

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

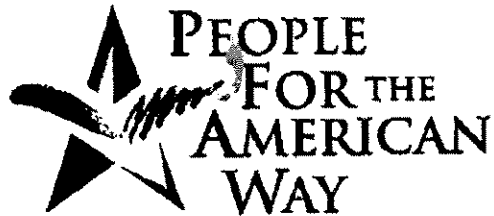
*Joint Committee for  
Review of  
Administrative Rules  
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

- Appointments ... Appt
- 
- Clearinghouse Rules ... CRule
- 
- Committee Hearings ... CH
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- Committee Reports ... CR
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- Executive Sessions ... ES
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- Hearing Records ... HR
- 
- Miscellaneous ... Misc
- 97hr\_JCR-AR\_Misc\_pt21b
- Record of Comm. Proceedings ... RCP
-

JCRAE - 7/30/98

**FAX COVER SHEET**

**To: HON. ROBERT WELCH, 1-608-267-4350  
HON. GLENN GROTHMAN, 1-608-282-3659**

**From: CAROLE SHIELDS, President**

**Date: July 27, 1998**

**Number of pages including cover sheet: 4**

**If there are any problems in transmission, please call Steven Benford at 202-467-2394**

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**Letter attached**

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July 27, 1998

Via overnight delivery and fax

Hon. Robert Welch  
Wisconsin State Senate  
Co-Chair  
Joint Administrative Rules Review Committee  
201 E. Main  
Madison, WI 53707

Hon. Glenn Grothman  
Wisconsin State Assembly  
Co-Chair  
Joint Administrative Rules Review Committee  
125 W. State Capitol  
Madison, WI 53707

Re: Department of Public Instruction  
Regulations for Participating Schools in  
Milwaukee "Parental Choice Program"

Dear Senator Welch and Representative Grothman:

I am writing on behalf of People For the American Way and our Wisconsin members to ask the Joint Administrative Rules Review Committee to reject the request of Clint Bolick of the Institute for Justice that the Committee eliminate significant legal protections for voucher students contained in the regulations of the Department of Public Instruction ("DPI") implementing the Milwaukee "Parental Choice Program" ("MPCP"). Mr. Bolick would like private religious schools that desire to participate in the voucher program to benefit from the receipt of public education dollars under that program, but be exempt from the legal provisions that protect students educated with those funds. This Committee should soundly reject this effort by those schools to secure special rights for themselves.

To be clear, we do not agree that private schools, religious or otherwise, should be publicly-funded to begin with. Voucher programs such as the MPCP drain scarce resources from our already underfunded public schools and are not the answer to our education problems. Now, however, not only do the religious schools seeking to participate in the Milwaukee voucher program

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Hon. Glenn Grothman  
July 27, 1998  
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want to receive public funds, they want to take them without having to comply with public laws. They cannot have it both ways. With public funds must come public accountability.

From the inception of the MPCP, DPI's regulations have sought to ensure that public funds are not misused by private schools to discriminate against students; participating private schools are required to sign a "Student Rights" form assuring compliance with specified state and federal laws, such as the Wisconsin Pupil Nondiscrimination Act, that protect students from invidious discrimination on a number of bases. It is our understanding that, to date, every private school that has participated in the MPCP has signed that form. Indeed, DPI's authority to require private schools participating in the voucher program to sign the "Student Rights" form has been expressly upheld in state court. Davis v. Grover, No. 90-CV-2576 (Circuit Court, Dane County, Aug. 6, 1990). It is also worth noting that the Wisconsin legislature has applied many of the same non-discrimination laws to private nonsectarian schools receiving public funds under other programs. See Wis. Stat. § 119.235.

Now that religious schools may participate in the MPCP, however, Mr. Bolick is asking the Joint Committee to eliminate the "Student Rights" form. Clearly, the private schools seeking to avoid signing this form are seeking special rights to which they have no legitimate claim: the right to take public education dollars, on the one hand, but at the same time be exempt from the rules that have governed the voucher program to this point.

It is our understanding that Mr. Bolick has, by letter to Senator Welch, assured the Committee that "no [legal] challenge is possible" if the Committee does his bidding. We disagree. Depending on what action this Committee takes with respect to the DPI regulations, potential violations of the voucher statute itself, other state education laws, and other legal requirements may be raised.

Mr. Bolick claims that if private schools are required to sign the "Student Rights" form, they will be discouraged from participating in the voucher program. We can only understand this to mean that such schools believe that they cannot operate unless they are free to discriminate against students and to violate the legal rights that students who attend public schools otherwise would be guaranteed. It would be detrimental to Wisconsin's citizens and contrary to sound public policy for this Committee to permit public education dollars to fund such

Hon. Robert Welch  
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schools. DPI's anti-discrimination regulations should not be eliminated.

Thank you for your consideration of this letter.

Sincerely,



Carole Shields  
President



INSTITUTE FOR JUSTICE

July 23, 1998

Hon. Robert Welch  
Wisconsin State Senate  
201 E. Main Street  
Madison, WI 53707

Hon. Glenn Grothman  
State Capitol  
Room 125W  
Madison, WI 53707

RE: Department of Public Instruction (DPI) Draft Regulations of Participating  
Schools in Milwaukee Parental Choice Program

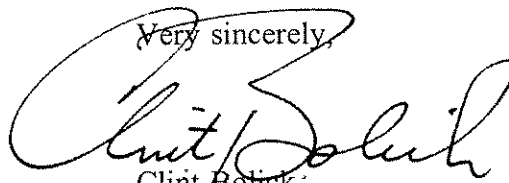
Dear Sen. Welch, Rep. Grothman, and Members of the Committee:

On behalf of Parents for School Choice and individual school choice families in Milwaukee, we urge the Joint Committee for Review of Administrative Rules to suspend PI 35.03(3)(c) 4, 5, 6, 7, 8, 9, and 10, which comprise Section II of DPI's "Notice of School's Intent to Participate." Those provisions attach to the choice program through administrative fiat an array of state and federal regulatory requirements as well as federal constitutional rights that are protected against state action. Those rules expose the schools to uncertain legal requirements and therefore may discourage participation in the program, which would diminish the broad range of choices intended by the Legislature when it expanded the program in 1995.

As the Wisconsin Supreme Court emphasized in its recent decision in *Jackson v. Benson*, the schools participating in the Milwaukee Parental Choice Program remain private schools. Yet, DPI's notice form imposes statutory and constitutional obligations which could be construed to treat the private schools as public schools. Your legislative counsel Russ Whitesel calls attention to this possibility in his July 16 opinion. That is clearly contrary to both the choice legislation and *Jackson v. Benson*. As such, requiring private schools to contractually obligate themselves to comply with such requirements, particularly when the scope of such obligations is left unclear, exceeds DPI's regulatory authority in the choice statute and frustrates the purposes of the choice program.

We appreciate your attention to this matter and your support for expanded choices for Milwaukee's schoolchildren.

Very sincerely,



Clint Bolick  
Vice President and  
Director of Litigation





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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

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DATE: July 16, 1998 (Revised July 27, 1998)

TO: SENATOR ROBERT WELCH

FROM: Russ Whitesel, Senior Staff Attorney

SUBJECT: Issues Relating to the Parental School Choice Program in Milwaukee

This memorandum, prepared at your request, provides information on requirements relating to the school choice program and assurances that participating choice schools must provide the Department of Public Instruction (DPI) with regard to compliance with specific federal and state laws.

You have specifically asked for a listing of the specific federal laws and state laws and the basis for the DPI requirements. The items in question are as follows:

1. Wisconsin pupil nondiscrimination statute. [s. 118.13, Stats.] This state statute prohibits a public school from discrimination based on 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 Act of 1972. [20 U.S.C. s. 1681, *et seq.*] This federal statute prohibits discrimination based on sex or gender.

3. The Federal Age Discrimination Act of 1985. [42 U.S.C. s. 6101, *et seq.*] This federal statute prohibits discrimination based on age.

4. Section 504 of the Federal Rehabilitation Act of 1973. [29 U.S.C. s. 794.] This federal statute prohibits discrimination based on a handicap or disability.

5. The Family Education Rights and Privacy Act (FERPA). [20 U.S.C. s 1232g, *et seq.*] This federal statute protects the privacy of student records and provides parents the right to inspect those records.

6. The Federal Drug-Free School and Communities Act of 1994. [20 U.S.C. s. 7101, *et seq.*] This federal statute provides grants and assistance to public schools to combat drug use.

It should be noted that this program has been modified and expanded substantially since originally enacted and it appears now to be a part of the Safe and Drug-Free School and Communities Program administered by the Federal Department of Education.

7. 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.

Under the existing administrative rules of the DPI [s. PI 35.03 (3), Wis. Adm. Code], a private school participating in the private school choice program must provide assurance of compliance with each of these items. In addition, under s. 119.23 (2), Stats., private choice schools must also comply with the Federal Civil Rights Act [42 U.S.C. s. 2000d, *et seq.*<sup>1</sup>], the private school statutes [s. 118.165 or 118.167, Stats.] and all health and safety laws or codes that apply to public schools, subchs. I and IV of chs. 101 and 145, Stats., and s. 115.33, Stats., including the aging school legislation. [See s. PI 35.03 (3) (c), Wis. Adm. Code.] However, compliance with these later requirements has not been questioned because they are also enumerated in s. 119.23, Stats. The original administrative rules relating to the Milwaukee Private School Choice Program were promulgated following the enactment of that program and the conclusion of the litigation which found the original program to be constitutional.

### **Basis for Administrative Rules**

The DPI bases its inclusion of these above-referenced items in the administrative rule on the decision of Judge Susan Steingass in *Davis v. Grover* ("*Davis*") issued in Dane County Circuit Court on August 6, 1990. [Case No. 90CV2576, Dane County Circuit Court, Branch 8.] Therefore, careful analysis of the case is essential to a determination of the DPI authority. In that extended opinion, Judge Steingass found that the program as applied to *nonsectarian* schools met the public purpose standard. Judge Steingass specifically rejected an argument that the legislation lost its public purpose because it caused the state to surrender control over the education its students receive in private schools. She concluded that the legislation had sufficient accountability and control to maintain its public purpose. Judge Steingass specifically stated that the level of state control and accountability required is "[o]nly such control and accountability as is reasonably necessary under the circumstances to attain the public purpose is required." [*Davis* at 9 and 10.]

Judge Steingass also concluded that the creation of the nonsectarian program did not violate the Uniformity Clause of the Wisconsin Constitution.<sup>2</sup> In her discussion, Judge Steingass

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1. 42 U.S.C. s. 2000d provides as follows: "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial Assistance."

2. Wisconsin Constitution, Article X, Section 3: the Legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the Legislature by law may, for the purpose of religious instruction outside the district schools, authorize release of students during regular school hours.

concluded that the program does not turn private schools into public schools and therefore since the private choice schools were not public schools they were not subject to the Uniformity Clause. [See *Davis* at 15.] Instead, Judge Steingass characterized participating schools as private schools that accept public school students. Specifically, Judge Steingass stated that “the student (sic) certainly remain public school pupils, but I do not think the private schools lose their character because of that fact.” Therefore, Judge Steingass concluded that “. . . whether the participating private schools are regarded as quasi-public schools or private schools who accept some public school pupils, I do not think s. 119.23, Stats., violates the uniformity clause.” [Davis at 15.]

Judge Steingass also discussed at some detail the question of whether the law was in violation of the private/local law provision of Wis. Const. art. IV, s. 18. That portion of the opinion is not pertinent to this discussion. Judge Steingass also directly addressed the State Superintendent’s rights and responsibility under the original parental choice law. She noted that the Superintendent had required each school wishing to participate to file a Notice of Intent form (“Intent Form”), constituting an agreement to comply with an array of state and federal laws, constitutional provisions and rules. She cited the Superintendent’s authority and obligation under s. 115.01 (1), Stats., to supervise and inspect the public schools, which include elementary and high schools supported by public taxation. The judge concluded that “. . . whether the participating private schools are regarded as private schools accepting public school students, or as public schools, is here irrelevant because these private schools are being supported to some degree by public taxation.” [Davis at 20.] She concluded that the Superintendent had the duty to oversee this aspect of publicly funded education, as well as others. She could have directly cited, but did not, s. 115.28 (1) and (3), which specifically delegates supervision of public schools to the State Superintendent of Public Instruction.

After review of the requirements, she concluded for the statutory requirements, the Superintendent had sufficient authority to require the assurance of the schools, except that to the extent that the wording of those requirements deviates from, exceeds or changes the language of the statutes, it would be deemed to exceed the Superintendent’s authority. [Davis at 20.] Judge Steingass also noted that the Intent Form requires compliance with private school provisions under ss. 118.165 and 118.167, Stats. She observed, however, if other private schools in the state are required to sign a form guaranteeing compliance, then these schools may also be required to do so. However, she noted that if other private schools need not file such forms, neither should the choice schools be required to file such forms, because to require more of them permits at least an inference that these schools are being singled out in part because the Superintendent does not approve of the program. [Davis at 21.] With regard to s. 118.13, Stats., the Wisconsin Pupil Nondiscrimination Act, Judge Steingass determined that it was appropriate to require participating schools to comply with the statutes, because this statute refers to public schools as well as public school programs and activities. Judge Steingass further concluded that the parental choice law is a public school program. [Davis at 21.]

Particularly relevant to your inquiry is Judge Steingass’s treatment of the other laws included on the Intent Form. Judge Steingass indicated that the *same result* that was arrived at for the Wisconsin Pupil Nondiscrimination Act also pertained for the *same reasons* to Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1985, Title XI of the Civil Rights Act; the Family Education Rights and Privacy Act; the Drug-Free School and

Communities Act of 1986 and to the protection of individual rights and liberties guaranteed by state and federal constitutional provisions.

Judge Steingass concluded that, however:

In these as in other areas of regulation, the manner in which compliance is secured or assured is germane. If the superintendent requires guarantees of those participating schools in the same manner as he requires it of public schools and other public school programs or activities, it is unobjectionable. What he may not do is make those burdens more onerous for this program than for others. [*Davis* at 22.]

Judge Steingass separately addressed the issue of s. 504 of the Rehabilitation Act of 1973, which provides that: "No otherwise qualified individual with handicaps shall solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity."

Judge Steingass concluded that there may be no discrimination of individuals with handicaps but proceeded to address the area of conflict: the extent and manner of compliance. She noted that the Federal Education for All Handicapped Children Act (which has now been superseded by the Individual's with Disabilities Education Act (IDEA)) places an affirmative obligation on the Wisconsin DPI to provide an appropriate free public education for all handicapped children. No qualified handicapped student may be excluded from its program and the department must ensure that all handicapped students and funded placements have an opportunity for a free appropriate education. The Superintendent proposed in arguments to the court that each private school be required to provide access to and provide free appropriate education for every handicapped student eligible under legislation. The Superintendent in effect asked that private schools comply with the law exactly as do the public schools.

After considering the arguments, Judge Steingass concluded that it is not the private school's obligation but the public school's obligation to offer participating public school students a free appropriate education if they wish to exercise that right. She concluded that private schools are required to admit otherwise qualified handicapped students to the program without discrimination but gave to the public schools the obligation to guarantee the rights of handicapped children to free and appropriate placements. She concluded that if the students are privately placed by their parents, the duty does not pass to the participating private schools to provide a full array of programs.

Finally, Judge Steingass concluded that the Superintendent has the rights and duties to guarantee that participating schools meet the requirements of both the Parental Choice Program and of other state and federal provisions--statutory, regulatory and constitutional. [*Davis* at 24.] However, she noted: "He may not insist on compliance in a manner more onerous or demanding than that insisted upon for other participating programs and public schools." [*Id.*] She indicated the state system retains its obligations to guarantee an appropriate public placement to all students at no cost and, especially to the handicapped, to see that they are not denied access to

any public school program, including the Parental Choice Program if they are "otherwise qualified." [*Davis* at 24.]

In implementing her decision, Judge Steingass directed the Superintendent to redraft the Intent Form consistent with her opinion. She also provided the challengers the opportunity to dispute the imposition of requirements contained in the revised form. The form was subsequently redrafted without challenge and has been used by the department since that time and has been incorporated into the administrative rules. The portion of the decision in *Davis* dealing with the form was not appealed and was not directly addressed at either the appellate court or Supreme Court level when those courts addressed the constitutionality of the original, non-sectarian Parental Choice Program. [See *Davis v. Grover*, 480 N.W.2d 460 at 465 (Wis. 1992).]

It should be noted that as part of the litigation related to the constitutionality of the amended Parental Choice Program to include sectarian schools, all of the parties agreed to a set of stipulated facts. Included in that listing was reference to the required Intent Form (Item 31 of Stipulated Facts). It could be argued that the existence of the form was used at least implicitly as a basis to support the public purpose of the expanded program. However, the Supreme Court in upholding the constitutionality of the program did not expressly reference the form.

### Discussion

There appears to be two major areas of ambiguity with regard to the rules and the Notice of Intent Form. First, the question could be raised whether this form places more onerous obligations on the private school choice participants than on other similarly situated programs. It is clear that signature of the form is required of all parental choice schools and has been in use since 1990. However, the reference in the Steingass decision to "other similarly situated programs," is clearly to schools other than the private school choice schools. Therefore, it would appear that if the same assurances are not sought and obtained from others "similarly situated," there may be a question raised as to the authority for the Superintendent to require the specific assurances. It should be noted that it is not entirely clear which other programs would be considered "similarly situated."

In addition, as noted in the analysis of the *Davis* case, the conclusions of Judge Steingass were predicated on the choice schools being considered either public schools or private schools with public students. [See *Davis* at 20, quoted on page 3 of this memorandum.] This construction becomes problematic in the application of the various requirements to the programs. If the choice schools are considered to be public schools, then in each of the instances, the same requirements that apply to public schools would apply to the choice schools. However, Judge Steingass indicates that the presence of public school students does not convert the choice schools into public schools. [See *Davis* at 15.] However, if the schools are not considered to be public schools, the extent of the application of the various laws to the *students* attending those schools is somewhat unclear. Two examples will serve to highlight the issues involved. For example, the Federal Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. However, the Act *permits* federally assisted programs and activities and recipients of federal funds to continue to use age distinctions and factors other than age that meet the requirements of the Act. [See 42 U.S.C. s. 6101 to 6103.] The Age Discrimination Act provisions apply to any program or activity

receiving federal financial assistance from the Federal Education Department. However, in the regulations drafted to implement the Age Discrimination Act, there is a provision indicating that the regulations do not apply to an age distinction "contained in that part of a federal, state, or local statute or ordinance adopted by an elected, general purpose legislative body that provides any benefits or assistance to persons based on age; establishes criteria for participation in age-related terms; or describes intended beneficiaries or target groups in age-related terms." [34 C.F.R. s. 110.2.] Also, the regulations do not apply to any employment practice of any employer, employment agency, labor organization or any labor-management joint apprenticeship training program, except any program or activity receiving federal financial assistance for employment under the Job Training Partnership Act. [34 C.F.R. s. 110.2 (2).] Thus, even if the Act applies, there may be sufficient basis in the acceptance of students in the program based on a statutory age distinction to preclude application of the Act itself.

It is not clear that any federal funds are involved in the Parental Choice Program. It is not clear from the information I have available whether any of the participating choice schools are receiving federal funds from a source other than the choice program which would obligate them to comply with any of the federal laws used in the Intent Form. It is also not possible to determine whether the aid received under the Choice Program from the state, through MPS may have been commingled with federal funds. An argument could be made that choice schools are required to comply with certain requirements which otherwise would apply to a school district if they are acting as a "subrecipient" of the program. For example, under the age discrimination regulation, a recipient is defined as any state or its political subdivision, any instrumentality of a state or its public subdivision, any public or private agency, institution, organization or other entity or any person to which federal financial assistance from the Federal Education Department is extended directly or through another recipient. [34 C.F.R. s. 110.3.] This would clearly include the Milwaukee Public Schools (MPS). A subrecipient is defined in the Federal Age Discrimination Act to mean any of the entities included in the definition of recipient to which a recipient extends or passes on federal financial assistance. [34 C.F.R. s. 110.3.] The regulations provide that a subrecipient is generally regarded as a recipient of federal financial assistance "... and has all the duties of a recipient in these regulations." [See 34 C.F.R. s. 110.3 (2).]

In this case, it could be argued that the private school choice schools become subrecipients of the MPS and therefore must comply with the same federal regulations as apply to MPS and MPS students. This analysis would conform to the theory that the students in the private school choice program continue to be public school students in a private school setting. Left unanswered, however, is to what extent the terms of the Act apply in the first instance to students currently attending MPS.

As a second example, there is also some uncertainty involved in the broad language included in the DPI rule and on the Intent Form relating to federal and state constitutional protections, including due process protections for school disciplinary actions such as expulsion. Using the Steingass analysis that the choice program is a public program which serves public school students in a private setting still leaves a degree of uncertainty. For example, an MPS student is entitled to certain statutory procedural safeguards set out in s. 119.25, Stats., or if the MPS Board does not choose to use the specific procedures in ch. 119, the statutory procedures in s. 120.13 (1) (c) apply to student expulsions. This statute provides specific requirements that apply to the expulsion of any public school student, including notice, hearing and opportunity to

be heard and the right to an impartial hearing and a right to appeal a school board decision to the State Superintendent. These procedural guarantees are consistent with the leading U.S. Supreme Court case on the issue, *Goss v. Lopez*, 419 U.S. 565 (1975). It is not clear whether compliance with the broad due process requirements of *Goss* would be sufficient or whether strict compliance with state statutory procedures would be required.

### Conclusion

The *Davis* case provides authority for the DPI to adopt certain rules and regulations applying to private school choice schools, including use of the Intent Form. It should be noted that the *Davis* case dealt, however, only with nonsectarian schools, not with the sectarian schools that are currently eligible to participate in the program. Further, it does not explicitly set forth the scope and extent of the application of the laws cited in the Intent Form. It is therefore not possible to predict with certainty how a court would rule on the application of these laws to sectarian schools that are participating in the Public School Choice Program. Further, it is unclear whether the existence of federal funds in the private sectarian school setting would create a requirement for compliance with those laws. Given these uncertainties and the current implementation of the Milwaukee Private School Choice Program, it might be advisable for a private school that is now uncertain with regard to the scope of the commitment contained in the Intent Form to include as a caveat to the signature of the form that the private school will assure compliance with DPI conditions only to the extent required by the Steingass opinion in *Davis v. Grover*.

I hope this memorandum is of assistance to you in dealing with this issue. If you have any further questions regarding this matter, please feel free to contact me directly at the Legislative Council Staff offices.

RW:rv:jt:kjf:tu:jt



State of Wisconsin  
Department of Public Instruction

Mailing Address: P.O. Box 7841, Madison, WI 53707-7841  
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(608) 266-3390 TDD (608) 267-2427 FAX (608) 267-1052  
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John T. Benson  
State Superintendent

Steven B. Dold  
Deputy State Superintendent



July 27, 1998

The Honorable Robert Welch, Co-Chair  
Joint Committee for the Review of Administrative Rules  
One East Main, Room 201  
Madison, WI 53703

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

Dear Gentlemen:

Attached, pursuant to s. 227.24(3), Stats., are a fiscal note and emergency rules relating to the Milwaukee parental school choice program for your information. In part, the rules establish uniform financial accounting and audit standards required of the participating private schools as provided for under 1995 Wisconsin Act 27.

We understand that questions have been raised about the rule's requirement that certain "assurances" must be signed by the participating schools and have attached a memo prepared by Robert Paul, our Chief Legal Counsel, which provides background on and describes those assurances. Upon careful review of these assurances, we have removed the reference to Drug Free Schools since it is a voluntary program under the Improving America's Schools Act of 1994 and is available to private schools through local public school districts much like Title I.

The department will be promulgating these rules as permanent rules and will hold a public hearing on both the emergency and proposed permanent rules in Milwaukee.

We will be happy to answer any questions you may have about the rules.

Sincerely,

A handwritten signature in cursive script that reads "John".

John T. Benson  
State Superintendent

JUL 28 1998



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

The state superintendent of public instruction hereby repeals PI 35.03(3)(b), PI 35.03(4), and PI 35.05(6), renumbers PI 35.02(1), (3), (4), (5), (7), (8), (9) to (13) and (14) to (17), amends PI 35.01, PI 35.03(1)(a), PI 35.03(3)(c)5, PI 35.05(7), repeals and recreates PI 35.02(2) and (6), 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), (13), and (20), PI 35.03(1)(d), PI 35.045, and PI 35.046, relating to the Milwaukee private school choice program.

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**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 private 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)(d) is created to read:

8 PI 35.03(1)(d) 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)(a) and (b) are repealed.

21 **SECTION 10.** PI 35.03(3)(a) is recreated to read:

22 PI 35.03(3)(a) Compliance with s. 119.23(7)(c), Stats.

23 **SECTION 11.** PI 35.03(3)(c)5. is amended to read:

24 PI 35.03(3)(c)5. 20 USC ~~1618~~ 1681 et seq.

25 **SECTION 12.** PI 35.03(3)(c)9. is repealed.

26 **SECTION 13.** PI 35.03(3)(c)10 is renumbered PI 35.03(3)(c)9.

27 Note: The citations listed in subds. 1., 5., 6., 7., and 8. ~~and 9~~ may be found in these named federal acts,  
28 respectively: Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age  
29 Discrimination Act of 1985, Section 504 of the Rehabilitation Act of 1973, and the Family Education Rights and  
30 Privacy Act, ~~and the Drug-Free School and Communities Act of 1986.~~

31 **SECTION 14.** PI 35.03(4) is repealed.

32 **SECTION 15.** PI 35.04 is repealed and recreated to read:

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

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

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

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

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

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

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

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

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

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

- 29           1. The pupil is in attendance for instruction on the date specified, or  
30           2. The pupil is absent on the date specified but has attended at least one day during the school term prior to  
31 the date specified and attends at least one day after the date specified and has not enrolled in another private school  
32 participating in the private school choice program or in a Wisconsin public school district during the period of  
33 absence.

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

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

5 SECTION 16. PI 35.045 and 35.046 are created to read:

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

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

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

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

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

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

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

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

21 b. Rentals for school buildings.

22 c. Food service revenues.

23 d. Governmental financial assistance revenues.

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

25 2. The private school's per pupil cost shall be determined by dividing the net eligible educational  
26 programming cost determined under subd. 1. by the membership for all pupils enrolled in kindergarten through grade  
27 12 educational programs.

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

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

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

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

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

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

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

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

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

14 1. Instruction costs may be allocated based on either pupil full-time equivalency or time spent.

15 2. Student support service costs may be allocated based on either pupil full-time equivalency or time spent.

16 3. Administration costs may be allocated based on direct program expenditures, time spent, or full-time  
17 equivalent employees.

18 4. Accounting costs may be allocated based on either the number of transactions or time spent.

19 5. Facility operation and maintenance costs may be allocated based on floor space operated, space occupied  
20 over time, or labor hours.

21 6. Pupil transportation costs may be allocated based on miles driven, pupil miles driven or driver hours.

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

23 1. Contributed services.

24 2. Fund raising.

25 3. Scholarship awards and financial support for pupils to attend the private school, including payments to  
26 parents or others on behalf of pupils.

27 4. Debt principal and interest payments to the private school's owners, sponsoring organization, or as a  
28 result of internal financing from other funds of the school. Borrowing from an endowment fund or from individuals  
29 serving on a board of directors or in an advisory capacity who do not have a proprietary interest in the school are not  
30 subject to the requirements under this subdivision. The interest rate on such borrowings may not exceed the  
31 published prime rate on the borrowing date.

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

1           1. The private school shall annually make an irrevocable election to either charge off all expenditures in  
2 each of the following categories entirely as a school year cost or amortize the expenditure over future periods as  
3 follows:

4           a. Media may be amortized over 5 years or 20% annually. Under this subparagraph, media includes  
5 consumable instructional and administrative items that are expected to serve their principal purposes for more than a  
6 year and includes text and reference books, audio-visual materials, and computer software.

7           b. Equipment and furnishings may be amortized over 5 years or 20% annually. Under this subparagraph  
8 furnishings includes desks, chairs, and freestanding lockers. Only the additional cost difference between the  
9 allowance granted for equipment traded in and the value of new equipment acquired shall be eligible for inclusion in  
10 cost calculation.

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

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

17           2. A private school may elect to charge off in accordance with par. (a), the fair market value of existing  
18 items in each category as of July 1, 1996, or at the date first participating in the program or re-entering the program.  
19 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  
20 periods.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 3. Select a sample of at least 60 private school choice pupils included on the private school's official  
16 enrollment records and verification against classroom records. The sample shall include records from each classroom.  
17 If the private school has a private school choice program enrollment of less than 60 pupils, all such pupil records  
18 shall be tested. If an exception is identified the auditor shall extend the sample test in increments of 60 records until  
19 no additional exceptions are found or the official enrollment records for all private school choice pupils have been  
20 verified against classroom records.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34           **SECTION 17.** PI 35.05(2) is repealed and recreated to read:

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

3 **SECTION 18.** PI 35.05(3)(b) is repealed and recreated to read:

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

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

11 2. The November payment shall be based on the number of pupils reported on the membership report  
12 submitted on October 1 under s. PI 35.04(4)(a) and the October 15 amount per pupil as determined under s.  
13 121.15(4), Stats., that the school district will receive in the current school year, multiplied by 50%, less the  
14 September payment.

15 3. The February payment shall be based on the number of pupils reported on the membership report  
16 submitted on February 1 under s. PI 35.04(4)(a) and the October 15 amount per pupil as determined under s.  
17 121.15(4), Stats., that the school district will receive in the current school year, multiplied by 25%.

18 4. The May payment shall be based on the number of pupils reported on the membership report submitted  
19 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.,  
20 that the school district will receive in the current school year, multiplied by 25%.

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

23 **SECTION 19.** PI 35.05(6) is repealed.

24 **SECTION 20.** PI 35.05(7) is amended to read:

25 PI 35.05(7) The state superintendent shall ensure that test security is maintained ~~on all school district~~  
26 ~~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:

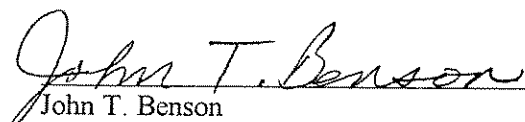
On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wisconsin Act 27.

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 30<sup>th</sup> day of July, 1998

  
\_\_\_\_\_  
John T. Benson  
State Superintendent

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.

# Memorandum

STATE OF WISCONSIN  
DEPARTMENT OF PUBLIC INSTRUCTION



DATE: July 24, 1998

TO: Steven Dold, Faye Stark

FROM: Robert J. Paul, Chief Legal Counsel

A handwritten signature in black ink, appearing to read "R. Paul", is written over the name "Robert J. Paul" in the "FROM:" field.

SUBJECT: Choice Assurances

This is the legal background which supports the application of state required assurances upon participating Milwaukee Parental Choice schools under sec. 119.23 Wis. Stats. The assurances address compliance with certain federal civil rights acts, federal pupil records law, state pupil non discrimination law, as well as due process and equal protection provisions.

On August 6, 1990, Judge Steingass in *Davis v. Grover* ruled on three state constitutional questions and on what the parties referred to as "the implementation issues," which addressed the assurances on the department's Notice of Intent to Participate private school form. On the last point, Judge Steingass ruled that except for the application of the special education laws and those three pages of the seven page form that dealt with that law, the state superintendent had *not* exceeded his authority in requiring assurances of compliance by the private schools with provisions mentioned above. The parents for school choice did not appeal their loss of this issue and it is therefore *law of the case* and remains binding upon the department and the Choice schools which were parties to that suit and are still participants: Harambee, Woodlands, and Urban Day. Judge Steingass ruled that the remaining assurances applied to the private schools because like sec. 118.13, Stats., the state pupil non discrimination law, these expressly apply to public schools "as well as public school programs or activities, and the Parental Choice Law is a public school program." (The opinion of Judge Steingass, page 21).

The remainder of this memo is divided into three parts: the first part outlines the seven assurances; the second provides the legal analysis for application of the Federal Civil Rights provisions, the authority of the department to require assurances and the risk of **state liability** for private school violation; and the third provides examples of departmental and U.S. Department of Education assurances as relevant examples.

## I. Assurances

1. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d - prohibits discrimination on the basis of race, color, or national origin "under any program or activity receiving federal financial assistance" (FFA). Compliance with this provision is explicitly required by the Choice statute.

2. Title IX of the Education Amendment of 1972, 20 USC §§1681-1683 and 1685-86 - which prohibits discrimination on the basis of sex by “educational institutions” “under any education program or activity receiving Federal financial assistance.”
3. Section 504 of the Rehabilitation Act of 1973, 29 USC § 794 - prohibits discrimination by recipients of FFA on the basis of disability.
4. 1975 Age Discrimination Act, 42 USC §§6101-6107 - which prohibits discrimination on the basis of age “in programs or activities receiving Federal financial assistance.” It is *not* a violation if the “action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective” of the program or activity.
5. Pupil non-discrimination, sec. 118.13 Wis. Stats. Like the first four provisions, above, prohibits discrimination in admission to any public school or denial of participation in or the benefits of any curricular or extra curricular services, program or activity; the expanded group of protected classes are sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability.
6. FERPA - Family Education Rights and Privacy Act, 20 USC §1232g

Applicable to recipients of Federal financial assistance under any education program - includes applicability to any public or private agency:

- guarantees confidentiality of pupil records;
- guarantees parent access to pupil records;
- provides a process for disagreement with and correction of a pupil record;
- guarantees to parents and students notice of their rights under this law.

7. Federal and State Constitutional Guarantees to Individuals [Bill of Rights]:

- These rights are freedom of religion, expression, association, against unreasonable search and seizure, equal protection and due process.
- Against unreasonable searches applies to the ability of administration to search children’s lockers, just as they do in public schools;
- Due process involves employee discipline and student suspension and expulsion (*Goss v. Lopez*);
- Equal protection: protects against arbitrary (government sponsored) action related to fundamental rights or arbitrary treatment of persons in protected classes such as race, gender, disability etc.

## II. Private Schools as Sub-recipients and Beneficiaries of Recipients of FFA; State Liability

The following federal administrative rules and cases apply the constitution (equal protection and due process, etc.) and federal civil rights laws and regulations to private or public educational institutions. The constitutional provisions apply to a private institution only if, because of receipt of state or federal funding or other reason, the institution can be viewed as acting on behalf of the state or with state approval. The laws and regulations apply to private institutions because the institution is viewed as a "recipient" of federal financial assistance (FFA), or as an a "sub-recipient" or "beneficiary" of "significant assistance" as a voluntary participant in a program operated by a recipient of FFA like DPI.

1. May 9, 1980 the federal government published administrative regulations defining who is a "recipient" of FAA and assurances required for purposes of Title VI, Title IX, and section 504, above referenced. 34 CFR 100.3, 100.4, 34 CFR 104.3(f), 104.4(b)(1)(v), 34 CFR 106.2(h) and (p), 106.4, 106.11, 106.21, 106.31(b)(6).

See Appendix B to 34 CFR 100, Guidelines applicable to State agencies recipients.

2. May 9, 1980, See Appendix A to 34 CFR 104, the regulations governing sec. 504 non discrimination on the basis of handicap Subpart A:

Explaining the definition of "recipient"; "One comment [before adoption of the rules] requested that the regulations specify that **non public elementary and secondary schools that are not otherwise recipients** do not become recipients by virtue of the fact their students participate in certain Federal funded programs. The Secretary believes that it is unnecessary to amend the regulation in this regard, because almost identical language in the department's regulations implementing title VI and title IX of the Educational Amendments of 1972 has consistently been interpreted so as not to render such schools recipients. These schools, however, are *indirectly subject to the substantive requirements of this regulation* through the application of section [104.4(b)(1)(v)], which prohibits recipients from assisting agencies that discriminate on the basis of handicap *in providing services to the beneficiaries [private schools] of the recipient's [DPI's Choice] program(s).*"

The above provision was quoted in the 1990 litigation, trial court level only, of the MPCP Program, *Davis v. Grover*. July 27, 1990, memorandum from Deputy Assistant Secretary for Policy, Office of Civil Rights, Richard D. Komer, to Undersecretary Ted Sanders, United States Department of Education.

Mr. Komer's memorandum failed to cite **intervening case law** as follows:

a. *Norwood v. Harrison*, 413 US 455, 37 L. Ed. 2d 723 (1973); under the equal protection clause it is unconstitutional for a **state supported** text book loan program to send text books to private racially segregated K-12 schools. The Supreme Court specifically directed the district court to **monitor a state "certification procedure** under



which any school seeking text books for its pupils may apply for participation on behalf of pupils.” Thus private schools were required to “**affirmatively declare its admission policies and practices**, state the number of its racially and religiously identifiable minority students, and such other relevant data as is consistent with this opinion.”

b. *Haffer v. Temple University*, 524 F. Supp. 531, 535 (E.D. Pa. 1981). An otherwise private college, receiving no federal funds earmarked to Title IX, is covered and must comply with Title IX because the college does receive federal grants and contracts for construction of university buildings, constituting one tenth of the school’s annual budget; the school will therefore be construed as a “recipient.” See extensive legislative history of Title IX, distinguishing earlier cases. One senator is quoted: “If a student is benefited, the school is benefited.”

c. *Bob Jones University v. United States*, 461 US 574, 76 L. Ed. 2d 157 (1982). racial discrimination violates equal protection and is against public policy and private institutions which so discriminate cannot be viewed as conferring a public benefit; private institutions may be denied their tax exempt charitable status by the IRS even if racial discrimination is based on a sincerely held religious belief; the grant of a tax exemption is a public benefit; the decision states it is applicable to all private schools at all education levels - the school accepted students from grades kindergarten through graduate school.

d. *Grove City College v. Bell*, 465 US 555, 79 L. Ed. 2d 526 (1984); private college, not otherwise a recipient of FFA **refused to sign assurances of compliance with Title IX**; even though federal student loans were primarily to benefit students, since the college accepted and was the beneficiary of those loan payments from students, the college would be construed as a recipient of FFA; **Federal assistance** to the college’s financial aid program **could be terminated solely on the basis of the college’s refusal to execute an assurance** of compliance with Title IX; the application of Title IX to the college did not infringe the first amendment rights of the college or its students; the restriction of the enforcement of Title IX remedies solely to that branch of the college involving student loans, was subsequently legislatively reversed, over the president’s veto, by the Civil Rights Restoration Act of 1987, PL 100-259, 20 USC §1687.

e. *Horner v. Kentucky High School Athletic Association*, 43 F. 3d 265 (6th Cir. 1994); Title IX; the Kentucky State Board for Elementary and Secondary Education, with responsibility for regulating interscholastic athletics, established an athletic association board to act as its agent in administering athletics at the high school level, including any private schools desiring to associate themselves. The agent is a voluntary, self managing, unincorporated association of public, private and parochial schools. **The association** is deemed to be a recipient of FFA and is **subject to Title IX** and its status goes beyond being an indirect recipient or beneficiary, 34 CFR 106.2(h).

DPI has no active presence, regulatory or otherwise, in private schools in Wisconsin. As the federal administrative rules indicate, private K-12 schools are required to comply with “the

substantive requirements” of the major civil rights provisions because they are sub-grantees of DPI which is a direct “recipient” of federal financial assistance. Judge Steingass also decided the usual Bill of Rights provisions that protect individuals from government like due process and equal protection likewise apply in Choice schools, again, because it is a public program. It is clearly reasonable for the department to require the voluntary participants in the Choice Program to sign assurances that those schools comply with what the federal rules indicate, i.e. the substantive provisions of these acts. As to *how* those acts substantively apply in specific instances, Wisconsin public schools have long preferred to consult with their own private legal counsel or the Wisconsin School Board’s Association so that policy may inform individual school board application of the law.

### III. Sample Assurances

1. Attached as Exhibit A, three pages, is a portion of the 1989 departmental Chapter 2 State Plan for compliance with the Elementary and Secondary Schools Act, signed by Superintendent Herbert Grover, which was an exhibit in the 1990 Choice litigation. On page three the major civil rights provisions were outlined in which DPI provides assurance to the U.S. Department of Education of compliance for itself and *“further assures that all contractors, subcontractors, sub-grantees or others with whom it arranges to provide services or benefits to its students or employees in connection with its education program or activities and are not discriminating in violation of statutes, regulations, guidelines, and standards against those students or employees.”*
2. Exhibit B, two pages, recites federal non discrimination acts which the department assures to the U.S. Department of Education that it will comply, which includes the four major civil rights acts as well as five others. It is a non inclusive list. Like Exhibit A, it was part of the department Chapter 2 application and state plan to the U.S. Department of Education in 1989. It was before Judge Steingass.
3. Exhibit C, is a one page general LEA assurance required by the Department of all public schools in 1979. The department retains a similar signed form on file for each school district. This exhibit is from Milwaukee Public Schools and certifies their assurance of compliance with the applicable federal civil rights provisions.
4. Exhibit D, is a part of the current Consolidated Plan application for LEAs under the Improving America’s Schools Act of 1994. On page 2, the Assurances under the General Education Provisions Act, 20 USC 1221(d), 1231e, require LEAs give to DPI their assurances that activities conducted with federal financial assistance will not be discriminatory “based on gender, race, color, national origin, disability, and age” with respect to students, teachers and other program beneficiaries. The only difference between these assurances and those on the Choice Notice of Intent form and departmental rule is the Notice and rule provide the precise federal and state legal citations.

The assurances covered by departmental rule and required of the private schools require substantive compliance, and require no more assurance than is required of public schools in accordance with Judge Steingass' decision (page 22):

“If the superintendent requires guarantees of these participating schools in the same manner as he requires it of public schools and other public school programs or activities, it is unobjectionable. What he may not do is make those burdens more onerous for this Program than for others.”

The use of assurances is the time honored method employed by federal and state governments as the least intrusive method of insuring that direct and indirect beneficiaries of government programs and the providers of those programs have a common understanding of what rules apply. It is a method precisely designed to avoid government entanglement with participating entities. Private schools are in no poorer position than public schools are as to understanding what may be required by the substantive provisions of the applicable federal rules. The Choice Program that was approved twice, in *Davis v. Grover* and in *Jackson v. Benson*, was the Choice Program *with* the administrative rules in P.I. 35, Wis. Admn. Code, not the Choice Program *without* those rules.

# FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)

NOTICE OF INTENT (OPTIONAL)

PREAPPLICATION

APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER

a. NUMBER

b. DATE Year month day

19 - -

3. STATE APPLICATION IDENTIFIER

NOTE TO BE ASSIGNED BY STATE

a. NUMBER

b. DATE ASSIGNED Year month day

19 - -

Leave Blank

### 4. LEGAL APPLICANT/RECIPIENT

a. Applicant Name: Wisconsin Department of Public Instruction

b. Organization Unit: Division for Management and Budget

c. Street/P.O. Box: Post Office Box 7841

d. City: Madison

e. County: Dane

f. State: WI

g. ZIP Code: 53707

h. Contact Person (Name & Telephone No.): Gary K. Johnson, Assistant Superintendent 608/266-3903

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

39-6006487

6. PROGRAM (From CFDA)

a. NUMBER 8 | 4 | 1 | 5

MULTIPLE

b. TITLE Federal, State, Local Partnership for Education

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project)

Chapter 2 of Title I of ESEA as amended by the Elementary and Secondary School Improvement Amendments of 1988

8. TYPE OF APPLICANT/RECIPIENT

- A—State
- B—Intrastate
- C—Substate
- D—County
- E—City
- F—School District
- G—Special Purpose District
- H—Community Action Agency
- I—Higher Educational Institution
- J—Indian Tribe
- K—Other (Specify):

Enter appropriate letter

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

Wisconsin

10. ESTIMATED NUMBER OF PERSONS BENEFITING

Entire state

11. TYPE OF ASSISTANCE

- A—Basic Grant
- B—Supplemental Grant
- C—Loan
- D—Insurance
- E—Other

Enter appropriate letter(s)

A

12. PROPOSED FUNDING

a. FEDERAL	\$ 8,851,135 .00
b. APPLICANT	.00
c. STATE	.00
d. LOCAL	.00
e. OTHER	.00
f. Total	\$ 8,851,135 .00

13. CONGRESSIONAL DISTRICTS OF: Statewide

a. APPLICANT: Wisconsin Dept of Public Instruction

b. PROJECT: Chapter 2

15. PROJECT START DATE: 19 89 7 1

16. PROJECT DURATION: 5 years or 60 Months

18. DATE DUE TO FEDERAL AGENCY: 19 89 5 31

14. TYPE OF APPLICATION

- A—New
- B—Renewal
- C—Revision
- D—Continuation
- E—Augmentation

Enter appropriate letter

17. TYPE OF CHANGE (For 14c or 14e)

- A—Increase Dollars
- B—Decrease Dollars
- C—Increase Duration
- D—Decrease Duration
- E—Cancellation
- F—Other (Specify):

Enter appropriate letter(s)

19. FEDERAL AGENCY TO RECEIVE REQUEST: United States Department of Education

a. ORGANIZATIONAL UNIT (IF APPROPRIATE): School Improvement Programs

b. ADMINISTRATIVE CONTACT (IF KNOWN): Alicia Coro, Director

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

NA

c. ADDRESS

400 Maryland Avenue, S.W.  
Washington, D.C. 20202

21. REMARKS ADDED

Yes  No

22. THE APPLICANT CERTIFIES THAT

To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

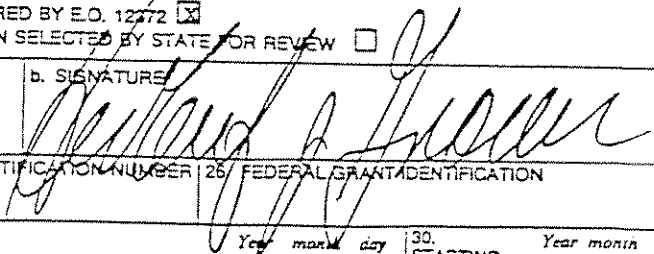
a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE

b. NO, PROGRAM IS NOT COVERED BY E.O. 12372  OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

23. CERTIFYING REPRESENTATIVE

a. TYPED NAME AND TITLE: Herbert J. Grover, State Superintendent

b. SIGNATURE



24. APPLICATION RECEIVED 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

27. ACTION TAKEN

- a. AWARDED
- b. REJECTED
- c. RETURNED FOR AMENDMENT
- d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- e. DEFERRED
- f. WITHDRAWN

28. FUNDING

a. FEDERAL	\$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	\$	.00

29. ACTION DATE 19 - -

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

30. STARTING DATE 19 - -

32. ENDING DATE 19 - -

33. REMARKS ADDED

Yes  No

**EX A P. I**

## WISCONSIN FEDERAL GRANT APPLICATION NOTICE FORM

Department of Administration  
Form DOA-7020 (R 5-88)  
(Formerly FDA 50)

Federal-State Relations Office  
101 S. Webster St., 6th Floor  
P.O. Box 7868  
Madison, WI 53707-7868  
Telephone 608/267-2125

1 Applicant Agency <b>Department of Public Instruction</b>			2 CFDA # <b>84 • 151</b>		3 Agency I.D. (Optional)																																																																																
4 Address (Street/City/State/Zip) <b>125 South Webster Street Madison, WI 53702</b> Contact Person <b>Gary K. Johnson</b> Phone <b>266-3903</b>			5 Federal Agency to Receive Request <b>United States Department of Education</b>			6 Period of Funding Mo/Day/Year <b>7/1/89 to 6/30/94</b>																																																																															
8 Agency Project Title <b>Chapter 2 of Title I of ESEA as amended by the Elementary/Secondary School Improvement of 1988</b>			9 Executive Order 12372 Review Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Clearinghouses: Notified _____ Dates _____ _____ _____ _____ All		7 Application Due Date Mo/Day/Year <b>5/31/89</b>																																																																																
11 Type of Application <input type="checkbox"/> New Grant <input type="checkbox"/> Amendment to Current Grant <input type="checkbox"/> Continuation-Unchanged <input checked="" type="checkbox"/> Continuation-Modified		12 Type of Assistance Grant <input checked="" type="checkbox"/> Formula <input type="checkbox"/> Discretionary Other _____		10 Area of Impact Counties/States <b>Entire state</b> _____ _____ _____																																																																																	
13 Number of Years Previously Funded <b>7</b>			14 Funding, Allotment and Position Data (including Federal indirect costs) Total Federal Funds Applied For <b>\$8,851,135</b>																																																																																		
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Numeric Appropriation</th> <th style="width: 15%;">Source</th> <th style="width: 15%;">Revenue Type</th> <th style="width: 15%;">Amount</th> <th style="width: 15%;">New Positions No. (FTE)</th> <th style="width: 15%;">Type</th> <th style="width: 15%;">Existing Positions No. (FTE)</th> <th style="width: 15%;">Type</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">142</td> <td style="text-align: center;">Federal</td> <td style="text-align: center;">PR-F</td> <td style="text-align: right;">\$ 1,770,227</td> <td></td> <td></td> <td style="text-align: right;">26.85</td> <td style="text-align: center;">Permanent</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$</td> <td></td> <td></td> <td style="text-align: right;">2.00</td> <td style="text-align: center;">Project</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">241</td> <td style="text-align: center;">Federal</td> <td style="text-align: center;">PR-F</td> <td style="text-align: right;">\$ 7,080,908</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: right;">\$</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>			Numeric Appropriation	Source	Revenue Type	Amount	New Positions No. (FTE)	Type	Existing Positions No. (FTE)	Type	142	Federal	PR-F	\$ 1,770,227			26.85	Permanent				\$			2.00	Project				\$					241	Federal	PR-F	\$ 7,080,908								\$								\$								\$								\$								\$					15 Indirect Cost Reimbursement <input checked="" type="checkbox"/> Yes Rate <b>6.1%</b> Base <b>\$1,770,227</b> Amount <b>\$107,984</b> <input type="checkbox"/> No		
Numeric Appropriation	Source	Revenue Type	Amount	New Positions No. (FTE)	Type	Existing Positions No. (FTE)	Type																																																																														
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16 Authorizations <input type="checkbox"/> Delegated Review		Authorized Agency Representative (Type or Print) <b>Herbert J. Grover</b>		Title if other than Agency Secretary <b>State Superintendent</b>																																																																																	
		Signature 		Date <b>6/5/89</b>																																																																																	

FOR DEPARTMENT OF ADMINISTRATION USE ONLY

Reviewing Analyst \_\_\_\_\_ Phone \_\_\_\_\_ SAI Number \_\_\_\_\_  
 Recommendation:  Approve  Approve With Conditions  Deny Date Received \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_ Date Due \_\_\_\_\_

COMMENTS:

Ex A. P. 2

CIVIL RIGHTS CERTIFICATE

ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, SECTION 504 OF THE REHABILITATION ACT OF 1973, TITLE IX OF THE EDUCATION AMENDMENTS OF 1972, AND THE AGE DISCRIMINATION ACT OF 1975

The applicant provides this assurance in consideration of and for the purpose of obtaining Federal grants, loans, contracts (except contracts of insurance or guaranty), property, discounts, or other Federal financial assistance to education programs or activities from the Department of Education.

The applicant assures that it will comply with:

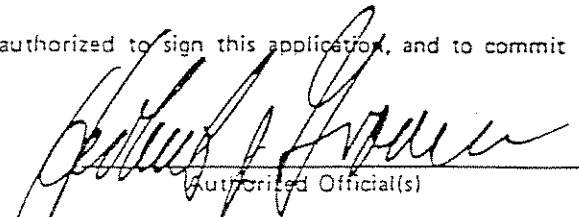
1. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*, which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance.
2. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.
3. 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 education programs and activities receiving Federal financial assistance.
4. 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 receiving Federal financial assistance.
5. All regulations, guidelines, and standards lawfully adopted under the above statutes by the United States Department of Education.

The applicant agrees that compliance with this Assurance constitutes a condition of continued receipt of Federal financial assistance, and that it is binding upon the applicant, its successors, transferees, and assignees for the period during which such assistance is provided. The applicant further assures that all contractors, subcontractors, subgrantees or others with whom it arranges to provide services or benefits to its students or employees in connection with its education programs or activities are not discriminating in violation of the above statutes, regulations, guidelines, and standards against those students or employees. In the event of failure to comply the applicant understands that assistance can be terminated and the applicant denied the right to receive further assistance. The applicant also understands that the Department of Education may at its discretion seek a court order requiring compliance with the terms of the Assurance or seek other appropriate judicial relief.

The person or persons whose signature(s) appear(s) below is/are authorized to sign this application, and to commit the applicant to the above provisions.

6/5/89

Date



Authorized Official(s)

Wisconsin Department of Public Instruction

Name of Applicant or Recipient

Post Office Box 7841

Street

Madison, WI 53707

City, State, Zip Code

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction subagreements.

EX B

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding protection of human subjects involved in research development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in the construction or rehabilitation of residential structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

Ex. B, p. 2



MAY 31 1979



WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION  
FEDERAL PROGRAMS: GENERAL APPLICATION  
AND ASSURANCES  
P.L. 95-561 Section 436(b)  
PI-1091

INSTRUCTIONS: Submit 1 copy by June 1. Amendments can be submitted prior to the effective date of a program.

Return to:

WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION  
STATE-LOCAL FEDERAL PROGRAMS, Rm.224  
126 LANGDON STREET  
MADISON, WI 53702

\*Approval of this application is required before funds to which the General Education Provisions Act applies can be issued to an agency.

1. Agency Name <b>MILWAUKEE PUBLIC SCHOOLS</b>	2. LEA Code <b>3619</b>	3. Name of Chief Agency Officer <b>Dr. Jack I. Marcussen</b>	4. Type of Application <input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment
---	----------------------------	---	---

5. Check each federal program for which application is to be made.

- ESEA TITLE I except sections 143 and 153  
20 USC 2701
- ESEA TITLE I—Institutions for Neglected or Delinquent Children, sections 151-153  
20 USC 2781-2
- ESEA TITLE I—Migrant Program, sections 141-143  
20 USC 2761
- ESEA TITLE I—P.L. 89-313 State-Operated or Supported Programs for Handicapped Children
- ESEA TITLE II-B—State Basic Skills Program  
20 USC 2901
- ESEA TITLE IV-B—Instructional Materials and School Library Resources  
20 USC 1801-1832
- ESEA TITLE IV-C—Improvement in Educational Practices
- ESEA TITLE IV-D—Guidance, Counseling and Testing
- ESEA TITLE VIII-Community Schools Program  
20 USC 3282

- ESEA TITLE IX—Gifted and Talented Program, section 904  
20 USC 3314
- P.L. 94-142, Education of Handicapped Children (EHA VI-B)
- Career Education Incentive Act except sections 10, 11 and 12  
20 USC 2601-2614
- Indochina Refugee Children Assistance Act, Title II  
20 USC 1211b
- Vocational Education Act, as amended (elementary and secondary programs administered by DPI)

FEDERAL CIVIL RIGHTS ASSURANCES

The following assurances are on file with the federal government:

- HEW 441— Race, color and national origin, 1964 Civil Rights Act
- HEW 639(A)—Sex discrimination, Education Amendments of 1972
- HEW 641— Handicapped discrimination, Rehabilitation Act of 1973

ASSURANCES

Assurance is hereby given:

1. That the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;
2. That the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;
3. That the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;
4. That the local educational agency will make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties and that the local educational agency will maintain such records, including the records required under Section 437, and provide access to those records, as the State agency or board or the Commissioner deem necessary to perform their duties;
5. That the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;
6. That any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

7. That in the case of any project involving construction —
  - a. the project is not inconsistent with overall State plans for the construction of school facilities, and
  - b. in developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under Section 504 of the Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals; and
8. That the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.
  - c. A general application submitted under this section shall remain in effect for the duration of the programs it covers. The State agencies or boards administering the programs covered by the application shall not require the submission or amendment of such application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in such application.

Signature of Chief Agency Officer

Date

May 27, 1979

EX.C, 1 p.



Wisconsin Department of Public Instruction  
 FINAL OR AMENDED CONSOLIDATED PLAN  
 IMPROVING AMERICA'S SCHOOLS ACT (IASA)  
 PI-9550 (Rev. 4-98)

INSTRUCTIONS: Submit five (5) copies, including one copy b ORIGINAL signatures and four additional copies, of the complete Pages must be securely stapled... Relevant support documents attach the plan must be kept to a minimum. School districts must s amendments/information by JUNE 30, 1998, to:

WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION  
 COORDINATOR OF STUDENT LEARNING  
 DIVISION FOR LEARNING SUPPORT: EQUITY AND ADVOCACY  
 125 SOUTH WEBSTER STREET  
 P.O. BOX 7841  
 MADISON, WI 53707-7841

Collection of this information is covered under PL 103-382, the Improving America's Schools Act of 1994.

I. GENERAL INFORMATION

School District		LEA Code
Address Street, City, State, Zip		
District's Consolidated Plan Contact Person	Title of Contact Person	Telephone Area/No.

II. PROGRAMS COVERED

1. Integration of Covered Programs: Under the provisions of IASA, each local educational agency plan submitted under the programs listed below is required under Sec. 14307(b), Part C, Title XIV, to be integrated with each other and its local improvement plan, if any, either approved or being developed, under Title III of the Goals 2000: Educate America Act.

Completion and submittal of this Final Consolidated Plan will satisfy the integration requirements set forth under Sec. 14307(b) for each of the checked programs.

- |  |   |
|--|---|
| <input type="checkbox"/> (A) Title I, Part A—Improving Basic Programs Operated by Local Educational Agencies | <input type="checkbox"/> (C) Title IV—Safe and Drug-Free Schools and Communities Entitlements |
| <input type="checkbox"/> (B) Title II—Dwight David Eisenhower Professional Development Program               | <input type="checkbox"/> (D) Title VI—Innovative Education Program Strategies                 |

III. CONSOLIDATION OF ADMINISTRATIVE FUNDS

Under sec. 14203 of IASA, a school district, with the approval of the state educational agency (DPI), may consolidate and use for administration one or more covered programs, not more than 10 percent of the total amount available annually to the school district for each covered program. This provision is not applicable to carry-over funds, if any, which the district may have from a prior year appropriation.

Please check one of the following:

- Our school district requests approval to consolidate for administrative purposes an amount not to exceed 10 percent of the funds provided annually under each covered program.
- Our school district will not consolidate any covered program funds for administrative purposes.

IV. SIGNATURES

WE, THE UNDERSIGNED, CERTIFY that the information contained in this plan is complete and accurate to the best of our knowledge; that the necessary assurances of compliance with applicable state and federal statutes, rules, and regulations will be met; and, that the school district designated in this plan is authorized to administer these programs.

Signature of District Administrator	Date Signed
Signature of School Board Clerk	Date Signed

FOR DPI USE ONLY

EX. D P. 1

Reviewer's initials	Date Received	Signature	Date Approved
---------------------	---------------	-----------	---------------

## V. ASSURANCES

A school district submitting a plan or application under the Improving America's Schools Act (IASA) is required to file with the Department of Public Instruction this single set of assurances, applicable to each program for which a plan or application is submitted. In submitting this Final Consolidated Plan the school district affirms that (check each):

## 1. GENERAL ASSURANCES

(Sec. 14306, Part C, Title XIV of Title I)

- Each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications.
- The control of funds provided under each program and title to property acquired with program funds will be in a public agency or in a nonprofit private agency, institution, organization, or in an Indian tribe if the law authorizing the program provides for assistance to such entities.
- The school district will administer such funds and property to the extent required by the authorizing statutes.
- The school district will adopt and use proper methods of administering such program, including (a) the enforcement of any obligations imposed by law on agencies, institutions, organizations, and other recipients responsible for carrying out each program; or (b) the correction of deficiencies in program operations that are identified through audits, monitoring, or evaluation.
- The school district will cooperate in carrying out any evaluation of such program conducted by or for the state educational agency, the secretary, or other federal officials.
- The school district will use fiscal control and fund accounting procedures as will ensure proper disbursement of, and accounting for, federal funds paid under each program.
- The school district will (a) make reports to the Department of Public Instruction and the U.S. Secretary of Education as may be necessary to enable the state and federal departments to perform their duties under each program; and, (b) maintain records, provide information, and afford access to the records as the department or the U.S. Secretary of Education may find necessary to carry out their duties.
- Before the plan was submitted, the school district afforded a reasonable opportunity for public comment on the plan and has considered such comment.
- Any printed (or other media) description of IASA programs will state the total amount being spent on the project or activity and will indicate the percentage of funds from the IASA program which are involved.
2. RELATIONSHIP OF PLAN OR APPLICATION TO PLANS UNDER THE GOALS 2000: EDUCATE AMERICA ACT (Sec. 14307(b), Part C, Title XIV of Title I)
- Each school district plan submitted for the programs checked in Section II of this Final Consolidated Plan will be integrated with each other and the school district's improvement plan, if any, either approved or being developed, under Title III of the Goals 2000: Educate America Act or the School-to-Work Opportunities Act of 1994.

## 3. EQUITY FOR STUDENTS, TEACHERS AND OTHER PROGRAM BENEFICIARIES (Sec. 236, Part C, General Education Provisions Act)

- The school district's plan includes descriptions of steps the district will take to ensure
- Equitable access to, and equitable participation in, the project activity to be conducted with the federal assistance by addressing the special needs of students, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age.
- Compliance with civil rights and nondiscrimination requirements and equal opportunities to participate for all eligible students, teachers, and other program beneficiaries; and,
- Promotion of high standards for all students, teachers and other program beneficiaries.

## 4. GUN FREE SCHOOLS

(Sec. 14602(a), Part F, Title XIV of Title I)

- The school district is in compliance with state law requiring expulsion from school for a minimum of one year, for any student found to have brought a weapon to school, subject to a case-by-case modification. Further, the school district assures it will submit separately the number of such expulsions, the schools involved and the types of weapons involved on an annual basis to the department.

## 5. INTENT TO FORM/JOIN CONSORTIA

- The school district intends to form/join a consortium for one or more of the covered programs under this Act. The school district will assure compliance with all requirements related to the Title(s) for which consortium participation is sought. The program(s) include the following: *Check all that apply:*
- Title II—Eisenhower  
Specify Fiscal Agent:
- Title IV—SDFSCA  
Specify Fiscal Agent:

By making this assurance, we hereby surrender all available funds in the program(s) to the designated fiscal agent.

## 6. TITLE I COMPARABILITY

(Sec. 1120A(c)(2)(i)(ii)(iii))

- The district has a districtwide salary schedule, and has or will implement policies to ensure equivalence among schools for teachers, administrators, and other staff and among schools in the provision of curriculum and instructional materials. Documentation will be on file to demonstrate that the local policies annually result in comparability.

EX. D, P. 2



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

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

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**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES  
COMMITTEE HEARING**

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The Joint Committee for Review of Administrative Rules will hold a **public hearing** in the GAR Hearing Room on the 4<sup>th</sup> Floor North of the State Capitol, on the following at the time below:

**Thursday, July 30, 1998 at 10:00 a.m.**

*The Joint Committee Will Hold an Executive Session on the Following*

- |                                      |  |
|--------------------------------------|--|
| Emergency Rule DOC 328.22            | <b>Relating to</b> the authority of the Department of Corrections to detain any convicted felon in a Department of Corrections Institution. Extension effective for 60 days at the request of the Department of Corrections. <i>First Consideration</i>    |
| Emergency Rule HSS 138               | <b>Relating to</b> health insurance premium subsidies for certain persons with HIV infections. Extension effective for 7 days at the request of the Department of Health and Family Services. <i>First Consideration</i>                                   |
| Emergency Rule HFS 196.03(22)(e)-(g) | <b>Relating to</b> the exemption of concession stands at locally sponsored sporting events from being regulated as restaurants. Extension effective for 60 days at the request of the Department of Health and Family Services. <i>First Consideration</i> |
| Emergency Rule. DWD 12.25            | <b>Relating to</b> budget amendments affecting the Learnfare Program. Extension of 60 days at the request of the Department of Workforce Development. <i>Second Consideration.</i>   |
| Emergency Rule Comm 51               | <b>Relating to</b> fire protect to fire protective penetrations in commercial buildings and multifamily dwellings. Extension of 60 days by the department of Department of Commerce. <i>Second Consideration.</i>  |

(MORE)

Emergency Rule NR 300

**Relating to** fees for waterway and wetland permit decisions. Extension of 60 days by the request of the Department of Natural Resources. *First Consideration.*

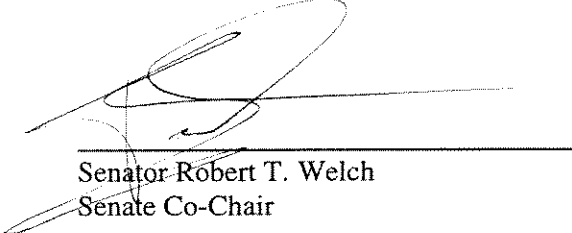
Emergency Rule NR 485

**Relating to** emission limitations for motor vehicles. Extension of 60 days by the request of the Department of Natural Resources. *Second Consideration*

*The Joint Committee will hold a public hearing on the following:*


**PI 35.03 (3) (c) 4-10** ---The Committee will take testimony regarding the permanent rule and its application on schools that are part of the Milwaukee Parental School Choice Program.

*\* The Joint Committee may hold an executive session on the preceding item.*



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Senator Robert T. Welch  
Senate Co-Chair



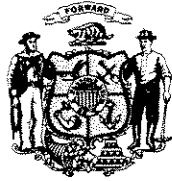
---

Representative Glenn Grothman  
Assembly Co-Chair



**Tommy G. Thompson**  
Governor

**Michael J. Sullivan**  
Secretary



**State of Wisconsin**  
**Department of Corrections**

---

Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 266-2471

July 7, 1998

✓ Senator Robert Welch  
Joint Committee for Review of Administrative Rules  
Room 201, 1 East Main Street  
Madison, Wisconsin 53707

Representative Glenn S. Grothman  
Joint Committee for Review of Administrative Rules  
State Capitol, Room 125 West  
Madison, Wisconsin 53708

Re: Clearinghouse Rule 98-070, Relating to the custody and detention of felony probationers and parolees

Dear Senator Welch and Representative Grothman:

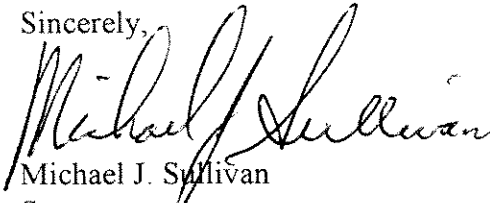
The Department of Corrections has an emergency rule which will expire on August 20, 1998, before it can be replaced by a permanent rule. Pursuant to s. 227.24 (2), Stats., I ask the Joint Committee to extend the emergency rule amending DOC 328.22 (5) by 60 days.

This emergency rule is required to alleviate the overcrowding that continues to prevail in the Milwaukee County Jail. The Department of Corrections has proposed a permanent rule to provide that any felony probationer may be detained in a Department of Corrections institution. The Department submitted a scope statement on March 16, 1998, a copy of which is enclosed. The Department submitted the proposed permanent rule to the Administrative Rules Clearinghouse and the Revisor of Statutes on May 7, 1998, copies of which are enclosed. The Department received the report from the Administrative Rules Clearinghouse on June 4, 1998, a copy of which is enclosed. On May 8, 1998, the Department scheduled this rule for hearing on June 26, 1998. A copy of the notice of hearing is enclosed. The hearing was held. No one appeared to testify at the hearing and no one submitted written comments to the Department. The Department

will not be able to promulgate the permanent rule before the emergency rule expires on August 20, 1998.

Copies of the order creating the emergency rule and the proposed order creating a permanent rule are enclosed. If you have any questions about our request to extend the effective period of the emergency rule, please contact Deborah Rychlowski of the Department's Office of Legal Counsel at 266-8426.

Sincerely,



Michael J. Sullivan  
Secretary

Enclosures

cc: JCRAR Members



Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary

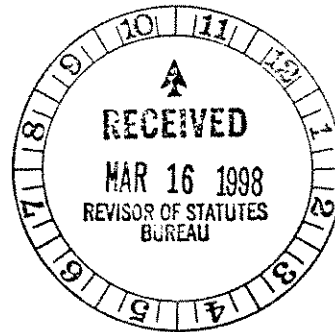


State of Wisconsin  
Department of Corrections

Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 266-2471

March 16, 1998

Mr. Bruce E. Munson, Revisor  
Revisor of Statutes Bureau  
Suite 800  
131 West Wilson Street  
Madison, WI 53703-3233

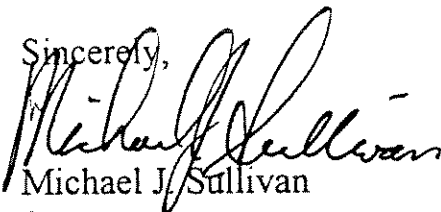


Dear Mr. Munson:

Pursuant to sec. 227.135, Stats., the Department of Corrections submits the enclosed statement of scope of a proposed administrative rule relating to the custody and detention of parolees and felony probationers. The department plans to have this proposed rule promulgated as an emergency rule on March 23, 1998.

If you have any questions, please call Robert Pultz at (608) 267-0922.

Sincerely,

  
Michael J. Sullivan  
Secretary

cc: Mark Bugher

Enclosure



**DEPARTMENT OF CORRECTIONS  
STATEMENT OF SCOPE OF PROPOSED RULE**

**SUBJECT:**

Rule promulgation and amendment to expand the categories of felony offenders that may be held in custody at Department of Corrections Institutions.

**DESCRIPTION OF POLICY ISSUES:**

**Description of the Objectives of the Rule:**

The objective of the rule is public safety. The rule will allow for the detention of any convicted felon in a Department of Corrections institution. The present rule allows for detention of any parolee at a Department institution, however only felony probationers with an imposed and stayed sentence can be detained at Department institutions. The Wisconsin Supreme Court ruling in Sullivan v. Kliesment, which allows the Milwaukee County Sheriff to refuse Department of Corrections detainees when dangerous overcrowding conditions prevail necessitates this rule amendment. This rule amendment will protect former and potential victims from criminal behavior by felons that are being supervised by the Department.

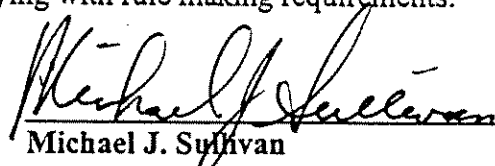
**STATUTORY AUTHORITY FOR THE RULE:**

Control and Supervision of Probationers: ss. 973.10, Stats.

**ESTIMATE OF THE AMOUNT OF TIME STATE EMPLOYEES WILL SPEND TO DEVELOP THE RULE AND OTHER RESOURCES NECESSARY TO DEVELOP THE RULE:**

The Department estimates that it will take 50 hours to develop the rule including drafting, cost estimates, public hearings, and complying with rule making requirements.

Date: March 16 1998

  
**Michael J. Sullivan**  
Secretary  
Department of Corrections



Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary



State of Wisconsin  
Department of Corrections

Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 266-2471

May 5, 1998

Ronald Sklansky, Director  
Administrative Rules Clearinghouse  
One East Main Street, Suite 401  
P.O. Box 2536  
Madison, Wisconsin

Dear Mr. Sklansky:

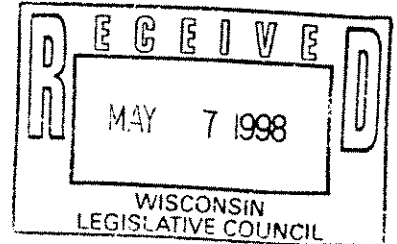
Pursuant to s. 227.15 (1), Stats., the Department of Corrections submits proposed administrative rule DOC 328.22 (5) which expands the authority of the Department to detain any parolee or any felony probationer in any Department institution.

If you have any questions regarding proposed DOC 328.22 (5), please contact Deborah Rychlowski at 266-8426.

Sincerely,

Michael J. Sullivan,  
Secretary

Enclosures



PROPOSED RULES OF THE  
DEPARTMENT OF CORRECTIONS

DOC 328.22 (5) Wis. Adm. Code

Subject:

AUTHORITY OF THE DEPARTMENT TO DETAIN ANY PAROLEE OR FELONY  
PROBATIONER IN ANY DEPARTMENT INSTITUTION.

Statutory Authority:

Sections 227.11 (2), and 973.10, Stats.

Analysis Prepared by the Department of Corrections

The objective of the rule is public safety. The rule will allow for the detention of any convicted felon in a Department of Corrections institution. The present rule allows for detention of any parolee at a Department institution, however only felony probationers with an imposed and stayed sentence can be detained at Department institutions. The Wisconsin Supreme Court ruling in Sullivan v. Kliesment, which allows the Milwaukee County Sheriff to refuse Department of Corrections detainees when dangerous overcrowding conditions prevail necessitates this rule amendment. This rule amendment will protect former and potential victims from criminal behavior by felons that are being supervised by the Department.

Forms

NA

Agency Procedure for Promulgation

Approval of notice of submittal to joint legislative council by secretary of department of corrections, submittal of rule to JLCS, notice of submittal to revisor and notice secretary of administration under s. 227.14 (4m); approval of notice of hearing by secretary under 227.17 (2m), Stats.; public hearing under ss. 227.17 and 227.18, Stats; notice of hearing to revisor of statutes and secretary of administration under s. 227.17 (1) (bm); approval of rules in final draft form by secretary; legislative standing committee review under 227.19; Stats.; and filing of rules under s. 227.20, Stats.

Name and Phone Number of Agency Contact

Deborah Rychlowski, Office of Legal Counsel, 266-8426.

Date Sent to Legislative Council Administrative Rules Clearinghouse

May 5, 1998

PROPOSED ORDER OF  
DEPARTMENT OF CORRECTIONS  
PROMULGATING RULES  
DOC 328.22 (5)

Under the authority vested in the Department of Corrections by ss. 227.11(2), and 973.10, Stats., the Department of Corrections hereby proposes an order to amend DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Statutory authority: ss. 227.11 (2), and 973.10, Stats.  
Statutes interpreted: ss. 973.10 (1), and (2), Stats.

Analysis Prepared by the Department of Corrections

The current administrative rule Ch. DOC 328.22 (5) allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution.

SECTION 1. DOC 328.22 (5) is amended as follows:

DOC 328.22 (5) ~~A. The department may detain a client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained~~ in an institution pending revocation proceedings.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Corrections

By

  
Michael J. Sullivan, Secretary

Dated: 5/6/98

SEAL:

FISCAL ESTIMATE  
DOA-2048 N(R10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

Subject

Emergency Administrative Rule broadening DOC's ability to detain all felony probationers pending revocation proceedings in an institution.

Fiscal Effect

State:  No State Fiscal Effect

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

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

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

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
     Permissive       Mandatory  
2.  Decrease Costs  
     Permissive       Mandatory

3.  Increase Revenues  
     Permissive       Mandatory  
4.  Decrease Revenues  
     Permissive       Mandatory

5. Types of Local Governmental Units Affected:  
 Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

Fund Sources Affected

- GPR    FED    PRO    PRS    SEG    SEG-S

Affected Ch. 20 Appropriations

20.410(1)(a), (b), (bn)

Assumptions Used in Arriving at Fiscal Estimate

The current Administrative Rule allows the Department of Corrections (DOC) to detain felony probationers with an imposed and stayed sentence who are pending revocation proceedings in an institution. This emergency Administrative Rule broadens that language to include all felony probationers, not just those with imposed and stayed sentences.

DOC anticipates that this rule change will result in more felony probationers being detained in DOC institutions while there are pending revocation proceedings. This increased usage could result in a need for more contracted space or more crowded conditions at DOC facilities. If the increased usage results in more crowded conditions within DOC facilities, increased costs will be incurred in the areas of food, supplies and services, and staff coverage. If the increased usage results in more offenders being transferred to contracted facilities, then DOC would incur an increase in contract costs.

Increased usage of DOC facilities for offenders who were formally detained in county jails, will impact on local county jail populations. It is anticipated that local county jails will experience lower DOC populations. These lower population numbers could also result in less revenue from reimbursable holds.

The Department's automated data on offenders being held in custody does not provide a breakdown of the type of probation. Although it is anticipated that local county jails will experience decreased populations and revenue and that DOC will experience increased costs and workload as the result of this rule change, it is difficult to estimate just how much of an impact will occur.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)  
Lucie Widzinski-Pollock 266-5070  
Department of Corrections

Authorized Signature/Telephone No.  
*Robert Margolies*  
Robert Margolies, 266-2931

Date  
March 13, 1998

WISCONSIN LEGISLATIVE COUNCIL STAFF



***RULES CLEARINGHOUSE***

Ronald Sklansky  
Director  
(608) 266-1946

Richard Sweet  
Assistant Director  
(608) 266-2982



David J. Stute, Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

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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 98-070**

AN ORDER to amend DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Submitted by **DEPARTMENT OF CORRECTIONS**

05-07-98 RECEIVED BY LEGISLATIVE COUNCIL.

06-04-98 REPORT SENT TO AGENCY.

RNS:SPH:kjf

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO





Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary



State of Wisconsin  
Department of Corrections

Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 266-2471

May 8, 1998

Mr. Gary L. Poulson  
Deputy Revisor  
Revisor of Statutes Bureau  
131 West Wilson Street  
Room 800  
Madison, WI 53703-3233



Re: Emergency Rule DOC 328.22 (5), Proposed Permanent Rule CR-98-070

Emergency and Proposed Permanent Rule Relating to Expanding the Authority of DOC to Detain Any Parolee or Any Felony Probationer in Any Department Institution

Dear Mr. Poulson:

Pursuant to s. 227.17, Stats., please find enclosed the Notice of Hearing for the emergency rule for DOC 328.22 (5), and the proposed permanent rule CR-98-070. The emergency rule and proposed permanent rule relate to expanding the authority of DOC to detain any parolee or any felony probationer in any Department institution. Also enclosed is a 3.5" double-density disk containing a copy of the notice.

I approve the attached notice of hearing.

If you have questions, please contact Robert Pultz at (608) 267-0922.

Sincerely,

Michael J. Sullivan  
Secretary

Enclosure

cc: Richard G. Chandler  
State Budget Director

NOTICE OF HEARING  
DEPARTMENT OF CORRECTIONS  
EMERGENCY RULE AND PROPOSED PERMANENT RULE  
328.22 (5), CR-98-070

(Authority of the Department to Detain Any Parolee or Any Felony Probationer in Any  
Department Institution - DOC 328.22 (5))

NOTICE IS HEREBY GIVEN That pursuant to ss. 227.11 (2) (a), and 973.10, Stats., the department of corrections proposes the following emergency rule and proposed permanent rule relating to the authority of the department to detain any parolee or any felony probationer in any department institution. The rules are the same.

Hearing Information

<u>Date &amp; Time</u>	<u>Location</u>
June 26, 1998 Friday 2:00 P.M. to 3:00 P.M.	Secretary's Conference Room Department of Corrections 149 E. Wilson Street, 3rd Floor Madison, Wisconsin

The public hearing site is accessible to people with disabilities.

Analysis Prepared by the Department of Corrections

Statutory authority: ss. 227.11 (2), and 973.10, Stats.  
Statutes interpreted: ss. 973.10 (1), and (2), Stats.

FINDING OF EMERGENCY

The Department of Corrections finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The Milwaukee County Jail has experienced severe overcrowding. The Department of Corrections and the Milwaukee County Sheriff have worked cooperatively to alleviate the crowded conditions that continue to prevail. This rule amendment will serve the purpose of further alleviating overcrowding by allowing any felony probationer to be detained in a Department of Corrections institution. Presently, only felony probationers with imposed and stayed sentences may be detained in a Department facility.

The Wisconsin Supreme Court ruled in Sullivan v. Kliesmet, that the Sheriff of Milwaukee County may refuse to accept Department of Corrections detainees when

severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliesmet decision one year or until June 25, 1998.

The current administrative rule Ch. DOC 328.22 (5) allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution.

SECTION 1. DOC 328.22 (5) is amended as follows:

DOC 328.22 (5) ~~A~~ The department may detain a client on parole from a state correctional institution or on felony probation ~~with an imposed and stayed sentence may be detained~~ in an institution pending revocation proceedings.

This permanent rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

#### Initial Regulatory Flexibility Analysis

These rules are not expected to have an effect on small businesses.

#### Fiscal Estimate

DOC anticipates that this rule change will result in more felony probationers being detained in DOC institutions while there are pending revocation proceedings. This increased usage could result in a need for more contracted space or more crowded conditions at DOC facilities. If the increase results in more crowded conditions within DOC facilities, increased costs will be incurred in the area of food, supplies and services, and staff coverage. If the increased usage results in more offenders being transferred to contracted facilities, then DOC would incur an increase in contract costs.

Increased usage of DOC facilities for offenders who were formerly detained in county jails, will impact on local county jail populations. It is anticipated that local county jails will experience lowered DOC populations. These lower population numbers could also result in less revenue from reimbursable holds.

The Department's automated data on offenders being held in custody does not provide a breakdown of the type of probation. Although it is anticipated the local county jails will experience decreased populations and revenue and that DOC will experience increased costs and workload as the result of this rule change, it is difficult to estimate just how much of an impact will occur.

Contact Person

Robert Pultz (608) 267-0922  
Office of Legal Counsel  
149 E. Wilson Street  
P.O. Box 7925  
Madison, Wisconsin 53707-7925

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written Comments

Written comments on the proposed rules received at the above address no later than June 30, 1998, will be given the same consideration as testimony presented at the hearing.



Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary



State of Wisconsin  
Department of Corrections

Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 266-2471

March 23, 1998


Honorable Douglas La Follette  
Secretary of State  
10th Floor-30 West Mifflin Street  
Madison, Wisconsin 53703

Dear Mr. La Follette:

Pursuant to s. 227.20 Stats., the Department of Corrections submits a certified copy of emergency rule DOC 328, relating to custody and detention of felony probationers and parolees.

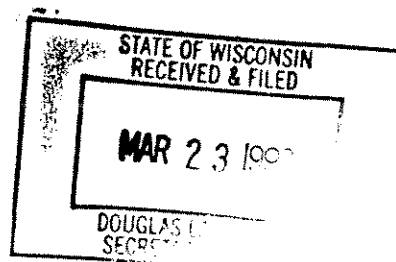
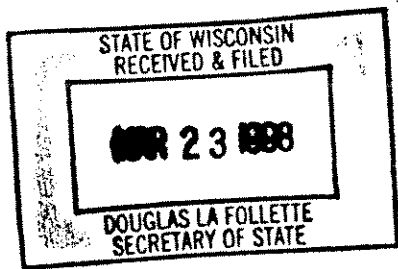
If you have any questions, please call Robert Pultz at (608) 267-0922.

Sincerely,



Michael J. Sullivan  
Secretary

Enclosures





ORDER OF  
DEPARTMENT OF CORRECTIONS  
PROMULGATING EMERGENCY RULES  
DOC 328.22 (5)

FINDING OF EMERGENCY

The Department of Corrections finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: The Milwaukee County Jail has experienced severe overcrowding. The Department of Corrections and the Milwaukee County Sheriff the have worked cooperatively to alleviate the crowded conditions that continue to prevail. This rule amendment will serve the purpose of further alleviating overcrowding by allowing any felony probationer to be detained in a Department of Corrections institution. Presently, only felony probationers with imposed and stayed sentences may be detained in a Department facility.

The Wisconsin Supreme Court ruled in Sullivan v. Kliesmet, that the Sheriff of Milwaukee County may refuse to accept Department of Corrections detainees when severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliesmet decision one year or until June 25, 1998.

Under the authority vested in the Department of Corrections by ss. 227.11(2), and 973.10, Stats., the Department of Corrections hereby amends DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

Statutory authority: ss. 227.11 (2), and 973.10, Stats.

Statutes interpreted: ss. 973.10 (1), and (2), Stats.

Adoption Procedure: This rule is adopted under the procedures authorized in ss. 227.16 (2) (c), and 227.24 (1) (a) and (4), Stats.

Analysis Prepared by the Department of Corrections

The current administrative rule Ch. DOC 328.22 (5) allows the Department of Corrections to detain, in any Department institution, any parolee or a felony probationer with an imposed and stayed sentence. The amended rule will expand upon this authority and allow the Department to detain any parolee or any felony probationer in any Department institution.

SECTION 1. DOC 328.22 (5) is amended as follows:

DOC 328.22 (5) A The department may detain a client on parole from a state correctional institution or on felony probation with an imposed and stayed sentence may be detained in an institution pending revocation proceedings.

This rule shall take effect on March 23, 1998, upon publication, as an emergency rule.

Wisconsin Department of Corrections

By   
Michael J. Sullivan, Secretary

Dated: 3/12/98

SEAL:





Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary

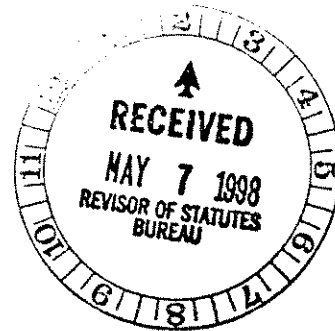


State of Wisconsin  
Department of Corrections

Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
Madison, WI 53707-7925  
Telephone (608) 266-2471

May 5, 1998

Bruce Munson, Revisor  
Revisor of Statutes Bureau  
131 West Wilson Street, Room 800  
Madison, Wisconsin 53703-3222



Dear Mr. Munson:

Pursuant to s. 227.14 (4m), Stats., please find attached the Notice of Submission of Administrative Rule, DOC 328.22 (5) to the Wisconsin Legislative Council Staff. This rule expands the authority of the Department to detain any parolee or any felony probationer in any Department institution.

If you have questions, please contact Deborah Rychlowski at 266-8426.

Sincerely,

Michael J. Sullivan  
Secretary

Attachment

cc: Richard G. Chandler  
State Budget Director  
DOA

NOTICE OF SUBMITTAL OF PROPOSED RULE OF THE  
DEPARTMENT OF CORRECTIONS  
DOC 328.22 (5)  
TO WISCONSIN LEGISLATIVE COUNCIL STAFF

NOTICE IS HEREBY GIVEN That pursuant to s. 227.14 (4m), Stats., the Department of Corrections submits proposed DOC 328.22 (5) to the Wisconsin Legislative Council Staff.

SUBJECT MATTER OF THE PROPOSED RULE

Expanding the authority to allow the Department to detain any parolee or any felony probation in any Department institution.

WHETHER PUBLIC HEARING THE PROPOSED RULE IS REQUIRED

Public hearing is required under s. 227.16 (1), Stats., and will be scheduled at a later date.

ORGANIZATION UNIT THAT IS PRIMARILY RESPONSIBLE FOR PROMULGATION OF THE RULE

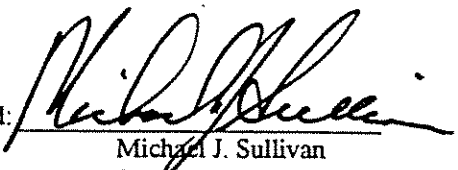
Division of Community Corrections .

DATE SUBMITTED TO WISCONSIN LEGISLATIVE COUNCIL STAFF:

May 5, 1998

APPROVAL BY SECRETARY OF THE DEPARTMENT OF CORRECTIONS

Date: 5/5, 1998

Approved: 

Michael J. Sullivan  
Secretary



Tommy G. Thompson  
Governor

Michael J. Sullivan  
Secretary



**State of Wisconsin**  
**Department of Corrections**

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Mailing Address  
149 East Wilson Street  
Post Office Box 7925  
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March 23, 1998

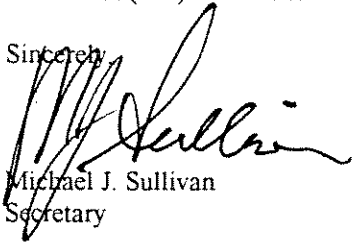
Members of the Legislature

Dear Member of the Legislature:

Enclosed is a copy of the Department of Corrections' emergency rule promulgated by the Department of Corrections. The emergency rule will be published in the Wisconsin State Journal on March 23, 1998. The effective date of the rule is March 23, 1998.

If you have any questions about the rule, please contact Robert Pultz of the Department's Office of Legal Counsel at (608) 267-0922.

Sincerely,

  
Michael J. Sullivan  
Secretary

Enclosure

ORDER OF  
DEPARTMENT OF CORRECTIONS  
PROMULGATING EMERGENCY RULES  
DOC 328.22 (5)

FINDING OF EMERGENCY

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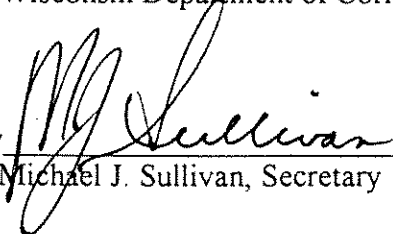
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Wisconsin Department of Corrections

By

  
Michael J. Sullivan, Secretary

Dated:

3/12/98

SEAL: