

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

The state superintendent of public instruction hereby repeals PI 35.02 (15); renumbers PI 35.02 (12), (13) and (14); renumbers and amends PI 35.02 (16); amends PI 35 (title), PI 35.01, PI 35.02 (8) and (11), PI 35.025, PI 35.03 (1) (intro.), (c) and the note following (2) (intro.), (3), (5), (6) (a) and the note following, PI 35.04 (1), (2), (5) (a) and (b), (6) (a) to (c), (7) (a) 2., the following note, and (8), PI 35.043 (1) (c), (3) (a) and (b), (4) and the note following (6), PI 35.045 (1) (intro.), (c), (e) (intro.) and 3. and the note following (4) (b) and (5), PI 35.046 (1) (b), (2) (b) 2., 3., 4., and 6., and PI 35.05 (3) (a); and creates PI 35.02 (12), PI 35.03 (1) (d), and PI 35.04 (4m), relating to the Milwaukee parental choice program.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: s. 227.11 (2) (a), Stats.

Statute interpreted: s. 119.23, Stats.

2001 Act 16 modified provisions under s. 119.23, Stats., relating to the Milwaukee Parental Choice Program (MPCP). To reflect the statutory changes Chapter PI 35 would be modified to:

- Change the date a private school must annually submit notice of its intent to participate in the program from May 1 to February 1.
- Reduce payments from MPCP summer school by 60%.

Other changes would be made to better ensure that participating schools are safe and make it easier for parents to apply for the program, including:

- Creating optional open application periods for participating private schools starting in the 2002-03 school year.
- Changing the dates pupil applications are due at the department.
- Stating that submission of temporary permits would not meet the safety requirements of this program.

In addition, the following technical modifications would be made to Chapter PI 35:

- Define in rule, rather than by cross-reference to statute, “pupils enrolled” and “membership.”
- Eliminate conflicting language related to the attendance standard that schools can meet to continue participation in the program in the following school year.
- Clarify the language related to counting pupils for the purpose of payment under the program and the requirement to return checks received by the school for pupils not present on the count dates.
- Modify references to the name of the program in the rule to make it consistent with the statutory name of the program.

SECTION 1. Chapter PI 35 (title) is amended to read:

Chapter PI 35

MILWAUKEE PARENTAL PRIVATE SCHOOL CHOICE PROGRAM

SECTION 2. PI 35.01 is amended to read:

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 private school located in the city. Participation in the ~~private school~~ Milwaukee parental choice program is limited to 15% of the school district's membership as specified under s. 119.23 (2) (b), Stats. This chapter establishes approval criteria and requirements for private schools participating in the ~~private school~~ Milwaukee parental choice program, and 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.~~

SECTION 3. PI 35.02 (15) is repealed.

SECTION 4. PI 35.02 (12), (13), and (14) are renumbered PI 35.02 (13), (14) and (15).

SECTION 5. PI 35.02 (12) is created to read:

PI 35.02 (12) "Milwaukee parental choice program" or "choice program" means the program established under s. 119.23, Stats.

SECTION 6. PI 35.02 (8) and (11) are amended to read:

PI 35.02 (8) (a) "Enrollment" or "pupils enrolled" has the meaning defined under s. 121.004 (7) (a) to (em), Stats. means the total number of pupils, as expressed by official enrollments, except as provided in pars. (b) to (d). If such total contains a fraction, it shall be expressed as the nearest whole number.

(b) A first grade pupil may be counted only if the pupil attains the age required under s. 118.14, Stats., for first grade admission.

(c) 1. A pupil enrolled in kindergarten may be counted only if the pupil attains the age required under s. 118.14, Stats., for kindergarten admission. A kindergarten pupil shall be counted as one-half pupil except that:

a. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for 5 days a week for an entire school year shall be counted as one pupil.

b. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for less than 5 days a week for an entire school year shall be counted as the result obtained by multiplying the number of hours in each day in which the pupil is enrolled by the total number of days for which the pupil is enrolled, and dividing the result by the product of the number of hours of attendance per day required of first grade pupils in the school district operating under ch. 119, Stats., multiplied by 180.

2. In subd. 1. a. and b., "full-day" means the length of the school day required of first grade pupils in the school district operating the 5-year-old kindergarten program under ch. 119, Stats.

(d) A pupil enrolled in a 4-year-old kindergarten program that provides the required number of hours of direct pupil instruction under s. 121.02 (1) (f) 2., Stats., shall be counted as a 0.6 pupil if the program annually provides at least 87.5 additional hours of outreach activities.

(11) "Membership" ~~has the meaning defined under s. 121.004 (5), Stats.~~ means the sum of the average number of pupils enrolled in the Milwaukee parental choice program as reported under s. PI 35.04 (6) (a) and the summer average daily membership equivalent as defined under s. PI 35.043 (1) (c).

SECTION 7. PI 35.02 (16) is renumbered PI 35.02 (2m) and as renumbered is amended to read:

PI 35.02 (2m) "Pupil Average 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.

SECTION 8. PI 35.025 is amended to read:

PI 35.025 **Pupil assignment council requirements.** The pupil assignment council created under s. 119.23 (8), Stats., shall meet annually by April 15 to designate a date by which all private schools in the choice program must have at least one open enrollment period for choice program applicants for the school year beginning the following September. The pupil assignment council shall also recommend to the state superintendent a method for ensuring that pupils will be accepted on a random basis.

SECTION 9. PI 35.03 (1) (d) is created to read:

PI 35.03 (1) (d) The open application periods during which the private school will accept Milwaukee parental choice program pupil applications.

SECTION 10. PI 35.03 (1) (intro.), (c) and the note following (2) (intro.), (3), (5), (6) (a) (intro.) and the note following are amended to read:

PI 35.03 (1) NOTICE OF INTENT TO PARTICIPATE. (intro.) By ~~May~~ February 1 each year a private school which intends to participate in the ~~private school~~ Milwaukee parental 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:

(c) The number of pupils participating in the ~~private school~~ choice program for which the private school has space.

Note: The Notice of School's Intent to Participate Form may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

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

(3) HEALTH AND SAFETY REQUIREMENTS. The administrator of a school in the ~~private school~~ Milwaukee parental choice program shall ensure that the school is meeting the requirements of s. 119.23 (2), Stats., regarding health and safety laws and codes for schools by filing with the department a copy of the private school's current certificate of occupancy issued by the city of Milwaukee. The administrator shall submit the certificate of occupancy under this subsection to the department no later than August 1 prior to the first school year of participation in the choice program, or by no later than May 1 if the school is beginning participation in the choice program with summer school. The administrator shall file subsequent certificates of occupancy as issued by the city of Milwaukee. An administrator that files a copy of a temporary certificate of occupancy issued by the city of Milwaukee will not meet the requirements of this subsection. A private school that fails to meet the requirements of this subsection may not participate in the choice program.

(5) CONTINUING ELIGIBILITY. (a) A private school participating in the ~~private school~~ Milwaukee parental 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.

(b) A private school participating in the ~~private school~~ Milwaukee parental choice program shall submit a report to the department by June 30 each school year providing evidence that the school has in that school year met at least one of the following criteria:

1. At least 70% of the pupils in the ~~private school~~ Milwaukee parental choice program ~~shall~~ advance one grade level each year. For pupils attending a ~~private school~~ Milwaukee parental 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. For pupils attending a ~~private school~~ Milwaukee parental choice program in grades kindergarten through 8, each participating private school shall ensure that each pupil in the choice program who is advanced one grade level has met one of the following criteria:

a. 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 subparagraph, a private school shall do all of the following: 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~~ Milwaukee parental choice program; document written criteria and methodology for evaluating pupil performance for each objective and document each pupil's performance using the evaluation method specified in this subparagraph in a written record and maintain these records for 3 years.

b. Achievement of at least .08 grade equivalent increase for each month between the spring or fall and spring administration of the standardized achievement test. Under this subparagraph, a private school shall do all of the following: report, by October 15, to the state superintendent the tests to be administered and the dates on which they will be administered, and maintain each ~~student's~~ pupil's answer sheets and score information for 3 years.

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

3. At least 80% of the pupils in the ~~private school~~ Milwaukee parental choice program demonstrate significant academic progress.

4. At least 70% of the families of pupils in the ~~private school~~ Milwaukee parental choice program meet parental involvement criteria established by the private school.

(6) (a) (intro.) A private school participating in the ~~private school~~ Milwaukee parental 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:

Note: All pupils participating under the ~~private school~~ Milwaukee parental 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 nonpaid fee is small claims court.

SECTION 11. PI 35.04 (4m) is created to read:

PI 35.04 (4m) Annually, by August 1, a private school under this section shall submit to the department a copy of the accepted pupil applications it received from February through July. The private school shall ensure the submitted pupil applications are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

SECTION 12. PI 35.04 (1), (2), (5) (a) and (b), (6) (a) to (c), (7) (a) 2., the following note, and (8) are amended to read:

(1) A private school that participates in the ~~private school~~ Milwaukee parental choice program shall accept pupils on a random basis in accordance with the method submitted under s. PI 35.03 (1) (a) and approved under s. PI 35.05 (5). A private school may give preference to siblings of pupils already enrolled in or accepted into the choice program at that private school.

(2) A private school under this section shall ~~establish open application periods for the following school year. The open application period shall be at least 14 days in length and may not begin prior to January 1. select which of the open application periods listed on the notice of intent to participate form during which it will accept Milwaukee parental choice program pupil applications. A private school may not amend, after February 1, the open application periods selected on its notice of intent to participate form for the following school year.~~

(5) (a) Submit to the department a copy of the accepted applications ~~that correspond to the class list submitted under par. (b).~~ it received during August. The private school shall ensure the submitted applications are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

(b) Submit a class list of the ~~private school~~ choice program pupils, alphabetically by last name, and separated by grade level, that corresponds to the accepted applications submitted under ~~par. sub. (4m) and par. (a).~~

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

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

(c) Submit to the department with the membership report under par. (a), copies of any accepted applications for pupils included in the class list under par. (b) that were not previously reported under sub. (4m) and (5) (a). The private school shall ensure that the applications submitted under this paragraph are complete, accurate and signed by the parent or guardian and the school administrator or his or her designee as proof of enrollment required under s. 119.23 (4), Stats.

(7) (a) 2. The pupil is absent on the date specified but has attended for instruction at least one day during the school term prior to the date specified and attends for instruction at least one day after the date specified and has not enrolled in another private school or in a Wisconsin public school district during the period of absence.

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

(8) A private school under this section shall return to the department any checks received under s. 119.23 (4), Stats., for pupils that did not meet the requirements under (7) (a) or that are not cashed within 45 days of their receipt at the school.

SECTION 13. PI 35.043 (1) (c), (3) (a) and (b), (4) and the note following (6) are amended to read:

PI 35.043 (1) (c) "Membership" for summer school payments means the school's total minutes of enrollment of eligible choice program pupils in academic summer classes or laboratory periods necessary for academic purposes.

(3) (a) The pupil was enrolled in the ~~private school~~ Milwaukee parental choice program on the 2nd Friday of January in the school term immediately preceding that summer.

(b) The pupil's application has been accepted into the ~~private school~~ Milwaukee parental choice program at that private school in the school term immediately following that summer.

(4) The summer school payment due to the private school shall be calculated according to s. 119.23 (4m), Stats. To determine payment, the private school shall divide the school's total summer school minutes of enrollment for their choice program pupils by 48,600; round that quotient to the nearest whole number; ~~and~~ multiply the resulting whole number by the voucher amount calculated under s. 119.23 (4) (b) 2., Stats., for the school year immediately following the summer school-; and multiply the result by 40%.

Note: The pupil count report and summer school membership report may be obtained at no charge from the Department of Public Instruction, Milwaukee Parental ~~Private School~~ Choice Program, P.O. Box 7841, Madison, WI 53707-7841.

SECTION 14. PI 35.045 (1) (intro.), (c), (e) (intro.) and 3. and the note following, (4) (b) and (5) are amended to read:

PI 35.045 (1) (intro.) Annually, by September 1 following a school year of operation under this program, a private school participating in the ~~private school~~ Milwaukee parental choice program shall submit, on a form provided by the department, a financial audit report accompanied by the auditor's opinion required under s. PI 35.046 (1) (a) containing the following information for the previous school year:

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

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

3. The private school's membership of pupils participating in the ~~private school~~ Milwaukee parental choice program shall be multiplied by the lesser of the amount determined under s. 119.23 (4) (b) 2., Stats., or the private school's per pupil cost under s. 119.23 (4) (b) 1., Stats. If the result is greater than the amount of the ~~private school~~ choice program payments retained by the school, an adjustment payment shall be made to the private school within 60 days of the financial audit report certified by the department. If the result is less than the amount of the ~~private school~~ choice program payments retained by the private school, the private school shall refund the amount of any overpayment to the department within 60 days of notification.

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

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

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

SECTION 15. PI 35.046 (1) (b), (2) (b) 2., 3., 4., and 6. are amended to read:

PI 35.046 (1) (b) Provide the auditor with a listing of all kindergarten through grade 12 pupils enrolled in the school by grade level and classroom. The listing provided under this paragraph shall identify pupils participating in the ~~private school~~ Milwaukee parental choice program.

(2) (b) 2. Verify enrollment reported on the membership report under s. PI 35.04 for all ~~private school~~ Milwaukee parental choice program pupils against the private school's official attendance records.

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

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

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

SECTION 16. PI 35.05 (3) (a) is amended to read:

PI 35.05 (3) (a) The number of pupils for which the private school shall receive payment shall be determined by ~~s. 121.004 (7) and (8), Stats.~~ ss. PI 35.02 (8) and PI 35.043 (1) (c).

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 July, 2002

Elizabeth Burmaster
State Superintendent