

Joint Committee for Review of Administrative Rules

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- **Clearinghouse Rule 04-069**

Report to the Legislature **Clearinghouse Rule 04-069**

The Joint Committee for Review of Administrative Rules

Produced pursuant to s. 227.26(2)(g), Stats.

Clearinghouse Rule 04-069 (CR 04-069), promulgated by the Department of Public Instruction (DPI), relates to prorating under the Milwaukee School Choice Program.

Description of the Problem

The Milwaukee School Choice program enrollment is limited to 15% of the Milwaukee Public School District's membership. Because DPI believes that the statutory enrollment limit may be reached by the 2005-2006 school year, DPI proposed CR 04-069. CR 04-069 creates a new application process to determine which students are accepted into the choice program and also a rationing system to satisfy the requirements of the statutory enrollment cap. However, the schools and students of the Milwaukee School Choice program believe this rule exceeds its statutory authority and is unworkable.

Arguments in Favor of Objection

- *A Legislative Council report states that the CR 04-069 selection process does not prorate the number of available spots at a given school as the statute requires. The rule allows DPI to randomly select which pupils may apply and which pupils a school may accept. Therefore, DPI has exceeded its statutory authority.*

- *The Legislative Council report also states that the application process timeline does not conform to the statutory requirement that the applicant be notified within 60 days of acceptance. This is again an instance where statutory authority has been exceeded.*
- *CR 04-069 requires students' applications for the choice program to be received by the last working day of March for the next school year. Currently, applications are received until mid-September of the school year. Shortening the application time period will create a hardship for the choice schools and parents.*

Arguments Against Objection

- *If the enrollment cap is exceeded, it will be difficult for DPI to prorate the number of school choice seats available without a rule in place.*
- *Without any clarifying statute or rule, confusion could be caused to all parties involved if the cap is exceeded.*

Action by Joint Committee for Review of Administrative Rules

On October 20, 2004, the Assembly Committee on Education Reform voted 8 to 2 to object to Clearinghouse Rule 04-069. The Joint Committee for Review of Administrative Rules held a public hearing and executive session on CR 04-069 on December 16, 2004. The committee passed a motion on a 6 to 4 vote, pursuant to s. 227.19 (4) (d) 6. and (5) (d), Stats., objecting to Clearinghouse Rule 04-069. This action prevents the DPI from promulgating the proposed rule.

On January 12, 2004, JCRAR voted by a 6 to 4 margin, to introduce LRB 1298 and LRB 1299, which makes the effect of the suspension statutory.