

**FINAL REPORT  
CLEARINGHOUSE RULE 09-084  
CHAPTER PI 35  
MILWAUKEE PARENTAL CHOICE PROGRAM TEACHER LICENSE WAIVER**

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**Analysis by the Department of Public Instruction**

**Statute interpreted:** Section 119.23 (2) (a) 6. and (7) (b) 3., Stats., and SECTION 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28.

**Statutory authority:** Sections 119.23 (2) (a) 6. c. and 227.11 (2) (a), Stats., and SECTION 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28.

**Explanation of agency authority:**

Section 119.23 (2) (a) 6. c., Stats., requires the department to, by rule, implement a process to issue a temporary, nonrenewable waiver to certain teachers that meet specific statutory requirements and who are employed by a private school participating in the Milwaukee Parental Choice Program (MPCP) program.

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.

SECTION 9139 (4r) of the nonstatutory provisions of 2009 Wisconsin Act 28, requires the department to, no later than the first day of the 4<sup>th</sup> month beginning after the effective date of the Act (October 1, 2009), submit proposed rules to the Legislative Council staff.

**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. The Act requires all of the private school's administrators have at least a bachelor's degree and teachers to have a bachelor's degree from an accredited institution of higher education. For teachers that do not have a bachelor's degree, the department is required to develop a rule setting forth the process to issue a temporary, nonrenewable waiver for eligible teachers who have been teaching for at least 5 consecutive years immediately preceding July 1, 2010.

By statute, a teacher may apply for a temporary, nonrenewable waiver if he or she:

- was employed by the private school participating in the Milwaukee Parental Choice Program (MPCP) on July 1, 2010,
- has been teaching for at least the 5 consecutive years immediately preceding July 1, 2010, and
- does not have a bachelor's degree from an accredited institution of higher education on July 1, 2010.

The statutes further require the applicant to submit to the department a waiver application designed by the department and a plan for satisfying the requirements under s. 119.23 (2) (a) 6. a., Stats., including the name of the accredited institution of

higher education at which the teacher is pursuing or will pursue the bachelor's degree and the anticipated date on which the teacher expects to complete the bachelor's degree.

The rules include the statutory requirements described above and establish the process for requesting the temporary, nonrenewable waiver. The rules require specific information to be submitted by July 31, 2010, when applying for the waiver, including:

- Information documenting that the institution of higher education is accredited.
- The name and contact information of the accredited institution of higher learning.
- A list of specific classes to be taken to complete the bachelor's degree, including updates of any changes that have occurred in the applicant's plan.
- If applicable, an official transcript showing courses already completed that count toward the bachelor's degree.
- Information demonstrating a bachelor's degree from the accredited institution of higher education can be issued within five years under the plan proposed by the applicant.

Finally, no waiver granted under these rules is valid after July 31, 2015.

The Act requires the permanent rules to be submitted to the Legislative Council by October 1, 2009.

**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:**

The waiver granted under these rules is only available to teachers that meet the requirements on July 1, 2010 and valid until July 31, 2015. The information required in the rule is typical of information requested from regular teachers in determining whether they are on-track to receiving proper certification.

**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)**

Robert Soldner, Director, School Management Services, (608) 266-7475, [robert.soldner@dpi.wi.gov](mailto:robert.soldner@dpi.wi.gov).

**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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A public hearing to consider the proposed rule was conducted by the department on December 8, 2009, in Milwaukee. Persons were asked to register in favor, generally in favor (except for . . .), against, generally against (except for . . .), or for information only.

*Milwaukee Hearing, December 8, 2009*

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Todd Beadle	Hickman Academy Preparatory Sch	X		
Paul Berger	HOPE Christian School: Fortis			X
Karen Hiller	St. Anthony Sch			X
Tracy Laster	Young Minds Preparatory	X		
Leon Mays	Dr. Brenda Noach Elem & Secondary Choice School			X
Kristi Piere	St. Catherine School	X		
Barbara Sage	Family Monessori Sch		X	
Patrick Carey	Notre Dame Middle Sch	X		

*The following persons submitted written testimony:*

NAME	ORGANIZATION	IN FAVOR OR GENERALLY IN FAVOR	OPPOSED OR GENERALLY OPPOSED	OTHER
Mary Bell	WEAC			X

*Summary of public comments relative to the rule, the agency’s response to those comments, and changes made as a result of those comments:*

**Comments** – A provision should be added to the rule that requires teachers who receive a waiver to submit an annual report to the department during the 5-year waiver period that documents his or her progress towards earning a bachelor’s degree. This will ensure that waiver recipients are held accountable for their progress towards earning a bachelor’s degree and will allow DPI to verify that these teachers are on track with their plan for a completed bachelor’s degree by July 31, 2015.

**Changes to the rule** – An annual report will not be requested. However, applicants will be expected to update their teacher waiver application form to reflect any changes when they occur.

**Comments** – A grandfathering provision should be added to the rule to allow teachers with tenure/longevity to be exempt from the waiver/bachelor degree requirement.

**Changes to the rule** – None. The statutes do not allow for any grandfathering provisions related to teaching longevity or tenure.

*Changes to the analysis or the fiscal estimate:*

The analysis now includes a reference to the statutory requirements that all of the private school's administrators have at least a bachelor's degree and teachers have a bachelor's degree from an accredited institution of higher education as these requirements are referenced in the rule.

The analysis now includes the requirement that applicants for a waiver include updates of any changes that have occurred in the applicant's plan as this change was made as a result of public testimony.

*Responses to Clearinghouse Report:*

5. Clarity, Grammar, Punctuation and Plainness:

a. Because the term "teacher" is defined as "a person who has primary responsibility for the academic instruction of pupils," the meaning of "teaching" does not need to be defined in the rule.

b. Recommendation accepted. Under s. PI 35.07 (1), the reference to s. 119.23 (2) (a) 6. has been changed to s. 119.23 (2) (a) 6. a., b. and (7) (b) 3., to clarify the requirements for administrators, teachers, and teacher aides.

**FINAL REGULATORY FLEXIBILITY ANALYSES**

Summary of Final Regulatory Flexibility Analysis:

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

Summary of Comments:

No comments were reported.