

MAR 27 2001

LCRC  
FORM 2



## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky  
Clearinghouse Director

Richard Sweet  
Clearinghouse Assistant Director

Terry C. Anderson  
Legislative Council Director

Laura D. Rose  
Legislative Council Deputy Director

### CLEARINGHOUSE REPORT TO AGENCY

[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 01-029

AN ORDER to amend PI 35.045 (4) (a) 1. (intro.) and c.; and to create PI 35.045 (4) (a) 1. e., relating to the Milwaukee parental choice program.

Submitted by **DEPARTMENT OF PUBLIC INSTRUCTION**

03-12-01 RECEIVED BY LEGISLATIVE COUNCIL.

03-26-01 REPORT SENT TO AGENCY.

RS:RW:jal;ksm

**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



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WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 01-029

Comments

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

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

a. The scope of the term "related party" as used in s. PI 35.045 (4) (a) 1. e. is not clear. A description or definition in the rule would aid in determining whether the usage charge option is appropriately claimed by a school.

b. In s. PI 35.045 (4) (a) 1. e., it appears that the term "additions" could be construed to include changes other than physical or capital improvements. If this is not the intent of the agency, the rule should be clarified.

c. Does the rule permit a school to use an assessment performed by a local governmental body for the appraised fair market value? Also, is there any requirement that the new appraisals be done by a professional or certified appraiser?

d. The agency may wish to indicate in the initial applicability section that the provisions in s. PI 35.045 (4) (a) 1. 3. first apply to aid paid based on the reports submitted by September 1, 2001.

REPORT TO  
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE  
MILWAUKEE PARENTAL CHOICE PROGRAM BUILDING USAGE CHARGE  
PI 35, Wisconsin Administrative Code

Wisconsin Statutory Authority - ss. 119.23 (7) (am) and (4) (b) 1. and 227.11(2)(a), Stats.

Federal Statutory Authority - None

Court Decisions Directly Relevant

*Davis v. Grover*, Dane County Cir. Ct. Case No. 90 CV 2576, (8-6-90)  
*Davis v. Grover*, 166 Wis.2d 501, 480 N.W.2d 460 (1992)  
*Jackson v. Benson*, 218 Wis.2d 835, 570 N.W. 602, Cert. Den. 119 S. Ct. 467 (1998)

Analysis of the Rule - Rule Effect - Reason for the Rule

The proposed rules will provide an option for private schools participating in the Milwaukee Parental Choice Program to claim the cost for facilities provided by a related party. Because such costs are currently calculated in a variety of ways by participating private schools, this modification is needed for consistency. The building usage charge shall be charged annually at 10.5% of the appraised market value of the buildings, sites and improvements. If a private school chooses to use the building usage charge, the cost must be claimed on the financial information report that is submitted annually on September 1. Also, previous reports submitted for the 1998-1999, 1999-2000, and 2000-2001 school years must be amended to reflect the new cost calculation. A private school has until September 1, 2002 to claim a building usage charge.

The proposed rules will also delete the term "annually" when it requires a private school to "annually make an irrevocable election . . ." since it is not the intent nor current practice to make an irrevocable decision on an annual basis.

Agency Procedure for Promulgation

Notice to Legislative Council pursuant to s. 227.15, Stats., and proceeding under the ten day notice/hearing process pursuant to ss. 227.16 to 227.18, Stats.

Description of any Forms (attach copies if available) - None

Name and Telephone Number of Agency Liaison(s)

Robert Soldner, Director, School Management Services, 266-7475  
Lori L. Slauson, Administrative Rules Coordinator, Policy and Budget, 267-9127

**PROPOSED ORDER OF THE  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
CREATING/AMENDING RULES**

The state superintendent of public instruction hereby proposes to amend PI 35.045 (4) (a) 1. (intro.) and c. and to create PI 35.045 (4) (a) 1. e., relating to the Milwaukee Parental Choice Program.

**ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION**

Statutory authority: ss. 119.23 (7) (am) and (4) (b) 1. and 227.11 (2) (a), Stats.  
Statute interpreted: s. 119.23, Stats.

The proposed rules will provide an option for private schools participating in the Milwaukee Parental Choice Program to claim the cost for facilities provided by a related party. Because such costs are currently calculated in a variety of ways by participating private schools, this modification is needed for consistency. The building usage charge shall be charged annually at 10.5% of the appraised market value of the buildings, sites and improvements. If a private school chooses to use the building usage charge, the cost must be claimed on the financial information report that is submitted annually on September 1. Also, previous reports submitted for the 1998-1999, 1999-2000, and 2000-2001 school years must be amended to reflect the new cost calculation. A private school has until September 1, 2002 to claim a building usage charge.

The proposed rules will also delete the term "annually" when it requires a private school to "annually make an irrevocable election . . ." since it is not the intent nor current practice to make an irrevocable decision on an annual basis.

**SECTION 1.** PI 35.045 (4) (a) 1. (intro.) and c. are amended to read:

PI 35.045 (4) (a) 1. (intro.) The private school shall ~~annually~~ make an irrevocable election to either charge off all expenditures in each of the following categories entirely as a school year cost or amortize the expenditure over future periods as follows:

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

**SECTION 2.** PI 35.045 (4) (a) 1. e. is created to read:

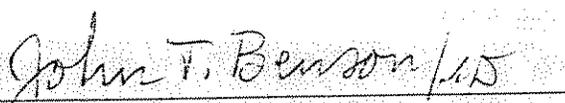
PI 35.045 (4) (a) 1. e. A building usage charge for facilities provided by a related party may be charged annually at 10.5 % of the appraised fair market value of the buildings, sites and improvements. Under this subparagraph improvements include sidewalks, installed playground equipment, landscaping and building components such as lighting fixtures, built-in lockers, heating, ventilating and wiring systems. New appraisals, for the purpose of establishing or re-establishing the fair market value, shall be done not less than once every 10 years. If the building usage charge is used, the cost of improvements and additions to school buildings or sites shall be added to the existing fair market value to establish a new fair market value until a new appraisal is completed.

THE WISCONSIN DEPARTMENT OF EDUCATION  
ADMINISTRATIVE REGISTER

**SECTION 3. INITIAL APPLICABILITY.** The treatment of s. PI 35.045 (4) (a) 1. e. may first be applied to participating private schools submitting their financial information report by September 1, 2001. However, any private school participating in the program prior to September 1, 2002, that chooses to use the building usage charge, shall do so by September 1, 2002. Also, any private school that chooses to use the building usage charge shall amend any financial information reports submitted under s. PI 35.045 for the 1998-1999, 1999-2000, and 2000-2001 school years, if applicable.

The proposed rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 12<sup>th</sup> day of March, 2001

  
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John T. Benson  
State Superintendent