

## Chapter PI 35

## PARENTAL PRIVATE SCHOOL CHOICE PROGRAM

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Note: Chapter PI 35 was created as an emergency rule effective September 20, 1991.

**PI 35.01 Purpose.** Under s. 119.23 (2) (a), Stats., any qualified pupil in grades kindergarten to 12 who resides within a city may attend, at no charge, any participating nonsectarian private school located in the city. Participation in the private school choice program is limited to 1.5% of the school district's membership. This chapter establishes approval criteria and requirements for private schools participating in the private school choice program, requirements for receipt of state aid for those private schools under s. 119.23 (4), Stats., and requirements for schools operating under ch. 119, Stats.

History: Cr. Register, May, 1991, No. 425, eff. 6-1-91; am. Register, July, 1994, No. 463, eff. 8-1-94.

**PI 35.02 Definitions.** In this chapter:

(1) "Board" means the board of directors in charge of the schools of a school district of a city of the 1st class.

(2) "Ceased to attend" means that a pupil has been absent without acceptable excuse under ss. 118.15 (1) (b) to (d) or (3), and 118.16 (4), Stats., for 20 consecutive school days and has not formally withdrawn from school.

(3) "City" means a city of the 1st class.

(4) "Credit" means the credit given in grades 9 through 12 for successful completion of a school term of study in one course that meets daily for a normal class period or the equivalent established by the board or the governing body or entity of any private school.

(5) "Department" means the Wisconsin department of public instruction.

(6) "Dropout" means a pupil who:

(a) Has ceased to attend school,

(b) Does not attend a public, private, or technical college system district school or home-based private educational program under s. 118.15 (4), Stats., on a full-time basis, and

(c) Has not graduated from high school and does not have an acceptable excuse under ss. 118.15 (1) (b) to (d) or (3) and 118.16 (4), Stats.

(7) "Grade equivalent" means the scaled score determined by a test publisher which corresponds to a pupil's raw score on a standardized achievement test.

(8) "Nonsectarian school" means a school that does not include a pervasively religious curriculum and is not sponsored, administered, or funded by any religious group or organization.

(9) "Parent" means a pupil's parent or guardian.

(10) "Private school" has the meaning given in s. 118.165, Stats.

(11) "Private school choice program" means the program established under s. 119.23, Stats.

(12) "Pupil attendance rate" means the rate obtained by dividing the aggregate number of full-time equivalent days of actual pupils' attendance, by the aggregate number of full-time equivalent days on which school was held.

(12m) "Reasonable fees" means the fee charged does not exceed the actual cost to the private school of the materials supplied to pupils or activities engaged in by pupils.

(13) "School district" means a school district operating under ch. 119, Stats.

(14) "School year" means the period commencing with July 1 and ending with the next succeeding June 30.

(15) "Significant academic progress" means both of the following:

(a) The pupil demonstrates improvement in reading and mathematics in comparison to his or her performance level in the previous school year.

(b) The pupil demonstrates satisfactory performance on at least 50% of any new instructional concepts in reading and mathematics introduced during each of the current school year semesters, and the level of attainment is documented in a written record of performance at beginning, mid-point and ending of each semester.

(16) "Standardized achievement test" means a published, nationally normed test which provides a valid and reliable measure of a pupil's present achievement level in comparison with age or grade level cohorts.

(17) "State superintendent" means the state superintendent of public instruction.

History: Cr. Register, May, 1991, No. 425, eff. 6-1-91; r. (6) (b), renum. (6) (c) and (d) to be (6) (b) and (c), Register, July, 1994, No. 463, eff. 8-1-94; correction in (6) (b) made under s. 13.93 (2n) (b) 6., Stats., Register, March, 1996, No. 483; cr. (12m), Register, May, 1996, No. 485, eff. 6-1-96.

**PI 35.03 Private school requirements.** (1) NOTICE OF INTENT TO PARTICIPATE. By May 1 each year a private school which intends to participate in the private school choice program the following school year shall submit to the state superintendent a notice of intent to participate. The notice of intent shall include all of the following:

(a) The private school's proposed method for ensuring that pupils will be accepted on a random basis which ensures that except for continuing pupils random selection shall be taken from a new pool of applicants each school year. Waiting lists from previous school years may not be carried over and used from one year to the next.

(b) The private school's agreement to adhere to the procedural requirements in sub. (2).

(c) The private school's assurances under sub. (3).

Note: The Notice of School's Intent to Participate Form may be obtained at no charge from the Department of Public Instruction, State Aids and Audit Section, P.O. Box 7841, Madison, WI 53707-7841.

(2) PROCEDURAL REQUIREMENTS. A private school that participates in the private school choice program shall do all of the following:

(a) Accept pupils on a random basis in accordance with the proposal reviewed under sub. (1) (a). The private school shall notify each applicant and the applicant's parent or guardian of acceptance or nonacceptance, in writing, within 60 days after receiving the application. A copy of the notice and accepted application as well as a copy of all nonaccepted applications shall be submitted to the department within 60 days after receiving the application.

(b) Submit a membership report as described under s. 121.05, Stats., to the department of the total number of pupils enrolled in the private school on the third Friday in September and the second

Friday in January. The report shall list separately the number of pupils enrolled in the private school choice program. The report shall be sent to the department by October 1 and February 1, respectively. The enrollment criteria specified in s. PI 14.01 shall be used to determine whether a pupil may be included in the membership report. The membership report form shall be provided by the department.

(c) Submit to the department by June 30 each school year the following information pertaining to pupils participating in the private school choice program in that school year:

1. Information required under sub. (4) (a).
2. Information required under sub. (4) (c).
3. Daily attendance report.
4. Number of pupils who dropped out.
5. Number of pupils suspended and expelled.
6. Information required under sub. (4) (e).

(d) Submit to the department by June 30 each year the total number of pupils enrolled in the private school.

(e) Appoint a representative to the pupil assignment council under s. 119.23 (8), Stats.

(f) If requested, submit to one or more financial or performance evaluation audits as provided for under s. 119.23 (9) (a), Stats., including a membership audit based on the daily attendance records for all pupils during March each year.

(g) Maintain financial accounts and records to substantiate program costs.

(h) Pay all costs incurred in the administration, scoring and reporting of results of the academic achievement tests required under sub. (4) (b) and (c).

(i) Ensure that test security is maintained for all academic achievement tests administered under par. (h).

**(3) ASSURANCES.** A private school participating in the private school choice program shall provide assurance of the following:

(a) The private school is a nonsectarian school.

(b) No more than 65% of the private school's enrollment consists of pupils attending under the private school choice program as determined on the third Friday in September enrollment count of the current school year.

(c) Compliance with the following:

1. 42 USC 2000d et seq.
2. Section 118.165 or 118.167, Stats., regarding private schools.
3. All health and safety laws or codes that apply to public schools, subchs. I and IV of ch. 101 and ch. 145, Stats., and s. 115.33, Stats., including the aging schools legislation.
4. Pupil nondiscrimination, s. 118.13, Stats.
5. 20 USC 1618 et seq.
6. 42 USC 6101 et seq.
7. 29 USC 794.
8. 20 USC 1232g.
9. 20 USC 3171 et seq.
10. 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.

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

**(4) COMPARABLE DATA.** In order to enable the state superintendent to make the report required under s. 119.23 (5) (d), Stats., the private schools participating in the private school choice program shall do all of the following:

(a) Report to the state superintendent the number of pupils who are enrolled in the private school choice program by grade level, gender, and ethnic membership.

(b) Administer achievement tests to pupils enrolled in the private school choice program as specified by the state superintendent under s. PI 35.05 (6).

(c) Report the results of the achievement tests under par. (b) to the state superintendent by June 30 each year. The reported results shall include the following:

1. For each grade level, individual pupil scores for each test and sub-test administered. Pupils shall be indicated by code so that identities are not revealed by the reporting procedures. This shall be reported as specified under par. (a).

2. Means and standard deviations of each grade level for each test and sub-test.

(d) Provide the state superintendent, by October 15 of each school year, with a plan for parental involvement activities for the school year. The plan shall include the following parental involvement activities:

1. The parental involvement with curricular or instructional issues.

2. The nature of the required activities.

3. The purpose of the required activities.

4. The frequency of expected parental participation in the activities.

5. The dates each activity will take place.

6. The location in which each activity will take place.

7. The number of parents expected to participate in each activity.

(e) By June 30 of each school year, provide the state superintendent with data on the results of the activities specified under par. (d) 4. to 7. for that school year.

**(5) CONTINUING ELIGIBILITY.** A private school participating in the private school choice program shall submit a report to the department by October 15 each school year indicating the criteria to be used in meeting the continuing eligibility standards specified under s. 119.23 (7) (a), Stats. In order to continue participating in the private school choice program in the next school year, private schools shall meet at least one of the following criteria:

(a) At least 70% of the pupils in the private school choice program shall advance one grade level each year. For pupils attending a private school choice program in grades 9 through 12, "advance one grade level" means a successful completion of at least 4 credits or the equivalent as approved by the state superintendent during each school year. To meet the requirement under this paragraph, each private school participating in the private school choice program shall ensure that each pupil in the private school choice program who is advanced one grade level has met one of the following criteria:

1. Achievement of 70% of the instructional objectives specific to each grade level in reading, mathematics and language arts which are introduced during each semester of the current school year. Under this paragraph, a private school shall do all of the following:

a. Establish written objectives and performance standards for reading, mathematics and language arts for each grade level in which pupils are enrolled in the private school choice program.

b. Document written criteria and methodology for evaluating pupil performance for each objective.

c. Document each pupil's performance using the evaluation method specified in subd. 1. b. in a written record and maintain these records for 3 years.

2. Achievement of at least .08 grade equivalent increase for each month between the spring or fall and spring administration of a standardized achievement test. Under this paragraph a private school shall do all of the following:

a. Report, by October 15, to the state superintendent the tests to be administered and the dates on which they will be administered.

b. Maintain each student's answer sheets and score information for 3 years.

(b) The private school's average attendance rate for pupils in the private school choice program is at least 90%. The report required under sub. (5) (intro.) shall include the method used by the private school in determining the average attendance rate for pupils.

(c) At least 80% of the pupils in the private school choice program demonstrate significant academic progress.

(d) At least 70% of the families of pupils in the private school choice program meet parental involvement criteria established by the private school. To meet the requirement under this paragraph each private school participating in the private school choice program shall, by October 15 of each school year, identify and submit to the department the parental involvement criteria it will use for the school year and by June 15 of each school year, submit to the department evidence that the criteria have been met for that school year.

**(6) FEES.** (a) A private school participating in the private school choice program may only charge pupils participating under the program fees that may be charged by public schools to indigent pupils. A private school under this subsection may charge reasonable fees for the following:

1. Personal use items, such as towels, gym clothes, or uniforms.
2. Social and extra-curricular activities if not necessary to the private school's curriculum.

(b) A private school under this subsection may not charge fees for any of the following:

1. Instruction, registration or tuition.
2. Books.
3. Teacher salary.
4. Buildings, maintenance or equipment.
5. Courses credited for graduation.
6. Computers or microfilm readers.
7. Transportation required under s. 121.54 (8), Stats.

(c) A private school may not prohibit an eligible pupil from attending the private school, expel or otherwise discipline the pupil, or withhold or reduce the pupil's grades because the pupil or the pupil's family cannot pay or has not paid fees charged under par. (a).

Note: All pupils participating under the private school choice program are indigent by definition under s. 119.23 (2) (a) 1., Stats., since the program is targeted exclusively to low-income pupils whose total family income does not exceed an amount equal to 1.75 times the poverty level. One available remedy for collecting a valid non-paid fee is small claims court.

(d) A school may not impose any sanctions on a parent or pupil participating in the program for failure to engage in fund raising.

History: Cr. Register, May, 1991, No. 425, eff. 6-1-91; am. (1) (intro.) and (3) (b), Register, July, 1994, No. 463, eff. 8-1-94; am. (1) (a), cr. (6), Register, May, 1996, No. 485, eff. 6-1-96.

**PI 35.04 School district requirements. (1)** The school district shall provide the state superintendent all of the following:

(a) Access to pupil record files of pupils that have been or are currently enrolled including:

1. Information on the academic achievement of pupils enrolled in the school district, including test results as specified in s. PI 35.03 (4) (c) to enable comparison with the data required from the private schools under s. PI 35.03 (4) (c).
2. The daily attendance report of pupils enrolled in the school district.
3. The number of pupils who dropped out.
4. The number of pupils suspended and expelled.

(b) Assistance from school district personnel responsible for records described in par. (a) in order to select by October 15 groups of pupils comparable to the pupils enrolled in the private school choice program, including a random sample of school district pupils and those school district pupils who applied to participate in the private school choice program but were not selected, so that a statistically valid comparison can be made of the items in par. (a).

(2) By October 15 of each school year, the school district shall provide the state superintendent with a plan for parental involvement activities for the school year for pupils in kindergarten through grade 12 as selected under sub. (1) (b) which includes the items listed in s. PI 35.03 (4) (d). By June 15 of each year, the school district shall provide the state superintendent with data on the results of the activities specified under s. PI 35.03 (4) (d) 4. to 7. for that school year.

History: Cr. Register, May, 1991, No. 425, eff. 6-1-91.

**PI 35.05 State superintendent's responsibility. (1)** Under s. 119.23 (7) (b), Stats., the state superintendent shall monitor the performance of the pupils attending private schools under this chapter. The state superintendent shall notify any private school which he or she determines in any school year is not meeting at least one of the requirements under s. PI 35.03 (5), that the private school may not participate in the program under this chapter in the following school year.

(2) (a) At the state superintendent's discretion, the department shall conduct on-site financial audits, including membership eligibility and performance evaluation audits, under s. 119.23 (9) (a), Stats., of any or all of the private schools participating under this chapter.

(b) By October 15 of 1990 and July 1 of subsequent years, the state superintendent shall inform all private schools participating under this chapter of the data and information that they must provide during the next 12 months for performance audit purposes.

(c) If an audit is conducted under this subsection, the state superintendent shall notify the private school's director at least 90 days prior to the beginning of an on-site audit.

(3) The state superintendent shall make payment to the private schools as specified in s. 119.23 (4) and (5), Stats., and as follows:

(a) The number of pupils for which the private school shall receive payment shall be determined by s. 121.004 (7) and (8), Stats.

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

1. The September payment shall be based on the number of pupils which were accepted by the private school and the estimated amount per pupil to which the school district is entitled.

2. The November payment shall be based on the number of pupils reported on the membership report required under s. PI 35.03 (2) (b) and the estimated amount per pupil to which the school district is entitled.

3. The February payment shall be based on the average number of pupils reported on the September and January membership reports required under s. PI 35.03 (2) (b) and the estimated amount per pupil to which the school district is entitled.

4. The May payment shall be based on audited membership reports the department performs during March each year as specified under s. PI 35.03 (2) (f) and the estimated amount per pupil to which the school district is entitled. Any adjustment of overpayment or underpayment due to the estimated amount per pupil will be settled by the end of June each year.

(4) The state superintendent shall annually inform the pupils and parents who reside in the city of the private schools participating under this chapter.

(5) The state superintendent shall review and approve the proposal submitted under s. PI 35.03 (1) (a) to ensure that pupils are accepted on a random basis.

(6) In order to make the report required under s. 119.23 (5) (d), Stats., and to ensure that comparable data is received and evaluated, the state superintendent, by September 1 of each year, shall provide to the private schools participating in the private school choice program, a list of achievement tests administered on a district-wide basis by the school district and shall require the private schools to administer these achievement tests.

(7) The state superintendent shall ensure that test security is maintained on all school district achievement tests administered under sub. (6).

(8) The state superintendent shall ensure that pupil confidentiality is maintained at all times.

History: Cr. Register, May, 1991, No. 425, eff. 6-1-91.

**PI 35.06 Transportation.** (1) The board shall provide transportation to pupils attending a private school under this chapter as specified under s. 121.54 (2) (b) 1., Stats.

(2) Each private school requesting that transportation of pupils be provided shall notify the board of the names, grade levels and locations of all pupils eligible to have transportation provided by the board and planning to attend such private school as specified under s. 121.54 (2) (b) 4., Stats.

(3) If a pupil is not required to have transportation provided as specified under s. 121.54, Stats., the parent or guardian may contract with the board for such transportation. The board may provide transportation under this subsection to a pupil not required to be transported under s. 121.54, Stats., if requested to do so by the parent or guardian of the pupil and if the parent or guardian agrees to pay to the board a fee sufficient to reimburse the board for the costs incurred in providing such transportation.

History: Cr. Register, May, 1996, No. 485, eff. 6-1-96.