

## Report From Agency

### ORDER OF THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION CREATING RULES

The state superintendent of public instruction hereby proposes to amend PI 35.05 (12) (a) 2. and to create PI 35.03 (1m) and PI 35.05 (4n), relating to establishing a fee under the Milwaukee Parental Choice Program.

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#### ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

**Statute interpreted:** Section 119.23 (2) (a) 3., Stats., and SECTION 9139 (4) of the nonstatutory provisions of 2009 Wisconsin Act 28.

**Statutory authority:** Sections 119.23 (2) (a) 3. and (11) and 227.11 (2) (a), Stats.

**Explanation of agency authority:**

Section 119.23 (2) (a) 3., Stats., requires the department to, by rule, set the fee charged to private schools participating in the Milwaukee Parental Choice Program (MPCP) at an amount such that the total fee revenue covers the costs of employing one full-time auditor to evaluate the financial information submitted by the private schools.

Section 119.23 (11), Stats., requires the department to promulgate rules to implement and administer the MPCP.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

**Related statute or rule:** N/A

**Plain language analysis:**

2009 Wisconsin Act 28, the 2009-11 biennial budget bill, made several modifications to the Milwaukee parental choice program under s. 119.23, Stats. Several of the modifications require that the department develop rules to implement the statutory provisions. One of those modifications requires the department to develop a rule to establish a nonrefundable fee to cover the cost of employing one full-time DPI auditor for the program. Each private school intending to participate in the program in the 2010-11 school year must pay the fee no later than February 1.

The rules:

- Require the department to establish the nonrefundable fee by December 1, 2009, for the 2010-11 school year and annually thereafter for subsequent school years.
- Set the nonrefundable fee by establishing a fee formula.
- Require that the private schools pay the nonrefundable fee to the department by cashier's check by February 1, 2010 for the 2010-11 school year and annually thereafter for subsequent school years.
- Allows the state superintendent to bar a private school from participating in the choice program if the private school fails to pay the nonrefundable fee.

**Summary of, and comparison with, existing or proposed federal regulations:** N/A

**Comparison with rules in adjacent states:**

Illinois, Iowa, Michigan, and Minnesota do not have rules relating to private school voucher programs.

**Summary of factual data and analytical methodologies:**

Because the cost of employing a full-time auditor to evaluate the financial information submitted by the private schools may change from year to year, the rules include a formula whereby a fee will be set annually. The fee should not change significantly from year to year but the formula will allow for flexibility if needed when establishing the fee.

2009 Wisconsin Act 28 requires the private schools to pay the fee by February 1 of the school year previous to the school year in which they plan to participate (see s. 119.23 (2) (a) 3., Stats.).

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:** N/A

**Anticipated costs incurred by private sector:** N/A

**Effect on small business:**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Agency contact person: (including email and telephone)**

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**Place where comments are to be submitted and deadline for submission:**

The department published a hearing notice in the *Administrative Register* which included this information.

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**SECTION 1.** PI 35.03 (1m) is created to read:

PI 35.03 (1m) NONREFUNDABLE AUDITOR FEE. By February 1, annually, a private school which intends to participate in the Milwaukee parental choice program in the following school year shall pay, in the form of a cashier's check, to the department the nonrefundable set fee under s. PI 35.05 (4n).

**SECTION 2.** PI 35.05 (4n) is created to read:

PI 35.05 (4n) In accordance with s. 119.23 (2) (a) 3., Stats., the state superintendent shall annually, by no later than December 1, set the nonrefundable fee to cover the costs of employing one full-time auditor to evaluate the financial information submitted by the private schools under s. 119.23 (7) (am) and (d) 2. and 3., Stats. The fee shall be set as follows:

(a) Divide the cost of the auditor position and unfunded prior year auditor costs, as determined by the department, by the number of private schools that are required to submit the information under s. PI 35.04 (6) by October 1.

(b) Round the quotient determined under par. (a) to the nearest whole dollar.

**SECTION 3.** PI 35.05 (12) (a) 2., is amended to read:

PI 35.05 (12) (a) 2. Failed to provide the notice or pay the fee required under s. 119.23 (2) (a) 3., Stats., by the date or within the time period specified.

The 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 \_\_\_\_ day of March, 2010

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Tony Evers, PhD  
State Superintendent