

2001 DRAFTING REQUEST

Bill

Received: 04/03/2001

Received By: grantpr

Wanted: As time permits

Identical to LRB:

For: John La Fave (608) 266-0486

By/Representing:

This file may be shown to any legislator: NO

Drafter: grantpr

May Contact:

Addl. Drafters:

Subject: Education - MPS
Education - state superintendent
Elections - miscellaneous

Extra Copies: MJL

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Milwaukee Parental Choice Program; exemption from religious activities

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|----------------------|------------------------|----------------|----------------------------|-----------------|-----------------|
| /? | grantpr 04/06/2001 | hhagen 04/09/2001 | | _____ | | | |
| /P1 | | | jfrantze 04/10/2001 | _____ | lrb_docadmin 04/10/2001 | | |

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| /1 | grantpr 05/10/2001 | hhagen 05/14/2001 | pgreensl 05/14/2001 | _____ | lrb_docadmin 05/14/2001 | lrb_docadmin 05/24/2001 | |
| /2 | grantpr 06/21/2001 | hhagen 06/21/2001 | pgreensl 06/21/2001 | _____ | lrb_docadmin 06/21/2001 | lrb_docadmin 06/21/2001 | |

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| /? | grantpr 04/06/2001 | hhagen 04/09/2001 | | | | | |
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| 1? | grantpr | 1PI hml 4/9/01 | [Signature] 4/1/01 | [Signature] 4/1/01 | | | |

FE Sent For:

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JOHN LA FAVE



**STATE REPRESENTATIVE
23RD ASSEMBLY DISTRICT**

To: Peter Grant, Attorney, Legislative Drafting Bureau

From: Representative John La Fave, 23 A.D.

Re: Drafting Instructions

Date: March 30, 2001

*Rec'd
4/3/01*

Please draft two bills for me according to the specifications in the attached memo from DPI.

Bill #1:

Page three, Option b.

Page four, Option b.

Bill #2:

Page ten, Option 2.

I have highlighted the pertinent sections.

If you have questions, please consult either with Bob Soldner, DPI, 266-7475, or my staff person, Mary Beth George, 266-0486.

6-8588



State of Wisconsin Department of Public Instruction

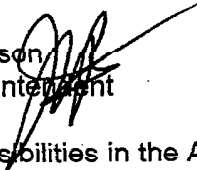
Mailing Address: P.O. Box 7841, Madison, WI 53707-7841
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Internet Address: www.dpi.state.wi.us

John T. Benson
State Superintendent

Steven B. Dold
Deputy State Superintendent

DATE: February 14, 2001

TO: Governor Scott McCallum
Members, Wisconsin Senate
Members, Wisconsin Assembly

FROM: John T. Benson
State Superintendent 

SUBJECT: DPI Responsibilities in the Administration of the Milwaukee Parental Choice Program

As you know, the Milwaukee Parental Choice Program (MPCP) and the Department of Public Instruction's (DPI) administration of the program have been controversial from the outset. Despite my opinions about the merits of this program, DPI has administered and will continue to administer the program in good faith according to the laws and administrative rules governing it. However, as the program has grown, new administrative issues have emerged. In addition, longstanding policy concerns remain. With this memo, I wish to identify areas of concern DPI believes must be addressed in the upcoming legislative session through amendments to statutes or administrative rules. This memo is intended to explain the scope of the problems and policy questions the department is encountering and to present some options and recommendations to address them.

The MPCP permits students from low-income families residing in the City of Milwaukee to attend any participating private school located in the city at no charge if certain eligibility criteria are met and there is space in the school. The DPI is responsible for ensuring that the \$49 million now appropriated for this program is paid to participants according to the law and that schools participating in the program comply with all requirements. The Legislature has historically been very cooperative in considering and approving DPI-proposed changes to administrative rules for the program, but I have found additional "gray" areas in the law and rules that warrant further review. For example, the department questions whether certain institutions that wish to participate in the MPCP qualify to do so and whether certain practices of participating schools are acceptable. In addition, I wish to suggest changes in the area of accountability that I believe are necessary and will improve the program. Following are our major areas of concern.

I. Private School Requirements

A. Background

Participation in the MPCP is limited to private schools located in the City of Milwaukee. Statutorily, an institution is a private school if its educational program meets all of the following criteria as set forth in sec. 118.165(1), Wis. Stats.:

- (a) The primary purpose of the program is to provide private or religious-based education.
- (b) The program is privately controlled.
- (c) The program provides at least 875 hours of instruction each school year.
- (d) The program provides a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science and health. This subsection does not require the program to include in its curriculum any concept, topic or practice in conflict with the program's religious doctrines or to exclude from its curriculum any concept, topic or practice consistent with the program's religious doctrines.
- (e) The program is not operated or instituted for the purpose of avoiding or circumventing the compulsory school attendance requirement under sec. 118.15(1)(a), Wis. Stats.
- (f) The pupils in the institution's educational program, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than 2 months of summer vacation, or the institution is licensed as a child welfare agency under sec. 48.60(1), Wis. Stats.

Each MPCP school annually submits an "intent to participate" form on which it guarantees compliance with the above-referenced provisions and acknowledges the understanding that participation in the MPCP could be terminated for failure to comply with any MPCP program requirement. This past summer, a dispute arose centered on paragraphs (c) and (d) in the private school definition of 875 hours of instruction and progressive curriculum in the six major subjects requirements. In a 180 school day calendar year, 875 hours means about five hours of instruction per day, which is a full-time program, not a part-time or half-day four-hour program. The controversy arose when DPI asked certain, mostly new, MPCP participating "schools," which the agency had reason to believe were part-time day-care providers, to provide substantiating evidence they were full-time (875 hours) operations and also met the curriculum requirements. Some of the private schools responded by questioning whether DPI had the legal authority to do this.

Beginning in August 2000, DPI informed some of these private schools that the department had not been able to verify that the school met the definition of a private school. The department further indicated that if documenting evidence that the organization was a private school was not provided prior to September 28, 2000, the school would be ineligible to participate in the MPCP during the 2000-01 school year and would not receive any state aid. The documentation needed to verify status as a private school could have included a school calendar (indicating the hours of instruction), grade-level course curriculum documentation, and any other supporting evidence. DPI released the delayed September aid payments to each and every school, but only after agreeing to accept modified documentation providing assurance that the school would meet the private school requirements for the remainder of the 2000-01 school year.

It should be noted that many of these applicants for private school choice funds were day-care centers immediately prior to their application to establish MPCP school programs for four-year-old children. Several of these private schools continue to be licensed by the Department of Health and Family Services as day-care providers for infants to five-year-old children.

48.60 (1) ?

I believe the Governor, Legislators, and citizens should know whether these new school programs have actually established an instructional curriculum or whether they primarily continue to exclusively provide the day-care opportunities provided prior to receiving MPCP funding. The current private school definition does not differentiate between an educational program designed to serve four-year-old children and a program designed to serve older children. Under the current private school law, both of these programs are required to provide at least a "full-time" instructional program of 875 hours per year.

This issue is important for every citizen in Wisconsin. The money used to support these early childhood programs comes from state general school aids that, until now, have been used to help support public school districts throughout Wisconsin. The Legislature has not specifically directed DPI to verify that these recipients of school funds are providing legitimate school programs. Should an organization that provides only day-care/early childhood programs for infants to five-year-old children be eligible to participate in the MPCP? Or, did the Governor and Legislature intend for kindergarten programs to be funded only if offered by a full-time private school that provides instruction in the higher elementary grades as well? In other words, a MPCP school could only offer kindergarten programs if it also provided instruction in, at least, first grade.

If the Governor and Legislature determine they do not want the DPI to have meaningful oversight of the Milwaukee Parental Choice Program, I obviously will accept that decision. However, by not proactively dealing with these issues and others, the Governor and Legislature will have missed an opportunity to provide direction in areas that sorely need attention.

B. Private School Verification

1. Options

- a. Maintain current law. DPI would continue to request documentation, as it deemed appropriate, verifying that current and interested MPCP private schools meet the statutory requirements to be a private school.
- b. Modify the statutes to require a participating private school to submit documentation upon DPI's request to verify the school's guarantee that it meets the statutory requirements of a private school. Specify that the documentation would include, but not be limited to, a yearly school calendar, a daily schedule indicating hours of instruction, and evidence showing a sequentially progressive curriculum in the six subject areas.

2. Recommendation

~~Option b. Modify the statutes to require a participating private school to submit documentation upon DPI's request to verify the school's guarantee that it meets the statutory requirements of a private school. Specify that the documentation would~~

include, but not be limited to, a yearly school calendar, a daily schedule indicating hours of instruction, and evidence showing a sequentially progressive curriculum in the six subject areas.

C. Day-Care/Early Childhood Programs

1. Options

- a. Maintain current law. To qualify as a private school, an organization that provides only day-care/early childhood programming (for example, a program for infants to five-year old children) would be required to provide at least 875 hours of instruction each year.
- b. Modify the statutory requirements of a private school to specify that the educational program provided to four-year-old and five-year-old children be required to provide at least 437 hours of instruction (one-half of the currently required 875 hours).

2. Recommendation

~~Option b. Modify the statutory requirements of a private school to specify that the educational program provided to four-year-old and five-year-old children be required to provide at least 437 hours of instruction (one-half of the currently required 875 hours).~~

Kindergarten *all priv. schools*
(A 118.165)

II. Private School Accountability

A. Background

Under current law, participating MPCP schools are required to report that the school is meeting only one performance standard during a school year. Annually, a participating private school must demonstrate that it is meeting at least one of the following four standards: (1) at least 70% of Choice pupils advance one grade level each year; (2) the private school's average attendance rate for Choice pupils is at least 90%; (3) at least 80% of Choice pupils demonstrate significant academic progress; or (4) at least 70% of the families of Choice pupils meet parent involvement criteria established by the private school. By June 30 each year, each participating private school must submit written notification to DPI that the school has met one of the four standards during the past school year. If a school does not self-verify it has met one of the four standards, that private school may not participate in the Choice program during the following school year.

I believe additional accountability requirements for participating schools should be enacted. My 2001-03 budget recommendations include a proposal to require state assessments to be administered to Choice students. Assessments are a crucial component of educational accountability. They measure the academic progress of students and, hopefully, reassure parents, students, and taxpayers that public dollars spent on education are producing good academic results. Administering the assessments to state-supported MPCP students will help ensure accountability for results, while leaving the participating private schools the autonomy to determine the means to achieve good results.

In addition, I believe Choice schools should provide parents with information on specific indicators of individual school success similar to what public schools report. Section 115.38, Wis. Stats., requires each public school board to annually distribute to the parent or guardian of each student enrolled in the school district a school and school district performance report. The law requires that this annual school performance report include specific indicators of individual school success, including the following: (a) performance of students on statewide assessments; (b) dropout, attendance, retention in grade, and graduation rates; (c) percentage of habitual truants; (d) percentage of students participating in extracurricular and community activities; (e) percentage of students taking advanced placement courses; (f) percentage of graduates enrolled in postsecondary educational programs; and (g) percentage of graduates entering the workforce. The school performance report must also include the numbers of suspensions and expulsions and the reasons for such action. In addition, each public school board must report the method of reading instruction used in the school district and the textbook series used to teach reading. These public school performance reports have proven to be a valuable comparison tool used by parents, teachers, and policy makers.

Under the current reporting requirement, it is not known which MPCP schools have been successful in providing quality education. Although the MPCP has been the subject of occasional evaluations and audits, the public has not had the information to judge whether taxpayer funds have been producing good academic results. The current MPCP performance standards provide almost no information on student achievement at participating schools. The minimal data on achievement is not comparable among Choice schools or with schools within the Milwaukee public school district and, as such, is not very helpful to parents in their exercise of school "choice."

I believe there is a compelling public interest in evaluating the educational outcomes of the program and reporting those outcomes to the Legislature and the parents who are considering the program for their children. Requiring participating Choice schools to administer the state's standardized tests to Choice pupils would provide the schools with a useful tool to measure individual student achievement as well as provide Legislators and others with valuable comparative information about individual MPCP schools and the Milwaukee Public Schools.

B. Options

1. Maintain current law that requires participating private schools to meet only one performance standard each school year.
2. Modify the statutes to require each MPCP school to administer the state assessments to Choice students and to annually report the results to the parent or guardian of each student enrolled at the Choice school and to the general public.
3. Modify the statutes to require, by January 1 of each year, that each MPCP school publish and distribute a school performance report to the parent or guardian of each student enrolled at the Choice school and to the general public. Specify that the annual school performance report must include the same information reported by public school districts.

C. Recommendation

Options 2 and 3. Require each MPCP school to administer state assessments and to annually distribute a school performance report to the parent or guardian of each student enrolled at the Choice school and to the general public. Specify that the annual school performance report must include the same information reported by public school districts.

III. Early Admission for Kindergarten and First Grade Students

A. Background

A private school may accept students of any age. However, if a private school chooses to participate in the MPCP, the school must follow state requirements for admission of persons interested in the Choice program and may only receive state funding for Choice-eligible students. Statutorily, students qualify for the MPCP on the basis of residency in the City of Milwaukee, household income, and the circumstances of their school enrollment in the prior school year. A participating school may not use any other criteria in determining whether to accept a Choice-eligible student.

For state aid payment purposes, only those students who meet the statutory definition of "pupils enrolled" may be included on the school's membership report and considered eligible to receive MPCP state aid payments. Under the Wisconsin Administrative Code provisions governing the MPCP, state aid payments are based on a school's membership reports, which include the number of MPCP pupils enrolled in the school on certain count dates. Wisconsin Administrative Code PI 35.02(8) defines pupils enrolled in the MPCP by cross-reference to the public school definition of pupils enrolled.

The statutory definition of "pupils enrolled" under sec. 121.004(7), Wis. Stats., provides, with one exception for *public* school boards of common or union high school districts, that only students who meet the age requirements of sec. 118.14, Wis. Stats., may be counted as pupils enrolled in the school. Under sec. 118.14, Wis. Stats., no student may be admitted to kindergarten or first grade unless the student is four, five, or six years of age on or before September 1 in the year he or she wishes to enter school. Specifically, sec. 118.14, Wis. Stats., states:

(1) Except as provided in s. 120.12(25):

(a) No child may be admitted to a 4-year-old kindergarten unless he or she is 4 years old on or before September 1 in the year that he or she proposes to enter school.

(b) No child may be admitted to a 5-year-old kindergarten unless he or she is 5 years old on or before September 1 in the year he or she proposes to enter school.

(c) No child may be admitted to the 1st grade unless he or she is 6 years old on or before September 1 in the year he or she proposes to enter school.

The exception to this age requirement, found under sec. 120.12(25), Wis. Stats., allows a *public* school board of a common or union high school district to admit and receive state aid for students younger than the above-referenced ages if the *public* school board

prescribes procedures, conditions, and standards for early admission to kindergarten and first grade. Public schools must accept every such child who qualifies for early admission.

The MPCP law specifies that the information private schools can use to determine eligibility for the Choice program is limited to household income, residency, and place of school attendance the prior year. Information about an applicant that a school may not use in the admission process for the MPCP includes but is not limited to an applicant's race, ethnic background, religion, prior test scores, an entrance exam, grades, or membership in the church parish. Choice schools must accept all eligible Choice applications during the period the school has designated to accept those applications. The school must, at the end of the application period, have a random drawing to pick the Choice students if there are more eligible Choice applications submitted than slots available.

Allowing MPCP schools to prescribe procedures for early admission would expand the criteria participating schools are statutorily required to use in admitting or denying students. For example, if early admission procedures were allowed for MPCP schools, different schools could prescribe varying conditions and standards for admittance, such as birthdates, evaluations, interviews with parents, and assessments of a child's social, emotional, physical, and mental maturity. If each school were allowed to develop its own procedures, parents of Choice-eligible children would not have an equal chance of being accepted at all participating schools, and random selection would no longer exist, because certain students could be required to pass an evaluation process to be accepted.

Because the early admission exception to the statutory age requirement results in a direct conflict with statutory MPCP eligibility and random selection, the public school exception for early admission cannot apply to the MPCP. Therefore, schools participating in the MPCP may not receive state aid payments unless students are four years of age for four-year-old kindergarten, five years of age for five-year-old kindergarten, or six years of age for first grade on or before September 1 in the year he or she wishes to enter school.

Even though the MPCP statutes specifically define student eligibility criteria, some MPCP schools have prescribed and utilized procedures for early admission for the current school year. DPI has determined that if early admission procedures have been prescribed and forwarded to DPI, it will allow that school to count students admitted under the early admission procedures for the 2000-01 school year only. However, unless the Governor and Legislature modify Wisconsin statutes to specifically allow private schools participating in the MPCP to prescribe early-admission procedures, schools will not receive future MPCP state aid payments for students that do not meet the above-referenced age requirements. If the Governor and Legislature decide that MPCP schools should be allowed to prescribe early-admission procedures, it should be made clear whether each individual school may prescribe its own policies or whether there should be one standard early-admission procedure for all MPCP schools.

B. Options

1. Maintain current law, which provides that schools may only use household income, residency, and the place of school attendance in the prior year to determine whether a child is eligible for the MPCP. DPI has determined that

current law prohibits private schools participating in the MPCP from prescribing and using early-admissions procedures.

2. Modify the statutes to expand the eligibility criteria for the MPCP and to specifically allow *each* private school participating in the MPCP to prescribe early-admission procedures for kindergarten and first-grade pupils and receive MPCP state aid payments for those students.
3. Modify the statutes to expand the eligibility criteria for the MPCP and create an early admission procedure for participating private schools that would permit them to receive state aid payments for students admitted under the policy.

C. Recommendation

Option 1. Maintain current law. DPI has determined that under current law private schools participating in the MPCP are prohibited from prescribing and using early-admissions procedures.

IV. Parental Right to Exempt MPCP Students from Participating in Religious Activities

A. Background

When the Legislature expanded the MPCP law in 1995 to include religious schools, it also required that a parent be able to exempt his or her child from participating in religious activities. The provision states:

A private school may not require a pupil attending the private school under this section to participate in any religious activity if the pupil's parent or guardian submits to the pupil's teacher or the private school's principals written request that the pupil be exempt from such activities.

On August 19, 1999, the People for the American Way Foundation and the NAACP, Milwaukee Branch, as Partners for Public Education, filed a second complaint with the department asking the department to investigate and take action. Among the four types of violations alleged were those concerning four schools, of 18 complained against, with respect to compliance with this provision. The allegations were based on responses complainants received from Choice school representatives to telephone inquiries made by persons representing themselves as parents of potential Choice pupils.

In its probable cause decision on the complaint, the program administrator refrained from making findings of probable cause for violation of this provision, stating there was no administrative rule or any previously issued agency guidance suggesting how compliance with this provision could be accomplished. The administrator presented factual findings with respect to the four schools to reflect the variety of issues and conduct presented and suggested minimal methods of compliance with an accompanying legal rationale.

It is the Department of Public Instruction's opinion that the current statutory provision allowing a MPCP student to "opt out" of religious activities at a participating private school cannot be administered without further legal definition. Based on this opinion and

the guidance contained in the probable cause document, the following outline for a draft rule has been developed:

- Statute*
1. Each school shall have a written policy that includes a definition of "religious activities." The definition shall include worship services, liturgies, ~~classes delineated as~~ religious instruction, and any other activity that is substantially sectarian, proselytizing, or doctrinal in nature but need not include discussions of topics or viewpoints from a religious perspective.
 2. The policy shall include the list of religious activities the school has identified from which parents could excuse their children's participation.
 3. The policy must permit a student exempted from each identified religious activity to receive sufficient instruction not identified as a religious activity to meet the school's yearly grade-level advancement criteria and the required minimum hours of instruction.
- DPI rules*
4. The policy shall define the meaning of "exempt(ing)" from "participate(ing)" in religious activities as including the requirement that the student is not present in the room where the religious activity takes place.
 5. The policy shall describe the adult supervision that will be provided for all students who exercise their right not to participate in religious activities, identify the on-site location(s) in which such students may be placed, and identify any alternative activities that may be available (study halls, recreational activities, etc.).
 6. The policy shall include a provision that a copy of the policy will be distributed by the school with its regular school informational and admissions literature, including the student-parent handbook and DPI's current MPCP brochure, whenever and at the same time the school provides school literature to persons expressing an interest in possible school admission.
 7. The policy shall contain a provision stating that when school officials orally describe the school's program with prospective school applicants, those officials will provide information consistent with the provisions of the school's policy and the DPI's rule on this subject and shall not knowingly omit information about this provision.

When the Legislature required that a parent be able to exempt his or her child from participating in religious activities, it provided for no exceptions to the exemption provision. The department interprets this to mean that such choice must be available in *any participating* Choice school. Some schools may conclude that meeting these requirements would compromise their curriculum to an unacceptable degree. If a school were unable or unwilling to make the necessary adjustments to comply with all of these provisions, it would not be able to participate in the Choice program.

The points in the outline are also designed to address an additional important consideration. As the Wisconsin Legislative Audit Bureau noted in its report, *An Evaluation, Milwaukee Parental Choice Program, #00-2*, page 52, "the primary or only source" of information about the Choice program for a parent during the application and admission process is the participating school itself. Since parents cannot exercise a right they do not know they have, this draft rule outline seeks to address this fact and

ensure that the schools timely and properly provide necessary information to persons expressing an interest in the schools that participate in the Choice program.

Copies of the 45-page probable-cause document as well as the department's 12-page decision, plus attachments, dated November 22, 1999, ruling on the issues of the standing of the complainants to make their complaint and the department's authority to investigate allegations may be obtained from Tricia Collins, MPCP administrator [phone: (608) 266-2853, fax: (608) 267-9207, or email: tricia.collins@dpi.state.wi.us].

B. Options

1. Repeal the religious activities exemption provision.
2. Modify the statutes to require all participating private schools to adopt and disseminate a "religious activities opt out" policy containing the minimal elements of a definition of religious activity, as defined by DPI through administrative rule, and identifying the specific religious activities within the school to which the "opt out" policy applies. Require participating private schools to disseminate the written "religious activities opt out" policy to DPI and all persons inquiring about a school's program. Direct DPI to adopt an administrative rule that contains the seven points referenced in the preceding outline.

C. Recommendation

~~Option 2. Modify the statutes to require all MPCP schools to adopt and disseminate a "religious activities opt out" policy containing the minimal elements of a definition of religious activity, as defined by DPI through administrative rule, and identifying the specific religious activities within the school to which the "opt out" policy applies. Require participating private schools to disseminate the written "religious activities opt out" policy to DPI and all persons inquiring about a school's program. Direct DPI to adopt an administrative rule that contains the seven points referenced in the preceding outline.~~

V. Power of Attorney

A. Background

When the MPCP was expanded in the 1995-97 biennial budget to include private religious schools, the law was amended to require DPI to make checks payable to parents of MPCP students instead of to participating schools. Section 119.23 (4)(c), Wis. Stats., requires as follows: "The department shall send the check to the private school. The parent or guardian shall restrictively endorse the check for the use of the private school." It is assumed this change of payee was made to avoid violating the "establishment clause" of the Wisconsin Constitution. Schools use the power-of-attorney form to allow school officials to sign the state checks on behalf of the parents. The department is aware that many MPCP schools are using power-of-attorney forms instead of requiring each parent to personally sign the check. The department has requested all MPCP schools that use the power-of-attorney authorization to submit a copy of the form and a list of the parents who have signed such authorization forms. Few schools have complied with this request.

Wisconsin statutes specifically state that the parent or guardian shall restrictively endorse the check for the use of the private school. The statutes are silent on whether or not the use of power of attorney for endorsement of state aid checks is authorized for the MPCP. It is the Department of Public Instruction's opinion that power-of-attorney forms violate the intent and spirit of the MPCP law.

B. Options

1. Modify the statutes to specifically authorize participating private schools to use power-of-attorney forms for endorsement of the MPCP checks.
2. Modify the statutes to specifically prohibit the use of power-of-attorney forms for endorsement of MPCP checks. Specify that the parent or legal guardian of a MPCP student must personally endorse each MPCP check.

C. Recommendation

Option 2. Modify the statutes to specifically prohibit the use of power-of-attorney forms for endorsement of MPCP checks. Specify that the parent or legal guardian of a MPCP student must personally endorse each MPCP check.

This memo is intended to inform the Governor and Legislators of Milwaukee Parental Choice Program issues that need attention in the upcoming session and to request specific direction in our continued administration of the program. I would appreciate hearing from any Legislators who wish to sponsor legislation that would clarify or resolve any of the above issues. At the same time, the department will pursue certain amendments to administrative rules and will request your review and approval.

Thank you for your careful consideration of the preceding issues. If you have questions or need additional information, please contact Bob Soldner, Director, DPI School Management Services, at (608) 266-7475 or robert.soldner@dpi.state.wi.us.

bs/dc

cc: Administrators, Milwaukee Parental Choice Program Schools
Susan Mitchell, President, American Education Reform Council
Howard Fuller, Director, Institute for the Transformation of Learning, Marquette University
Dan McKinley, Executive Director, Partners Advancing Values in Education
Judith Schaefer, Partners for Public Education
Judd Schemmel, Executive Director, Wisconsin Council of Religious and Independent Schools

4/4/01

TC w/ Bob Boldner & Tina Collins —

RE p. 10 section 2

see p. 9 #1-3 — they should
be in statute.

RE #'s 4-7: ~~simple~~
simply require DPL to promulgate rule to
administer #'s 1-3.

RE #'s 1-3: ps must accept a policy to
implement, & provide policy to every
applicant & psi
must incorporate # 3.

4/6/01

TC w/ Bob Boldner & Tina Collins:

Try to incorporate #'s 4, 5 —
ie, "rules shall specify..."

TC later

NO —

Am 19.23(7)(c) to place #
#4 in there.

2001

Date (time)
needed

~~XXXX~~ OTHER

LRB - 3035, P1

BILL

PLG : hmb:

Use the appropriate components and routines developed for bills.

AN ACT . . . [generate catalog] *to repeal . . . ; to renumber . . . ; to consolidate and renumber . . . ; to renumber and amend . . . ; to consolidate, renumber and amend . . . ; to amend . . . ; to repeal and recreate . . . ; and to create . . .* of the

statutes; relating to: *the requirement to exempt pupils attending a private school under the Milwaukee Parental Choice Program from religious activities.*

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: create → anal: → title: → head

For the subheading, execute: create → anal: → title: → sub

For the sub-subheading, execute: create → anal: → title: → sub-sub

For the analysis text, in the component bar:

For the text paragraph, execute: create → anal: → text

This is a preliminary draft. An analysis will be included in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #.

119.23 (1)(am) cr.

(b)

119.23 (1)(am) "Religious activity" ^{means} ~~includes~~ any

~~worship services, liturgies, ^{any} class designated as~~

~~religious instruction, and any other activities~~

activity

that ~~is~~ ^{is} substantially sectarian, ^{proselytizing} ~~proselytizing~~, or

^{doctrinal} doctrinal in nature, ~~"Religious activity"~~ ^{academic} does

not include ^{of} instruction in religion.

including worship services and ^{liturgies} liturgies, but

~~does not~~

renumbered 119.23 (7m)(a) GR

Section #. 119.23 (7) (c) of the statutes is amended to read:

③
(7m)(a)

119.23 (7m)(a) A private school may not require a pupil attending the private school under this section to participate in any religious activity if the pupil's parent or guardian submits to the pupil's teacher or the private school's principal a written request that the pupil be exempt from such activities the activity.

History: 1989 a. 336; 1993 a. 16; 1995 a. 27 ss. 4002 to 4009, 9145 (1); 1995 a. 216; 1997 a. 27, 113; 1999 a. 9.

The private school shall ensure that a pupil who is exempt from participating in a religious activity under this paragraph is not present in the room in which the religious activity occurs

SEC. CR; 119.23 (7m) (b) to (d)

(b) 119.23 (7m) (b) Each private school participating in the program under this section shall adopt a policy ~~the~~ implementing par. (a) and provide a copy of the policy to each person who applies to the school under sub. (3) (a) and department. ^{private school} ^{in the policy} annually to the ~~school~~. The ~~policy~~ shall include a list of ~~the religious~~ ^{school} activities identified ~~by the~~ ^{private school} as religious activities for the

~~purpose of par. (a)~~

participating in the program under this section

(c) Each private school shall ensure that a pupil who is exempt from all religious activities,

~~under par. (a) is able to meet the school's~~
enable the pupil to meet the minimum number of hours required under
sufficient instruction to ~~enable the pupil to~~
advance ~~progress~~ from grade to grade in the school.

(d) The department shall promulgate rules to implement and administer this subsection.

S. 118.165 (1) (c)
and to

(c) Each private school participating in the program under this section shall provide a pupil who is exempt from religious activities ^{under par. (a)} with ~~sufficient instruction to enable the pupil~~ a sufficient number of ~~at least the number of~~ hours of instruction ~~required~~ ~~under s. 118.165 (1) (c) (i) to~~ meet the requirements under s. 118.165 (1) (c) and to enable the pupil to advance from grade to grade in the private school.

(d) The department shall promulgate rules to ~~be~~ implement and administer this subsection, ~~the~~ including ~~rules~~ specifying the supervision ~~that~~ the required ~~private school must provide~~ for pupils who are exempt from religious activities under par. (a).

INITIAL APPLICABILITY

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → inappl

For the budget action phrase, execute: create → action: → *NS: → 93XX

For the text, execute: create → text: → *NS: → inappl

2. Nonstatutory subunits are numbered automatically. Fill in the Section # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9300 department code.

SECTION # 93 **Initial applicability;**

(#1) ()

The treatment of sections ..

of the statutes

first applies to

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → inappl

For the text, execute: create → text: → *NS: → inapplA

2. Nonstatutory subunits are numbered automatically. Fill in the Section # or subsection # only if a "frozen" number is needed.

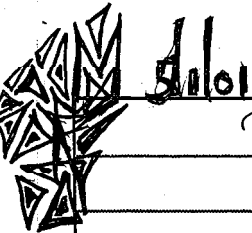
SECTION # . **Initial applicability;**

(#1) in This act first

applies to in the 2002-03 school year

(Encl)

pupils who apply to attend a private school under section 119.23 of the statutes, and to pupils who attend a private school under section 119.23 of the statutes,



Bob Soldner - RE 3035

6-1475

~~Steve Olson~~ ~~Bunker~~ 256-3451

see Campbell v. St. Tammany's Sch Bd.

206 F 3d 482

(March 2000)

2001 Westlaw 263 421

Lamb's Chapel

eg: discussion of family values from a rel. perspective

P. 2 l. 10 add:

expressing an interest in possible school
admission under this section

~~P. 12 and "b7 Mex 1" to departments~~

P. 15

AM 19.23 (2)(a) 3. policy inclusion of activities

Grant, Peter

From: Robert Soldner [robert.soldner@dpi.state.wi.us]
Sent: Thursday, May 10, 2001 10:49 AM
To: peter.grant@legis.state.wi.us
Cc: robert.paul@dpi.state.wi.us; tricia.collins@dpi.state.wi.us
Subject: Religious Opt-Out



Religious Activity
Opt-Out Dra...

Per our phone conversation, attached are the notes on LRB 3035/P1.

- Delete Section 1

- Page 2, line 10 (delete lines 10 to 12 and insert)

each person expressing an interest in possible school attendance under this section and annually to the department as part of its notification of its intent to participate under s. 119.23(2)(a)3. The private school shall include in the policy a list of the school activities that it has identified as religious activities. The private school's list of religious activities shall include religious worship, religious instruction, and any school activity the school has identified as sectarian, proselytizing, or religiously doctrinal in nature.

- Page 2, line 21

Delete "apply to attend" and insert "express an interest in possible attendance at"

- Effective date

January 1, 2002 or two months after date of publication.

stays

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

SOON

regenerate

1 AN ACT *to renumber and amend* 119.23 (7) (c); and *to create* 119.23 (1) (am)
 2 and 119.23 (7m) (b) to (d) of the statutes; **relating to:** the requirement to
 3 exempt pupils attending a private school under the Milwaukee parental choice
 4 program from religious activities.

Analysis by the Legislative Reference Bureau

(see attached)

~~This is a preliminary draft. An analysis will be included in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 119.23 (1) (am) of the statutes is created to read:

6 119.23 (1) (am) "Religious activity" means any activity that is substantially
 7 sectarian, proselytizing, or doctrinal in nature, including worship services and
 8 liturgies, but does not include academic instruction in religion.

9 **SECTION 2.** 119.23 (7) (c) of the statutes is renumbered 119.23 (7m) (a) and
 10 amended to read:

expresses an interest in attending the private school under this section.

1 119.23 (7m) (a) A private school may not require a pupil attending the private
2 school under this section to participate in any religious activity if the pupil's parent
3 or guardian submits to the pupil's teacher or the private school's principal a written
4 request that the pupil be exempt from such activities the activity. The private school
5 shall ensure that a pupil who is exempt from participating in a religious activity
6 under this paragraph is not present in the room in which the religious activity occurs.

7 SECTION 3. 119.23 (7m) (b) to (d) of the statutes are created to read:

8 119.23 (7m) (b) Each private school participating in the program under this
9 section shall adopt a policy implementing par. (a) and provide a copy of the policy to
10 each person who ~~applies to the school under sub. (3) (a)~~ and annually to the
11 department. *with the notice under sub. (2) (a) 3* The private school shall include in the policy a list of ^{the} school activities
12 that it has ~~identified as~~ *determined one for the purpose of par. (a)* religious activities. **INSERT**

13 (c) Each private school participating in the program under this section shall
14 provide a pupil who is exempt from ^{one or more} religious activities under par. (a) with a sufficient
15 number of hours of instruction to meet the requirement under s. 118.165 (1) (c) and
16 to enable the pupil to advance from grade to grade in the private school.

17 (d) The department shall promulgate rules to implement and administer this
18 subsection, including rules specifying the supervision required for pupils who are
19 exempt from religious activities under par. (a).

20 SECTION 4. Initial applicability.

21 (1) This act first applies to pupils who ~~apply to attend~~ *express an interest in attending* a private school under
22 section 119.23 of the statutes, and to pupils who attend a private school under section
23 119.23 of the statutes, in the 2002-03 school year.

EFFECTIVE DATE

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → *NS: → **effdate**
For the text, execute: **create** → **text:** → *NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # 11 . **Effective date.**

(#1) 11 This act takes effect on January 1, 2002, or on the first day of the ^{second} month beginning after publication, whichever is later.

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → *NS: → **effdateE**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

SECTION # ____ . **Effective dates;**

..... This act takes effect on the day after publication, except as follows:

(#1) () The treatment of sections of the statutes takes effect on

1. In the component bar: For the budget action phrase, execute:.. **create** → **action:** → *NS: → **94XX**
For the text, execute: **create** → **text:** → *NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9400 department code.

SECTION 94 ____ . **Effective dates;**

(#1) () The treatment of sections of the statutes takes effect on

(End)

INSERT

NOTE The list shall include religious worship,
religious instruction, and any school
activity that the private school has
determined is sectarian, ^{pro} proselytizing, or
religiously ~~doctrinal~~ ^{doctrinal} in nature.

ANALYSIS

¶ Current law prohibits a private school that is participating in the Milwaukee Parental Choice Program (MPCP) from requiring ~~any~~ a pupil attending the private school under the program to participate in any religious activity if the pupil's parent or guardian requests that the pupil be exempt from the ~~religious~~ activity.

¶ This bill requires each private school participating in the MPCP to adopt a policy implementing the requirements described above. The private school ^{must} ~~must~~ include in the policy a ^{list} of the school activities that it has determined ^{are} ~~are~~.

religious activities for the purpose of the exemption requirements. The ^{list} must include religious worship, religious instruction, and any ~~of~~ ^{school} activity that the private school has determined is ^{sectarian} ~~is~~ ^{proselytizing} ~~sectarian~~, ^{doctrinal} ~~proselytizing~~, or religiously doctrinal in nature.

~~Each~~ ^{Each} private school
(~~no~~ ^{no} ~~9~~ ⁹) The bill requires each MPCP ~~private~~ school to provide a copy of ~~the~~ its policy to each person who expresses an interest in attending the private ^{school} ~~school~~ ^{under} ~~under~~ ^{annually} the program and to the department of public instruction (DPI).

⁹ The bill directs each MPCP ~~private~~ school to ~~provide~~ ^{ensure} ensure that a pupil who is exempt ^{from} ~~from~~ participating in a religious

activity is not ^{present} present in the room in which the ^{activity} activity occurs. The bill also directs each MPCP ~~set~~ ~~per~~ school to provide a pupil who is exempt from religious activities with a sufficient number of hours of instruction to meet the statutory requirements for all private schools (at least 875 ^{hours} hours of instruction each school year) and to enable the pupil to advance from grade to grade.

¶ Finally, the bill directs DPI to promulgate rules specifying the supervision required for pupils who are exempt ^{from} from religious activities.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

May 14, 2001

MEMORANDUM

To: Representative La Fave

From: Peter R. Grant, Managing Attorney

Re: LRB-3035/1 Milwaukee Parental Choice Program; exemption from religious activities

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 267-3362 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3035/1 ✓

PG:hmh:pg

Stays

FR 12/1

2001 BILL

1 *Regenerate*
 AN ACT *to renumber and amend* 119.23 (7) (c); and *to create* 119.23 (7m) (b)
 2 to (d) of the statutes; **relating to:** the requirement to exempt pupils attending
 3 a private school under the Milwaukee parental choice program from religious
 4 activities.

Analysis by the Legislative Reference Bureau

Current law prohibits a private school that is participating in the Milwaukee Parental Choice Program (MPCP) from requiring a pupil attending the private school under the program to participate in any religious activity if the pupil's parent or guardian requests that the pupil be exempt from the activity.

This bill requires each private school participating in the MPCP to adopt a policy implementing the requirement described above. The private school must include in the policy a list of the school activities that ~~is~~ has determined are religious activities for the purpose of the exemption requirement. The list must include religious worship, religious instruction, and any school activity that the private school has determined ~~is~~ sectarian, proselytizing, or religiously doctrinal in nature. The bill requires each MPCP school to provide a copy of its policy to each person who expresses an interest in attending the private school under the program and annually to the department of public instruction (DPI).

The bill directs each MPCP school to ensure that a pupil who is exempt from participating in a religious activity is not present in the room in which the activity occurs. The bill also directs each MPCP school to provide a pupil who is exempt from religious activities with a sufficient number of hours of instruction to meet the

BILL

statutory requirement for all private schools (at least 875 hours of instruction each school year) and to enable the pupil to advance from grade to grade.

Finally, the bill directs DPI to promulgate rules specifying the supervision required for pupils who are exempt from religious activities.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 119.23 (7) (c) of the statutes is renumbered 119.23 (7m) (a) and
2 amended to read:

3 119.23 (7m) (a) A private school may not require a pupil attending the private
4 school under this section to participate in any religious activity if the pupil's parent
5 or guardian submits to the pupil's teacher or the private school's principal a written
6 request that the pupil be exempt from ~~such activities~~ the activity. The private school
7 shall ensure that a pupil who is exempt from participating in a religious activity
8 under this paragraph is not present in the room in which the religious activity occurs.

9 **SECTION 2.** 119.23 (7m) (b) to (d) of the statutes are created to read:

10 119.23 (7m) (b) Each private school participating in the program under this
11 section shall adopt a policy implementing par. (a) and provide a copy of the policy to
12 each person who expresses an interest in attending the private school under this
13 section and annually to the department with the notice under sub. (2) (a) 3. The
14 private school shall include in the policy a list of the school activities that it has
15 determined are religious activities for the purpose of par. (a). The list shall include
16 religious worship, religious instruction, and any school activity that the private
17 school has determined is sectarian, proselytizing, or religiously doctrinal in nature.

18 (c) Each private school participating in the program under this section shall
19 provide a pupil who is exempt from one or more religious activities under par. (a) with

BILL

1 a sufficient number of hours of instruction to meet the requirement under s. 118.165
2 (1) (c) and to enable the pupil to advance from grade to grade in the private school.

3 (d) The department shall promulgate rules to implement and administer this
4 subsection, including rules specifying the supervision required for pupils who are
5 exempt from religious activities under par. (a).

6 **SECTION 3. Initial applicability.**

7 (1) This act first applies to pupils who express an interest in attending a private
8 school under section 119.23 of the statutes, and to pupils who attend a private school
9 under section 119.23 of the statutes, in the 2002-03 school year.

10 **SECTION 4. Effective date.**

11 (1) This act takes effect on January 1, 2002, or on the first day of the second
12 month beginning after publication, whichever is later.

13 (END)