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PI 35 - SCHOOL CHOICE - MILD  
98-112

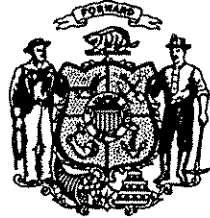
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**CLEARINGHOUSE REPORT TO AGENCY**

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

**CLEARINGHOUSE RULE 98-112**

AN ORDER to repeal PI 35.02 (2), (6) and (8), 35.03 (3) and (4) and 35.05 (6); to renumber PI 35.02 (1), (3), (4), (5), (7), (9), (10) to (13) and (14) to (17); to amend PI 35.01, 35.03 (1) (a) and 35.05 (7); to repeal and recreate PI 35.03 (1) (c) and (2), 35.04 and 35.05 (2) and (3) (b); and to create PI 35.025, 35.02 (1), (2), (4), (8), (9), (11), (12) and (19), 35.045 and 35.046, relating to the Milwaukee parental school choice program.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

08-12-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-10-98 REPORT SENT TO AGENCY.

RNS:RW:kjf;jt

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## CLEARINGHOUSE RULE 98-112

### Comments

**[NOTE:** All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

#### 2. Form, Style and Placement in Administrative Code

- a. In s. PI 35.03 (2) (c), the subdivision number should be followed by a period.
- b. In ss. PI 35.03 (2) (e) and 35.05 (3) (b), only one "PI" is needed in the enumeration of rules. For example, in s. PI 35.03 (2) (e), "ss. PI 35.04, 35.045 and 35.046" should replace "ss. PI 35.04, PI 35.045 and PI 35.046."
- c. In several parts of s. PI 35.04, "A" or "a" should replace "The" or "the."
- d. In s. PI 35.04 (5) (a) 1., a period should replace ", or".

#### 4. Adequacy of References to Related Statutes, Rules and Forms

In s. PI 35.045 (4) (a) 1. a., "this subd. 1. a." should replace "this subparagraph." Similar changes should be made in subd. 1. b. and c. [See s. 1.07 (2), Manual.]

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

- a. In s. PI 35.01, it appears that in the second sentence, specific reference should be made to the 15% limit contained in s. 119.23 (2) (b), Stats., or the reference should be to the "enrollment limits" in s. 119.23 (2) (b), Stats. The reference to the "membership" is unclear.

b. In s. PI 35.02 (1), "notwithstanding" should be one word.

c. In s. PI 35.04 (5) (a), the intended meaning is not clear. For example, how is a student to be counted if the student attends one day before the date specified and one day after, but enrolls in a private school that is not participating in the private school choice program? This section should be reviewed to assure that it adequately addresses all possible circumstances.

d. Under s. PI 35.045 (1), it is not clear how a school would proceed if it is in its initial year of operation. Would the department accept estimated figures in lieu of prior year data? This should be clarified.

e. In s. PI 35.045 (1) (e) 3., is there a need to specify the time in which a refund amount is paid to the department?

f. Under the cost accounting provisions in s. PI 35.045 (3) (a), is it assumed that the auditor will indicate on the report the option chosen to allocate individual costs? Also, are schools required to adhere to those options in subsequent years or can they opt for a different basis?



## ASSEMBLY COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

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REPRESENTATIVE GLENN GROTHMAN  
CHAIRMAN

**To:** Members, Assembly Committee for Review of Administrative Rules

Representative Scott Gunderson  
Representative Lorraine Seratti  
Representative Rebecca Young  
Representative Jim Kreuser

**From:** Representative Glenn Grothman, Chair

**Date:** November 6, 1998

**Re:** Referral of Clearinghouse Rule 98-112

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Pursuant to s. 227.19(2), stats., the Assembly Committee for Review of Administrative Rules has received jurisdiction over Clearinghouse Rule 98-112, relating to the Milwaukee Parental School Choice Program, for the purposes of legislative review. The transmission of this notification satisfies the requirements of s. 227.19(4)(a), stats.

As is the case with other committees of the Legislature, s. 227.19(4)(b), stats., provides the Assembly Committee for Review of Administrative Rules a period of 30 days in which to review this Clearinghouse Rule. The standard statutory process that governs the legislative review of proposed rules prior to promulgation applies also to the review of this rule by the Assembly Committee for Review of Administrative Rules.

I have attached a copy of the proposed rule for your review. As it was referred to the Assembly committee on November 5, our review period expires on December 5. Please notify my office in writing if you are interested in a further review of this rule by this committee.

Les-  
Full

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:

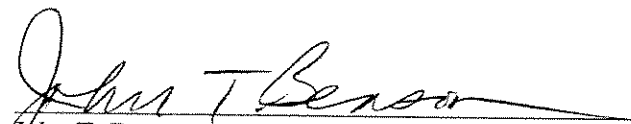
On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wisconsin Act 27.

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 5<sup>th</sup> day of August, 1998

  
John T. Benson  
State Superintendent



State of Wisconsin  
Department of Public Instruction

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John T. Benson  
State Superintendent

Steven B. Dold  
Deputy State Superintendent



August 7, 1998

The Honorable Robert Welch  
Co-Chair, JCRAR  
One East Main  
Room 201  
Madison, WI 53703

Dear Bob:

Attached, pursuant to s. 227.24(3), Stats., are a fiscal note and emergency rules relating to the Milwaukee parental school choice program. These emergency rules were promulgated by the department effective August 5, 1998.

1995 Wisconsin Act 27 made several modifications to the Milwaukee parental school choice program, including expanding the program to include sectarian schools. On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made under the Act. 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 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. If you have any questions regarding these emergency rules, please contact Brad Adams, School Finance Consultant, (608) 266-2853 or Lori Slauson, Administrative Rules Coordinator, at (608) 267-9127.

Sincerely,

Steven B. Dold  
Deputy 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), rennumbers 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 ~~4.5%~~ 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%.



FISCAL ESTIMATE       ORIGINAL       UPDATED)

LRB or Bill No./Adm. Rule No.  
Chapter PI 35

DOA-2048 (R10/92)       CORRECTED       SUPPLEMENTAL

Amendment No. If Applicable

Subject: Milwaukee Private School Choice Program

Fiscal Effect (See attached)

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

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

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

Local:  No local government costs      (See attached)

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       VTAE Districts

Fund Sources Affected

GPR       FED       PRO       PRS       SEG       SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules make several modifications to the Milwaukee private school choice program. These revisions were made due to program revisions included under 1995 Wisconsin Act 27. The rule modifications which may have a fiscal effect include:

- Allowing private religious schools to participate in the program.
- 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 daily attendance rates, drop out rates, suspensions and expulsions of pupils.
- 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.

Long-Range Fiscal Implications

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

Department of Public Instruction  
Lori Slauson (608) 267-9127

Authorized Signature/Telephone No.

*Gina Frank-Reece*  
Gina Frank-Reece      (608) 266-2804

Date

7/27/98

**State Costs:**

In the 1997-98 school year, 23 private schools participated in the program. In the 1998-99 school year 110 private schools have sent letters of intent to participate in the program serving potentially 15,000 pupils.

Major activities related to administration at more sites include answering questions related to the program, verification of membership on the count days, making payment adjustments at the end of the school year and collecting information to determine if each school has met one of the four criteria for continuing eligibility in the program.

1995 Wisconsin Act 27 requires that the check paying private school tuition must be made out to the parent. Currently, checks are made out to the private schools and checks are sent four times annually. In the 1997-98 school year, a total of 92 checks were made to 23 private schools. When the checks are made out to parents beginning in the 1998-99 school year, as many as 75,000 checks may be processed annually.

To administer the program effectively, the department will be requesting 2 FTE positions in its 1999-2001 biennial budget.

**Public School Costs:**

The proposed rules are not expected to have a fiscal effect on the Milwaukee public schools.

**Private School Costs:**

It is anticipated that the private school financial audit requirements will have a fiscal effect since many of the schools participating in the 1998-99 school year currently have no audit procedures in place. Auditing costs for small public school districts range from \$2,000 - \$5,000, annually. It is assumed that auditing costs to participating private schools will fall within the lower end of the \$2,000 - \$5,000 range due to private schools' processing of fewer transactions than public schools. The actual costs will vary depending on the number of financial transactions and expertise of the private school's accounting staff. The status of the financial records maintained by the private school staff will directly affect the time involved in auditing those records.



State of Wisconsin  
Department of Public Instruction

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

John T. Benson  
State Superintendent

Steven B. Dold  
Deputy State Superintendent

DATE

[Choice School  
Administrator  
Street  
City, state, zip]

RE: Milwaukee Parental Choice - Student Rights

Dear School Administrator/Principal:

Judge Susan Steingass ruled in *Davis v. Grover*, (Trial court opinion, Dane County, 8-6-90) that the attached Student Rights apply to private schools participating in this public program.

The Judge also ruled DPI has an obligation to advise participating schools of these state and federal provisions.

As administrator of the school, please sign and date this letter below and return the original in the enclosed envelope.

Sincerely,

John T. Benson  
State Superintendent

I hereby acknowledge I have received and read this letter which is not to be construed as an agreement between DPI and the school, and further, is not to be construed as an admission that the student rights provisions attached hereto apply to private schools participating in the choice program.

\_\_\_\_\_  
School Administrator/Principal

\_\_\_\_\_  
Date

## STUDENT RIGHTS

1. The Wisconsin Pupil Nondiscrimination Act, s. 118.13 and PI 9 which prohibit discrimination against students on the grounds of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.
2. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et. seq., which prohibits discrimination on the basis of sex in educational programs.
3. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et. seq., which prohibits discrimination on the basis of age in programs or activities.
4. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et. seq., which prohibits discrimination on the basis of handicap in programs and activities. To comply in Section 504, DPI must assure that no qualified handicapped persons are excluded from its programs; and must assure that all handicapped students in funded placements have opportunity for a free appropriate education.
5. The Family Education Rights and Privacy Act, 20 U.S.C. 1232g, 34 CFR 99, which regulates access and release of student's educational records.
6. All federal and state constitutional guarantees protecting the rights and liberties of individuals including freedom of religion, expression, association, against unreasonable search and seizure, equal protection, and due process.
7. All regulations, guidelines, and standards lawfully adopted under the above statutes by the appropriate administrative agency.
8. Pupils charged with misconduct and subject to suspension or expulsion shall be accorded state and federal constitutional due process of law.

Attachment to JTB letter to  
MPCP School Administrators  
July-August, 1998



**MILWAUKEE PARENTAL CHOICE PROGRAM**  
**NOTICE OF SCHOOL'S INTENT TO PARTICIPATE**  
**(119.23 Wisconsin Statute)**  
**1998-1999 School Year**

Type or Print

School Name	
Street Address	
Administrator Name	Telephone Area/No.

This notice is divided into two sections: specific requirements and student rights. A representative of the school is to sign at the end of each section and also at the end of the entire application.

**I. SPECIFIC REQUIREMENTS**

This section provides an overview of the requirements of Wisconsin Statute 119.23. If the school agrees to comply with all of the items listed, the administrator of the school should sign on the appropriate line at the end of the section.

The School shall:

1. Submit a proposal to the Department of Public Instruction with this notice stating how pupils will be accepted on a random basis. This proposal must be reviewed and approved by DPI.
2. Instruction must be free to all pupils enrolled in the Milwaukee Parental Choice Program. Private schools participating in the program may only charge pupils participating under the program fees that may be charged by public schools to indigent pupils. See PI 35.03(6) Wisconsin Administrative Code.
3. Have a representative on the Pupil Assignment Council.
4. Notify each applicant of acceptance or nonacceptance, in writing, within 60 days after receiving the application. A copy of the letter shall be sent to DPI.
5. Within 14 days after the random selection, submit to the DPI, an alphabetical listing, categorized by grade of the names of students enrolled under this program. Copies of applications shall be included with the alphabetical list. Copies of applications for students placed on waiting lists or otherwise not accepted shall also be identified and submitted to the department.
6. Submit to the DPI, an alphabetical listing, categorized by grade of the names of students enrolled and in attendance on the first day of instruction.
7. Submit a membership report on forms furnished by the DPI showing the number of pupils in this program and the total number of pupils enrolled in the school on the third Friday in September and the Second Friday in January. Along with the membership report, submit to the DPI, in writing, an alphabetical list by grade of the names of students enrolled and counted for membership for each count date under this program.
8. Submit to the DPI, financial and membership audits, as required by Wisconsin Statutes, and Administrative Rules.
9. Comply with statute 119.23 and Administrative Rules Chapter PI 35. (See attached).

The School shall guarantee that:

At least one of the following standards needs to be met in the 1998-99 school year if the school wishes to continue in this program. Submit documentation by June 30, 1999, verifying that the standard has been met.

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

The School shall guarantee compliance with:

1. Title VI of the Civil Rights Act of 1964 as amended , 42 U.S.C. 2000d et. seq., which prohibits discrimination on the basis of race, color or national origin.
2. Wisconsin state statutes regarding private schools, s. 118.165 or s. 118.167 which require in part, schools to provide at least 875 hours of instruction each school year and provide instruction in a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health.
3. All health and safety laws or codes that apply to the public school which includes in part, subchapters I and IV of ch. 101 and ch. 145 Wis. Stats., and s. 115.33 Wis. Stats., including the Aging Schools Legislation.

I have read the section and guarantee that the school will comply with all the provisions of this section.

School Name	
Administrator Signature ➔	Date Signed
Administrator Name	Telephone Area/No.

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

Please note that the provisions listed are subject to statutory and administrative rule change.

I have read the notice and guarantee that the school will comply with all its provisions.

School Name	
Administrator Signature ➔	Date Signed
Administrator Name	Telephone Area/No.

**Please Provide the following estimates for the 1998-99 school year:**

Anticipated 1998-99 Enrollment (All Students)	Anticipated 1998-99 Enrollment (Choice Students)	Grade Levels Served

Submit completed and signed form to:

**Wisconsin Department of Public Instruction  
Milwaukee Parental Choice Program  
P.O. Box 7841  
Madison WI 53707-7841**



State of Wisconsin  
Department of Public Instruction

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

John T. Benson  
State Superintendent

Steven B. Dold  
Deputy State Superintendent



July 16, 1998

Attorney General James Doyle  
State Capitol, Room 114 East  
Madison, WI 53702-0001

Re: Milwaukee Parental Choice - single gender schools

Dear Jim:

Now that the State Supreme Court has approved the extension of the Choice program to religious schools, *Jackson v. Benson* (June 10, 1998) the issue of whether single gender schools may participate in the program under sec. 119.23 Wis. Stats. has again arisen. At least one all boys school has indicated an intent to participate. Enclosed is my letter of July 25, 1995 and your response of November 3, 1995 on the same issue. I am asking the same questions today as I previously asked. Again, while we would prefer a formal opinion, because of the short time, an informal legal opinion will do.

As you know, the United States Supreme Court has ruled in *United States v. Virginia*, 518 U.S. 515, 135 L. Ed 2, 735 (1996), in the Virginia Military Institute case, and the several court decisions within the Fourth Circuit, *Faulkner v. Jones*, 858 F. Supp. 552 (D.S.C. 1994), *aff'd* 51 F. 3d 440, (Fourth Cir.) *cert. denied*, 516 U.S. 938, 133 L. Ed. 2 248 (1995), *United States v. Jones*, 136 F. 3rd 342 (1998), single gender state funded college level institutions are unlawful under the federal equal protection clause in many instances. The one K-12 level case is the *Garrett* case mentioned in my earlier letter which is a Title IX decision. The Choice schools receive substantial state funding, about \$5,000 per student.

I would like private schools which historically have been single gender institutions at the K-12 level to be able to remain so and participate in the Choice program. As I indicated previously, please examine whether, under any conditions, the equal protection clauses and Title IX permit this. Please note as to Title IX, the Civil Rights Restoration Act of 1987, PL 100-259, sec. 9081, which in part overruled *Grove City v. Bell*, 465 U.S. 555, 79 L. Ed. 2, 516 (1984), seems to indicate that subgrantees (Choice schools) of recipients of federal financial participation (DPI), become subject to the "substantive requirements" of the Title IX regulations which pertain to entities that receive "significant assistance" or "benefits" from state agencies. Senate Report 100-64, 100th Congress, First Session, 4 (1987), page 28. 34 C.F.R. §§ 106.1, 106.2(h), 106.2(j) 106.11 and compare 34 C.F.R. 104.4 (b)(1)(v).

It would be helpful if we could have your opinion before the start of school in late August, or at the very latest before September 15 when the agency will be preparing its first state aid payments to the parents and schools. Thank you very much for your consideration.

Sincerely,

For John T. Benson, State Superintendent

Steven B. Dold, Deputy 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), 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 \_\_\_\_\_ day of August, 1998

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John T. Benson  
State Superintendent



P.O. Box 7882  
MADISON, WI 53707-7882  
(608) 266-0751

P.O. Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

### School Choice Background

#### Background

The School Choice program began in 1990 and was expanded by the Legislature in 1993 and again in July, 1995. The 1995 legislation expanded the program to include all private schools in the City of Milwaukee. On August 25, 1998, the Wisconsin Supreme Court granted an injunction which effectively halted this implementation. On June 10<sup>th</sup>, the Supreme Court removed the injunction and declared the program to be constitutional. This action allows the Milwaukee Public School Choice Program to move forward.

- The Joint Committee for the Review of Administrative Rules is being asked to suspend a portion of **PI 35** of the Wisconsin Administrative Code. The portion of the Code in question is **PI 35(3)(c) 4-10** and pertains to the operation of the **Parental Private School Choice Program**. Information on the text of the Emergency Rules, soon to be issued by the Department of Public Instruction, indicates that these provision will become part of the Emergency Rules. The Rule would require that these provisions would become part of an application form which schools would need to file with the Department to participate in the Choice program.

The Committee is being to determine whether these rules are needed or whether they act as a deterrent to the further implementation of the School Choice program in Milwaukee. Enclosed you will find:

- PI 35
- Memo to Steve Dold, Deputy Sec.-D.P.I. regarding single sex schools, student rights (7/2/98) and attached letter from Clint Bolick to James Doyle(8/15/95) and letter in response from Steve Dold.
- Memo to Legislators from Milwaukee Business/Community Leaders
- Memo from Russ Whitesel, Legislative Council on PI 35
- Various letters from Clint Bolick, Attorney for School Choice

If you have any questions, please contact Les Wakefield (6-0751)



State of Wisconsin  
Department of Public Instruction

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John T. Benson  
State Superintendent

Steven B. Doid  
Deputy State Superintendent



September 28, 1998

The Honorable Robert Welch  
Co-Chair, JCRAR  
One East Main  
Room 201  
Madison, WI 53703

SEP 2 1998

Dear Senator Welch:

The Department of Public Instruction will hold a public hearing as follows to consider emergency rules and proposed permanent rules amending the Milwaukee private school choice program under chapter PI 35. These emergency rules were promulgated by the department effective August 5, 1998. The hearing will be held as follows:

\* October 13, 1998  
5:30 - 7:30 p.m.

Milwaukee  
Woodlands School  
1669 South 5th Street  
Auditorium

*on calendar*

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

Copies of the emergency rule and the fiscal estimate are attached. Written comments on the proposed rules should be submitted to Lori Slauson, Administrative Rules Coordinator, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707. Written comments on the proposed rules received at the above address no later than October 16, 1998, will be given the same consideration as testimony presented at the hearing.

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 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 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.

Sincerely,



Lori L. Slauson  
Administrative Rules Coordinator

**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), rennumbers 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.

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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%~~ 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:

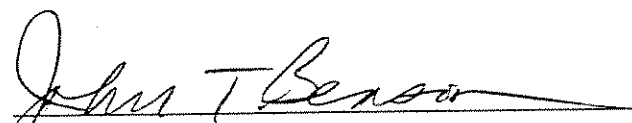
On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wisconsin Act 27.

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 5<sup>th</sup> day of August, 1998

  
John T. Benson  
State Superintendent

FISCAL ESTIMATE       ORIGINAL       UPDATED)  
 DOA-2048 (R10/92)       CORRECTED       SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
 Chapter PI 35

Amendment No. If Applicable

Subject: Milwaukee Private School Choice Program

Fiscal Effect (See attached)

State:  No State Fiscal Effect

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

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

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

Local:  No local government costs (See attached)

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       VTAE Districts

Fund Sources Affected

- GPR       FED       PRO       PRS       SEG       SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rules make several modifications to the Milwaukee private school choice program. These revisions were made due to program revisions included under 1995 Wisconsin Act 27. The rule modifications which may have a fiscal effect include:

- Allowing private religious schools to participate in the program.
- 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 daily attendance rates, drop out rates, suspensions and expulsions of pupils.
- 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.

Long-Range Fiscal Implications

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

Department of Public Instruction

Lori Slauson (608) 267-9127

Authorized Signature/Telephone No.

*Gina Frank-Reece*  
 Gina Frank-Reece (608) 266-2804

Date

7/27/98



**State Costs:**

In the 1997-98 school year, 23 private schools participated in the program. In the 1998-99 school year 110 private schools have sent letters of intent to participate in the program serving potentially 15,000 pupils.

Major activities related to administration at more sites include answering questions related to the program, verification of membership on the count days, making payment adjustments at the end of the school year and collecting information to determine if each school has met one of the four criteria for continuing eligibility in the program.

1995 Wisconsin Act 27 requires that the check paying private school tuition must be made out to the parent. Currently, checks are made out to the private schools and checks are sent four times annually. In the 1997-98 school year, a total of 92 checks were made to 23 private schools. When the checks are made out to parents beginning in the 1998-99 school year, as many as 75,000 checks may be processed annually.

To administer the program effectively, the department will be requesting 2 FTE positions in its 1999-2001 biennial budget.

**Public School Costs:**

The proposed rules are not expected to have a fiscal effect on the Milwaukee public schools.

**Private School Costs:**

It is anticipated that the private school financial audit requirements will have a fiscal effect since many of the schools participating in the 1998-99 school year currently have no audit procedures in place. Auditing costs for small public school districts range from \$2,000 - \$5,000, annually. It is assumed that auditing costs to participating private schools will fall within the lower end of the \$2,000 - \$5,000 range due to private schools' processing of fewer transactions than public schools. The actual costs will vary depending on the number of financial transactions and expertise of the private school's accounting staff. The status of the financial records maintained by the private school staff will directly affect the time involved in auditing those records.