentoring program for initial and professional educators. Program components which may be funded under this subsection include all of the following:

- (a) An ongoing orientation for initial educators that is collaboratively developed and delivered by administrators, teachers, support staff and parents.

(b) Seminars that meet the needs and concerns of the initial educator and reflect the Wisconsin standards for teacher development and licensure which includes demonstration of all of the following:

1. The teacher understands the central concepts, tools of inquiry, and structures of the disciplines he or she teaches and can create learning experiences that make these aspects of subject matter meaningful for students.
2. The teacher understands how children learn and develop, and can provide learning opportunities that support their intellectual, social, and personal development.
3. The teacher understands how students differ in their approaches to learning and creates instructional opportunities that are adapted to diverse learners.
4. The teacher understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.
5. The teacher uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.
6. The teacher uses knowledge of effective verbal, nonverbal, and media communication techniques to foster active inquiry, collaboration, and supportive interaction in the classroom.
7. The teacher plans and delivers instruction based upon knowledge of subject matter, students, the community, and curriculum goals.
8. The teacher understands and uses formal and informal assessment strategies to evaluate and ensure the continuous intellectual, social, and physical development of the learner.
9. The teacher is a reflective practitioner who continually evaluates the effects of his or her choices and actions on others, such as students, parents, and other professionals in the learning community and who actively seeks out opportunities to grow professionally.
10. The teacher fosters relationships with school colleagues, parents, and agencies in the larger community to support students' learning and well being.

(c) A mentor for all initial educators.

(d) A description of the selection, training, roles and responsibilities of the mentors.

(e) A professional development plan for the initial educator which includes a list of activities, timelines for achievement, and assessments based on the standards described under par. (b).

PI 38.05 REVIEW OF APPLICATIONS AND AWARDING OF GRANTS. The state superintendent shall review the applications submitted under this chapter and shall determine which of the applications eligible for funding will receive grants based on the following criteria:

- (1) The extent to which teachers are involved in the program development and activities.
- (2) The extent to which the goals and objectives relate to the purpose of the program.
- (3) The extent to which the program activities are appropriate to the goals and objectives of the proposed program.

(4) The adequacy of the timeline for completion of each major activity and the extent to which continuation of program activities is ensured after the grant period is completed.

(5) The extent to which the program activities will enhance instruction and ultimately enhance student achievement.

FINDING OF EMERGENCY

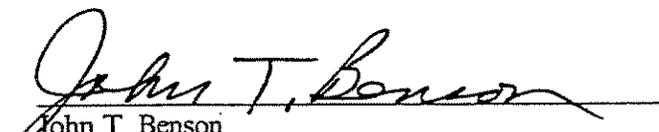
The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Under s. 115.405(2), Stats., the state superintendent shall allocate \$500,000 annually, for one-year grants that allow a participating CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28(7) and 115.192, Stats., to implement peer review and mentoring programs.

The grant award period begins the 1998-99 school year. Since the timelines would be too stringent to implement this grant program by September 1, 1998, the department is requiring applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. In order for applicants to develop proposals and for the state superintendent to review the proposals and make grant awards in time for the upcoming school year, 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 15th day of August, 1998


John T. Benson
State Superintendent

de

HFS 94

Emergency Rule Extension



State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Lekan, Secretary



December 1, 1998

The Honorable Glenn Grothman, Co-Chairperson
Joint Committee for Review of Administrative Rules
Room 125 West, State Capitol
Madison, Wisconsin

Dear Representative Grothman:

The Department of Health and Family Services has an emergency rulemaking order in effect that amends s. HFS 94.24 (2) (e), to authorize random searches of the rooms and personal belongings of ch. 980, Stats., patients at the Wisconsin Resource Center and the rooms and personal belongings of patients in the maximum security facility at the Mendota Mental Health Institute. The emergency order will expire before the rule change is made permanent unless the effective period of the emergency order is extended. Pursuant to s. 227.24(2), Stats., I ask the Joint Committee to extend the effective period of the emergency order by 60 days, from January 13, 1999 through March 13, 1999.

The rule change was promulgated by emergency order to protect public safety. Before August 1, 1998, staff at the Wisconsin Resource Center conducted random searches of the rooms and personal belongings of ch. 980 patients. These searches were carried out for treatment purposes and to protect other patients and staff and, in the long run, the general public. The searches were temporarily suspended effective August 1 after a patient brought a lawsuit challenging the practice, claiming that it violated s. HFS 94.24 (2) (e) which permits searches of patient rooms and belongings only if there is documented reason to believe that security rules have been violated or if the living unit is a forensic unit. The unit housing ch. 980 patients at the Wisconsin Resource Center is not a forensic unit.

The emergency order was published on August 15, 1998, and will expire on January 13, 1999, unless extended. The replacement permanent order, which also amends s. HFS 94.24 (2) (d) 1. d. to clarify that routine personal searches of these patients are authorized, was sent to the Legislative Council for review on October 26, 1998, and will be taken to public hearing on December 17, 1998.

A copy of the emergency rulemaking order is attached to this letter. If you have any questions about it, you may contact Neil Gebhart of the Department's Office of Legal Counsel at 267-2002.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Lekan".

Joe Lekan
Secretary

Attachment

cc Senator Welch

7-27-98

ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING RULES

FINDING OF EMERGENCY

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center effective August 1 will temporarily suspend random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront crimogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives

for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

ORDER

Pursuant to authority vested in the Department of Health and Family Services by ss. 51.61 (9), 227.11 (2) (a) and 227.24 (1) (a), Stats., the Department of Health and Family Services hereby amends rules interpreting ss. 51.61 (1) and 980.06 (2) (b), Stats., as follows:

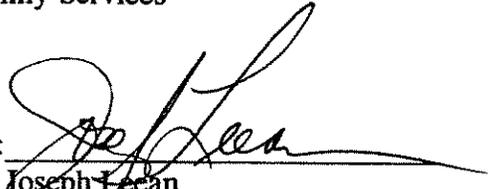
SECTION 1. HFS 94.24 (2) (e) is amended to read:

HFS 94.24 (2) (e) The room and personal belongings of an inpatient may be searched only when there is documented reason to believe that security rules have been violated, except ~~that in forensic units where routine~~ searches may be conducted under other circumstances in forensic units, the maximum security facility at the Mendota mental health institute or a secure mental health unit or facility under s. 980.065, Stats., in accordance with as specified in written facility policies.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24 (1) (c), Stats.

Wisconsin Department of Health and
Family Services

Date: July 30, 1998

By: 

Joseph Lecan
Secretary

SEAL:

FISCAL ESTIMATE
DOA-2048 N(R10/96)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
HFS 94.24 (2) (e)
Amendment No. if Applicable

Subject

CONDITIONS FOR SEARCHING THE ROOMS AND BELONGINGS OF CH. 980, STATS., PATIENTS AT THE WISCONSIN RESOURCE CENTER AND PATIENTS IN THE MAXIMUM SECURITY FACILITY AT MENDOTA MENTAL HEALTH INSTITUTE

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

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

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

Decrease Costs

Local: No local government costs

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

Assumptions Used in Arriving at Fiscal Estimate

This rule change will not affect the expenditures or revenues of state government or local governments.

Section HFS 94.24 (2) (e) in the Department's rules relating to the rights of patients receiving treatment for a mental disability, currently prohibits searches of the rooms and personal belongings of inpatients except when there is documented reason to believe that security rules have been violated. An exception to this prohibition is made in the case of patients in forensic units. This order amends s. HFS 94.24 (2) (e) to make exceptions also for searches of the rooms and personal belongings of patients in the maximum security facility at the Mendota Mental Health Institute and patients at the Wisconsin Resource Center who were committed for treatment under ch. 980, Stats.

The amendment of s. HFS 94.24 (2) (e) will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of ch. 980, Stats., patients. Those searches were done until recently for security and effective treatment reasons, but their legality under the current rule has been challenged and on the advice of counsel they have been suspended until the rule is amended.

The rule change concerns only the operation of state-operated mental health inpatient facilities, and not mental health inpatient facilities operated by local governments.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

H&FS/Paul Menge, 266-5602

Authorized Signature/Telephone No.

Richard W. Lorang, 266-9622

Date

7-28-87