

Clearinghouse Rule 98-112

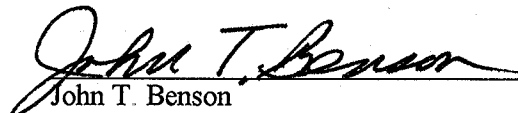
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF PUBLIC INSTRUCTION)

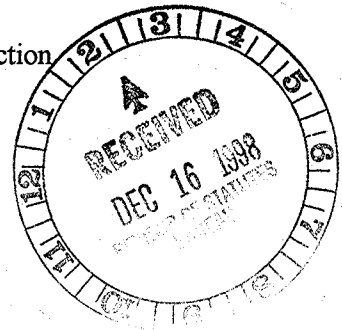
I, State Superintendent of the Department of Public Instruction and custodian of the official records of said Department, do hereby certify that the annexed rule relating to the Milwaukee parental choice program was duly approved and adopted by this Department on the first day of the month following publication in the Wisconsin Administrative Register.

I further certify that said copy has been compared by me with the original on file in this Department and the same is a true copy thereof, and of the whole of such original.

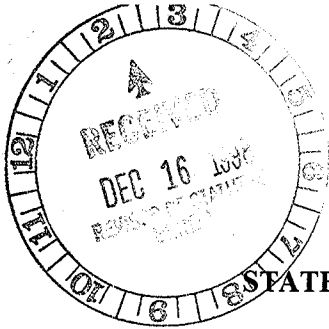
IN TESTIMONY WHEREOF, I hereunto set my hand and affixed the official seal of the Department at General Executive Facility (GEF) 3, 125 South Webster Street, P.O. Box 7841, in the city of Madison, this 16th day of December, 1998.



John T. Benson
State Superintendent
State Department of Public Instruction



3-1-99



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

The state superintendent of public instruction hereby repeals PI 35.02(2), (6) and (8), PI 35.03(3) and (4), and PI 35.05(6), renumbers PI 35.02(1), (3), (4), (5), (7), (9), (10) to (13) and (14) to (17), amends PI 35.01, PI 35.03(1)(a), PI 35.05(7), repeals and recreates PI 35.03(1)(c), PI 35.03(2), PI 35.04, PI 35.05(2), and PI 35.05(3)(b) and creates PI 35.025, PI 35.02(1), (2), (4), (8), (9), (11), (12) and (19), PI 35.045, and PI 35.046, relating to the Milwaukee parental school choice program.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statutory authority: s. 227.11(2)(a), Stats.
Statute interpreted: s. 119.23, Stats.

1995 Wisconsin Act 27 made several modifications to the Milwaukee parental school choice program, including

- Allowing private religious schools to participate in the program.
- Expanding participation to 15% of the Milwaukee school district's membership.
- Allowing siblings of pupils accepted on a random basis to be given preference in accepting applications.
- Requiring quarterly payments to be made by check to parents rather than made to the private schools.
- Requiring the participating private schools to be subject to uniform financial accounting standards established by the department and to annually submit to the department an independent financial audit of the private school.
- Forbidding a private school from requiring that a pupil participate in any religious activity if the pupil's parent or guardian submits a written request that the pupil be exempt from such activities.
- Eliminating the requirement that no more than 65% of the private school's enrollment consist of pupils attending under the private school choice program.
- Eliminating the reporting of comparable data by the school district and the participating private schools.
- Eliminating the financial or performance evaluation audits, as required by the state superintendent.

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made under 1995 Wisconsin Act 27. Therefore, the department is promulgating rules to implement the provisions under the Act. These rules were promulgated as emergency rules effective August 5, 1998.

The proposed permanent rules make several modifications to the Milwaukee private school choice program, including:

- Allowing private religious schools to participate in the program.
- Requiring the pupil assignment council to meet annually by April 15 to designate a date by which random selection of pupils will be determined for those private schools that receive more applications than spaces available for enrollment.
- Developing private school financial reporting requirements.
- Determining costs allowed to be claimed by private schools and reimbursed by the department.
- Developing private school financial audit requirements.
- Developing payment adjustments to be made at the end of the school year by the private schools or the department.
- Eliminating the reporting of comparable data by the school district and the participating private schools relating to pupils' daily attendance, drop out rates, suspensions and expulsions.
- Eliminating specific parental involvement activities to be included in a private school's parental involvement plan.
- Eliminating specific parental involvement activities to be reported by the school district.

- Eliminating the requirement that private schools administer specific achievement tests to pupils and report the results of those achievement tests to the department.

Finally, several pre-existing requirements have been repealed and recreated in different sections reorganizing the rule to align it with the new provisions under the Act.

SECTION 1. 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 nonsectarian private school located in the city. Participation in the private school choice program is limited to ~~4.5%~~ 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 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.

SECTION 2. PI 35.025 is created 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 random selection of pupils will be determined for those private schools that receive more applications than spaces available for enrollment. 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 3. PI 35.02 (2), (6) and (8) are repealed.

SECTION 4. PI 35.02(1), (3), (4), (5), (7), (9), (10) to (13), and (14) to (17) are renumbered PI 35.02(3), (5), (6), (7), (10), (13), (14) to (18) and (20) to (23), respectively.

SECTION 5. PI 35.02(1), (2), (4), (8), (9), (11), (12), and (19) are created to read:

PI 35.02(1) "Accrual basis" means revenues are recorded when earned and expenditures are recorded as soon as they result in liabilities for benefits received, notwithstanding that the receipt of the revenue or the payment of the expenditure may take place, in whole or in part, in another accounting period.

(2) "Auditor" means a person licensed as a certified public accountant by the accounting examining board under ch. 442, Stats.

(4) "Capital outlay" means expenditures for items having a useful life greater than one year.

(8) "Enrollment" or "pupils enrolled" has the meaning defined under s. 121.004(7)(a) to (cm), Stats.

(9) "Fiscal period" means the school year as defined under s. 115.001(13), Stats.

(11) "Membership" has the meaning defined under s. 121.004(5), Stats.

(12) "Offsetting revenue" means revenues that reduce school expenditures used for per pupil cost computations.

(19) "School term" has the meaning defined under s. 115.001(12), Stats.

SECTION 6. PI 35.03(1)(a) is amended to read:

PI 35.03(1)(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 and their siblings, pupils will be accepted on a random selection shall be taken basis 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.

SECTION 7. PI 35.03(1)(c) is repealed and recreated to read:

PI 35.03(1)(c) The number of pupils participating in the private school choice program for which the private school has space.

SECTION 8. PI 35.03(2) is repealed and recreated to read:

PI 35.03(2) **PROCEDURAL REQUIREMENTS.** A private school that participates in the private school choice program shall do all of the following:

- (a) Submit to the department by June 30 each school year information demonstrating compliance with s. 119.23(7)(a), Stats.
- (b) Appoint a representative to the pupil assignment council under s. 119.23(8), Stats.
- (c) Pay all costs incurred in the administration, scoring and reporting of results of the academic achievement tests if used to meet the requirement under s. 119.23(7)(a)3., Stats.
- (d) Ensure that test security is maintained for all academic achievement tests administered under par. (c).
- (e) Meet all of the requirements specified under ss. PI 35.04, 35.045 and 35.046.

SECTION 9. PI 35.03(3) and (4) are repealed.

SECTION 10. PI 35.04 is repealed and recreated to read:

PI 35.04 ENROLLMENT. (1) A private school that participates in the private school choice program shall accept pupils on a random basis in accordance with the method reviewed under s. PI 35.03(1)(a). A private school may give preference to siblings of pupils accepted on a random basis.

(2) A private school under this section shall notify each applicant and the applicant's parent or guardian of acceptance or nonacceptance, in writing, within 60 days after receiving the application. The private school shall retain all notices given under this section and all original applications, both accepted and nonaccepted, submitted under this chapter.

(3) Annually, by September 1 or within 5 days after classes begin, a private school under this section shall do all of the following:

- (a) Submit to the department a copy of the accepted applications that correspond to the class list submitted under par. (b). The private school shall ensure the submitted applications are complete, accurate and signed by the parent or guardian as proof of enrollment required under s. 119.23(4), Stats.
- (b) Submit a class list of the private school choice pupils, alphabetically by last name, and separated by grade level, that corresponds to the accepted applications submitted under par. (a).

(4) A private school under this section shall do all of the following:

(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 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 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. (3)(a). The private school shall ensure that the applications submitted under this paragraph are complete, accurate and signed by the parent or guardian as proof of enrollment required under s. 119.23(4), Stats.

(5)(a) A private school may include a pupil on its membership report under sub. (4)(a) only if one of the following occurs:

1. The pupil is in attendance for instruction on the date specified.
2. The pupil is absent on the date specified but has attended at least one day during the school term prior to the date specified and attends 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.

(b) If a pupil who is eligible to be included in the official enrollment under sub. (5)(a)2. returns following the filing of the membership report, an amended report shall be filed with the department.

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.

SECTION 11. PI 35.045 and 35.046 are created to read:

PI 35.045 FINANCIAL REPORTING REQUIREMENTS AND DETERMINING COSTS. (1) Annually, by September 1 following a school year of operation under this program, a private school participating in the private school 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:

(a) Revenues and expenditures for all programs of the private school and the amount attributable to kindergarten through grade 12 educational programs.

(b) Asset and liability balances at the start and end of the school year.

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

(d) Per pupil cost related to kindergarten through grade 12 educational programming computed on a full-time equivalent membership basis.

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

1. The private school's educational programming cost shall be reduced by the following offsetting revenues.
 - a. Fees charged pupils for books and supplies used in classes and programs.
 - b. Rentals for school buildings.
 - c. Food service revenues.
 - d. Governmental financial assistance revenues.
 - e. Interest earnings and other income resulting from investment of debt proceeds.
2. The private school's per pupil cost shall be determined by dividing the net eligible educational programming cost determined under subd. 1. by the membership for all pupils enrolled in kindergarten through grade 12 educational programs.
3. The private school's membership of pupils participating in the private school choice program shall be multiplied by the lesser of the school district's per pupil aid eligibility or the private school's per pupil cost. If the result is greater than the amount of the private school choice payments retained by the school, an adjustment payment shall be made to the private school. If the result is less than the amount of the private school choice 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.

(2) The accrual basis of accounting shall be used in reporting the information required under this section except as follows:

- (a) Debt proceeds are included in revenue when received.
- (b) Long-term debt principal and interest payments are included in expenditures when payments are due.
- (c) Summer school program revenues and expenditures are reported in the fiscal year corresponding to the pupil membership used for program payment purposes.
- (d) Withdrawals as salary compensation by individuals with a proprietary interest in the private school shall be included in expenditures only when identified as such on the private school's records and made by check on or before June 30.

(e) Acquisition of capital outlay items are reported in expenditures when acquired.

(3)(a) Costs requiring allocation between kindergarten through grade 12 educational programming and other programs of the private school shall be made using one or more of the following allocation bases the private school considers most appropriate:

1. Instruction costs may be allocated based on either pupil full-time equivalency or time spent.
2. Student support service costs may be allocated based on either pupil full-time equivalency or time spent.

3. Administration costs may be allocated based on direct program expenditures, time spent, or full-time equivalent employees.

4. Accounting costs may be allocated based on either the number of transactions or time spent.

5. Facility operation and maintenance costs may be allocated based on floor space operated, space occupied over time, or labor hours.

6. Pupil transportation costs may be allocated based on miles driven, pupil miles driven or driver hours.

(b) The following may not be included in kindergarten through grade 12 educational programming cost:

1. Contributed services.

2. Fund raising.

3. Scholarship awards and financial support for pupils to attend the private school, including payments to parents or others on behalf of pupils.

4. Debt principal and interest payments to the private school's owners, sponsoring organization, or as a result of internal financing from other funds of the school. Borrowing from an endowment fund or from individuals serving on a board of directors or in an advisory capacity who do not have a proprietary interest in the school are not subject to the requirements under this subdivision. The interest rate on such borrowings may not exceed the published prime rate on the borrowing date.

(4)(a) The private school shall, for the purpose of computing per pupil cost, charge off non-debt financed capital outlay expenditures as follows:

1. 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:

a. Media may be amortized over 5 years or 20% annually. Under this subd. 1 a., media includes consumable instructional and administrative items that are expected to serve their principal purposes for more than a year and includes text and reference books, audio-visual materials, and computer software.

b. Equipment and furnishings may be amortized over 5 years or 20% annually. Under this subd. 1 b., furnishings includes desks, chairs, and freestanding lockers. Only the additional cost difference between the allowance granted for equipment traded in and the value of new equipment acquired shall be eligible for inclusion in cost calculation.

c. Buildings, sites and improvements 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.

d. Leasehold improvements may be amortized over the remaining lease period.

2. A private school may elect to charge off in accordance with par (a), the fair market value of existing items in each category as of July 1, 1996, or at the date first participating in the program or re-entering the program. The value of items not so elected to be charged off as a cost may not be eligible for inclusion in cost in future fiscal periods

(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 choice program.

(c) The private school shall maintain, indefinitely, documentation regarding capital outlay values, expenditures and their use in per pupil cost computation.

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

PI 35.046 FINANCIAL AUDIT REQUIREMENTS. (1) A private school under this chapter shall provide and pay for an independent auditor's opinion regarding the information required under s. PI 35.045 as follows:

(a) Employ an auditor to provide an audit opinion stating that the private school's financial report is free from material misstatement and the private school's per pupil cost and any payment adjustment is fairly presented.

(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 choice program.

(c) Deposit all receipts and pay all disbursements from a public depository account or accounts maintained solely for the private school's purposes unless the operating organization's financial accounting system provides for separate identification of the school's revenue and expenditure transactions.

(d) Maintain a record of all receipts using a sequential numbering system.

(e) Furnish all other financial and pupil records the auditor considers necessary to provide the audit opinion.

(2)(a) The auditor employed sub. (1) shall develop a written audit program identifying the steps and procedures followed in conducting the audit. The audit program shall include all the procedures specified in paragraphs (b) and (c) and such other procedures the auditor considers necessary to fulfill professional responsibilities. The auditor shall retain working papers relating to the audit under this subsection for at least 3 years from the date specified under s. PI 35.045(1)(intro.).

(b) The auditor shall perform the following procedures in auditing the private school's enrollment:

1. Verify totals used to compile reported enrollments and tracing totals to classroom records.
2. Verify enrollment reported on the membership report under s. PI 35.04 for all private school choice program pupils against the private school's official attendance records.

3. Select a sample of at least 60 private school choice 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 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 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 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.

5. If the private school is reporting pupils enrolled in a 4-year-old kindergarten program as permitted by s. 121.004(7)(cm), Stats., verify that the 4-year-old kindergarten program included at least 87.5 hours of outreach activities as documented by teacher logs.

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

7. If the private school has operated a summer school program, the auditor shall review for clerical accuracy documentation maintained by the school supporting summer school membership reports filed with the department.

(c) The auditor shall perform the following procedures in auditing the private school's financial records:

1. Ensure that the financial report is free from material misstatement by performing procedures as required under subd. 2. and such other procedures, that in the auditor's judgment, provide reasonable assurance that the report does not contain misapplications of accounting requirements, departures from fact, or other errors or omissions, that in the aggregate, would result in reported net eligible educational programming cost under s. PI 35.045(1)(e)1 exceeding the following acceptable variance limitations:

a. For costs less than \$100,000, the variance limitation shall be 4% of the reported costs.

b. For costs of at least \$100,000 but less than \$1,000,000, the variance limitation shall be 2% of the reported costs.

c. For costs of at least \$1,000,000 but less than \$3,000,000, the variance limitation shall be 1.5% of the reported costs.

d. For costs of at least \$3,000,000 but less than \$5,000,000, the variance limitation shall be 1% of the reported costs.

e. For costs of at least \$5,000,000 but less than \$10,000,000, the variance limitation shall be .7% of the reported costs.

f. For costs at least \$10,000,000, the variance limitation shall be .5% of the reported costs.

2. Consider account balances equal to at least 75% and individual transactions equal to at least 20% of the variance limitation amount determined under subd. 1. as being significant and shall perform procedures considered necessary to conclude such items do not contain misstatements whose effect, when aggregated with misstatements in other balances and transactions, would exceed the variance limitation amount.

3. Determine that fees charged pupils are allowed as specified under s. PI 35.03(6)(a).
4. Confirm the private school's cash and investment account balances with depositories.
5. Prepare or obtain and examine a reconciliation of confirmed cash and investment account balances to the private school's accounting records. The reconciliation shall include the following:
 - a. Depository balances at the beginning of the fiscal period reconciled to the private school's accounting records.
 - b. Receipts per depository statements reconciled to the private school's accounting records.
 - c. Disbursements per depository statements reconciled to the private school's accounting records.
 - d. Depository balances at the end of the fiscal period reconciled to the private school's accounting records.
4. Prepare or obtain and examine a reconciliation of payroll withholdings to remittances to authorized agencies or taxing authorities.

(d) The auditor shall respond directly to inquiries from the department concerning information accompanying the auditor's opinion and permit the department, upon request, to review audit workpapers. The auditor shall notify the private school of any such inquiries or requests and the auditor's response thereto.

SECTION 12. PI 35.05(2) is repealed and recreated to read:

PI 35.05(2) The department shall collect audits under s. PI 35.046, including membership eligibility of any or all of the private schools participating under this chapter.

SECTION 13. PI 35.05(3)(b) is repealed and recreated to read:

PI 35.05(3)(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 ss. PI 35.03(1), 35.04, 35.045 and 35.046. The payment schedule is as follows:

1. The September payment shall be based on the number of pupils receiving instruction at the beginning of the school year as indicated on the class list submitted under s. PI 35.04(3)(b) and the July 1 estimated amount per pupil as determined under s. 121.15(4), Stats., multiplied by 25%.
2. The November payment shall be based on the number of pupils reported on the membership report submitted on October 1 under s. PI 35.04(4)(a) and the October 15 amount per pupil as determined under s. 121.15(4), Stats., that the school district will receive in the current school year, multiplied by 50%, less the September payment.
3. The February payment shall be based on the number of pupils reported on the membership report submitted on February 1 under s. PI 35.04(4)(a) and the October 15 amount per pupil as determined under s. 121.15(4), Stats., that the school district will receive in the current school year, multiplied by 25%.
4. The May payment shall be based on the number of pupils reported on the membership report submitted on February 1 under s. PI 35.04(4)(a) and the October 15 amount per pupil as determined under s. 121.15(4), Stats., that the school district will receive in the current school year, multiplied by 25%.

5. Any payment adjustment shall be made as specified under s. PI 35.045(1)(e) after the department has received and reviewed the audit opinion under s. PI 35.046(1)(a).


SECTION 14. PI 35.05(6) is repealed.

SECTION 15. PI 35.05(7) is amended to read:

PI 35.05(7) The state superintendent shall ensure that test security is maintained ~~on all school district achievement tests administered under sub. (6)~~ if any achievement tests are administered under s. 119.23(7)(a)3.

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 16th day of December, 1998



John T. Benson
State Superintendent