



## WISCONSIN LEGISLATIVE COUNCIL

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TO: SENATOR LUTHER OLSEN

FROM: Anne Sappenfield, Senior Staff Attorney, and Katie Bender-Olson, Staff Attorney KBO

RE: Statutory Requirements for Charter and Choice Schools

DATE: November 18, 2011

This memorandum responds to your request for information regarding charter schools and schools participating in the Milwaukee Parental Choice Program and the program established in 2011 Wisconsin Act 32 for the Racine Unified School District (referred to as "choice schools").

The memorandum initially provides background information on charter schools and choice schools. The memorandum also addresses your specific questions regarding the consequences for failure to comply with applicable statutory standards, and provides information regarding low-performing schools and the manner in which state and federal law applies to charter and choice schools. Further, the memorandum addresses requirements for charter and choice schools to administer the Wisconsin Knowledge and Concepts Examination (WKCE) test to students, addresses the data reported to the Department of Public Instruction (DPI) by choice schools, and addresses special education requirements that apply to charter and choice schools.

### **BACKGROUND INFORMATION ON CHARTER SCHOOLS**

Charter schools are tuition-free, nonsectarian public schools intended to generate options for students and parents by allowing these schools freedom from general laws and rules governing traditional public schools. Exemption from regulation is designed to allow charter schools more autonomy to experiment with instruction methods, curriculum, and other policies.

Charter schools are created on the basis of a "charter" between the school and a chartering authority. A "charter" is a performance contract specifying governing principles such as the school's program, goals, student population, and assessment methods. A chartering authority is an entity that sponsors a charter school and is responsible for oversight of the school.

A chartering authority may be a school board, or it may be another entity specified in the state statutes. In addition to school boards, the following entities are chartering authorities that may establish a charter school: (a) the common council of the City of Milwaukee; (b) the chancellor of the University

of Wisconsin-Milwaukee; (c) the chancellor of the University of Wisconsin-Parkside, on a pilot basis; and (d) the Milwaukee Area Technical College district board. A chartering authority may either operate a charter school itself or, alternatively, may enter into a contract with an individual or entity to operate its charter school.

Charter schools are classified as instrumentality, non-instrumentality, or independent schools. The classification depends upon the relationship between the charter school staff and the local school district. An instrumentality charter school is one in which the charter school staff are employees of the school district that authorized the charter school. A non-instrumentality charter school is typically one in which the charter school is organized as a non-profit organization that employs its own staff. The school board of the district in which the charter school is located determines whether the charter school is an instrumentality or a non-instrumentality of the district. An independent charter school is one that is not chartered by a school board but, instead, is chartered by another chartering authority.

### **BACKGROUND INFORMATION ON CHOICE SCHOOLS**

Choice schools are private schools that participate in a state program providing tuition vouchers for qualifying, low-income pupils in the Milwaukee and Racine public school districts. Students first began participation in the choice program in Milwaukee during the 1990-91 school year. When it began, the choice program involved participation by seven private schools and 300 students. Twenty years later, in the 2010-11 school year, the program involved approximately 102 private schools and 20,300 students.

Pupils in grades kindergarten to 12 who live in one of the eligible school districts may participate in the choice program if they meet specified criteria. To be eligible, a pupil's total family income cannot exceed three times the poverty level. Participating schools must submit the names, addresses, Social Security numbers, and other state and federal tax identification numbers of the parents or guardians of students to DPI to verify eligibility for the choice program.

Choice schools receive a specified funding amount for each choice student who attends. For the current and upcoming school years, choice schools receive per pupil payments of \$6,442 or the school's operating and debt service cost per pupil related to educational programming, whichever is less.

### **CONSEQUENCES FOR FAILURE TO MEET STATUTORY STANDARDS**

#### **Charter Schools**

Charter schools are not subject to the requirements of chs. 115 to 121 of the Wisconsin statutes, the chapters governing elementary and secondary education, unless a particular requirement is explicitly applied to charter schools. [s. 118.40 (7) (b), Stats.] Requirements that explicitly apply to charter schools included compliance with requirements contained in federal special education law and licensing by the DPI for all teachers.

Failure to meet these requirements has a number of potential consequences. First, failure to meet requirements may lead to revocation of a school's charter. A chartering authority may revoke a charter for specified reasons. A chartering authority may revoke a school's charter if it finds that any of the following occurred: (a) the school violated its contract with the chartering authority; (b) the pupils

enrolled in the school failed to make sufficient progress toward attaining the school's educational goals; (c) the school failed to comply with generally accepted accounting standards of fiscal management; or (d) the school violated s. 118.40, Stats., the provisions governing charter schools. [s. 118.40 (5), Stats.]

Second, failure to meet requirements may lead to non-renewal of the contract between a chartering authority and an individual or group contracted to operate the charter school. A chartering authority may contract with an individual or group to operate a school as a charter school for a term not exceeding five school years. Though the contract term may not exceed five years, the contract may be subsequently renewed for additional terms of five years or less. [s. 118.40 (3) (b), Stats.] A chartering authority could choose not to renew a charter school's contract at the end of the contractual term if the school failed to meet statutory requirements. If the chartering authority terminates the contract, the authority could either sign a contract with a different entity to operate the charter school or it could cease operation of the charter school.

Finally, failure to meet requirements could result in the withholding of state funds or federal grant funds by DPI. The statutes provide the State Superintendent with general authority to "withhold state aid from any school district in which the scope and character of the work are not maintained in such manner as to meet the state superintendent's approval." [s. 121.006 (1) (a), Stats.] Charter schools established by a school district may also participate in categorical school aid and grant programs if the participation is included in the charter. Further, charter schools may apply for federal grant money that flows through DPI. Therefore, it is possible for DPI to withhold funds from the school district or from the charter school if the school fails to comply with statutory requirements.

### **Choice Schools**

Similar to charter schools, choice schools are not generally subject to the requirements included in chs. 115 to 121 of the Wisconsin statutes unless a particular requirement is explicitly applied. However, the statutes contain standards that specifically apply to private schools participating in the choice program. The following provides a concise list of statutory requirements specifically applicable to choice schools:

- Require teachers to have a bachelor's degree from an accredited institution of higher education.
- Provide specified information to pupils or the parent or guardian of each minor pupil who applies to attend the choice participating school.
- Provide specified materials and information to DPI on an annual basis, including information regarding numbers of choice and non-choice pupils, graduation rates, grade-level promotion rates, pupil scores, and a copy of the academic standards.
- Provide a signed statement to DPI from each member of the school's governing board verifying that the individual is a member of the board.
- Meet at least one of the following standards: (1) at least 70% of the pupils advance one grade level each year; (2) average attendance rate is at least 90%; (3) at least 80% of the

pupils demonstrate significant academic progress; or (4) at least 70% of the families meet parent involvement criteria established by the school.

- Submit financial and certificate of occupancy information to DPI on an annual basis.
- Administer to each 3<sup>rd</sup> grade pupil a standardized reading test developed by DPI.
- Adopt pupil academic standards.
- Require all teacher aides to have graduated from high school or to have been granted an equivalency.
- Schedule two meetings annually of the governing body members where parents and guardians of pupils or prospective pupils may communicate with the members.
- Maintain progress records for each pupil.
- Provide a copy of a pupil's progress records to the parent or guardian, upon request.
- Issue a high school diploma or certificate to each pupil who completes requirements for graduation.
- Transfer all progress records to the public school board if the school ceases operation.
- Refrain from requiring participation in religious activities for any pupil whose parent or guardian submits a written request to be exempt from such activities.

Failure to meet requirements has a number of potential consequences. First, the State Superintendent may issue an order *immediately* terminating a school's participation in the choice program. The statutes provide that immediate removal of the school may only be done if the State Superintendent determines that conditions at the school present an imminent threat to the health or safety of pupils. [ss. 118.60 (10) (b) and 119.23 (10) (b), Stats.]

Second, the State Superintendent may issue an order barring the school from participation in the choice program in the *current school year*. The statutes provide specified reasons for which a school may be barred from current participation in the program, including:

1. Misrepresentation of required financial information and information relating to the certificate of occupancy;
2. Failure to provide the notice of intent to participate and pay the fee by the deadline;
3. Failure to refund to the state any overpayment made by the date specified by DPI rule;
4. Failure to meet at least one of the four DPI standards relating to pupil advancement, average attendance rate, demonstration of significant academic progress, or meeting parental involvement criteria;

5. Failure to provide an independent financial audit or evidence of sound fiscal practices;
6. Failure to comply with the provisions regarding religious activities;
7. Failure to adopt pupil academic standards;
8. Failure to schedule and provide notice for two required meetings;
9. Failure to develop a written visitor policy;
10. Failure to ensure that teacher's aides have the required educational credentials;
11. Failure to provide any of the above information to a pupil or parent or guardian of a minor pupil;
12. Failure to administer 3<sup>rd</sup> grade reading tests to choice pupils;
13. Failure to issue a diploma to a choice pupil who satisfactorily completes the requirements necessary for high school graduation or to ensure that an accrediting agency review the school's compliance with this provision; or
14. Failure to comply with the various provisions regarding pupil records.

[ss. 118.60 (10) and 119.23 (10), Stats.]

Third, the State Superintendent may issue an order barring a choice school from participating in the program in the *subsequent school year*. The statutes provide specified reasons for which a school may be barred from participating in the coming school year, including:

1. Failure to comply requirements to seek accreditation by December 31 of the school year in which the school enters or re-enters the choice program;
2. Denial of the school's application for accreditation by an accrediting organization; or
3. Failure to achieve accreditation by December 31 of the third school year following the first school year that begins after June 30, 2006, in which the school participates in the choice program.

[ss. 118.60 (10) (am) and 119.23 (10) (am).]

Finally, failure to meet requirements could result in the withholding of state funds by DPI. The statutes specify that the State Superintendent may withhold payment from a private school if the school violates the statutory provisions governing the choice program. [ss. 118.60 (10) (d) and 119.23 (10) (d), Stats.]

## CONSEQUENCES FOR LOW-PERFORMING SCHOOLS

### State Law

Current law specifies actions that may be taken if: (a) a school district is considered to be in need of improvement; (b) a public school is determined to be in need of improvement; or (c) a public school is considered to be among the lowest 5% of public schools in the state in the previous school year. These determinations are based on adequate yearly progress (AYP) in the objective criteria described in Wisconsin's state plan required by the federal No Child Left Behind Law (NCLB) and approved by the U.S. Department of Education (DOE). Under state and federal law, all public school and districts must meet the state's four AYP objectives. For 2011-12, the AYP objectives are as follows:

- Elementary and middle schools must have an attendance rate of at least 85% or show growth over the prior year. High schools must have graduation rates of at least 85% or show an increase of at least 2% over the prior year.
- 95% of all students enrolled in the tested grades must participate in the WKCE. The test participation objective is met using the current year's participation rate or a two-year average.
- A school or district must achieve a reading proficiency of 87%.
- A school or district must achieve a mathematics proficiency of 79%.

A school is identified as "persistently lowest-achieving" if the following conditions exist:

- It is currently identified for improvement in reading or mathematics.
- It has missed AYP in reading and mathematics in any subgroup.
- It has made less than five percentage points of progress in reading and mathematics combined in the all-students group over a period of three years.
- It had the lowest combined reading and mathematics test scores for the most recent school year.

### *School District in Need of Improvement*

A school district is considered in need of improvement if the school district does not meet AYP.

If the State Superintendent determines that a school district has been in need of improvement for four consecutive school years, the school board **shall** do all of the following:

1. Employ a standard, consistent, research-based curriculum that is aligned with the state's model academic standards and across all grades in all schools.

2. Use pupil academic performance data, including data indicating improvement in pupil academic achievement and acquisition of English, to differentiate instruction to meet individual needs.
3. Implement a system of academic and behavioral supports and early intervention for pupils, including diagnostic assessments, instruction in core academic subjects, different instructional strategies for different pupils, and strategies to improve reading and mathematics instruction and promote positive behavior.
4. Provide additional learning time to address the academic needs of pupils who are struggling academically, including pupils whose proficiency in English is limited. The additional learning time may include an extended school day, an extended school year, summer school, or inter-session courses.

[s. 118.42 (1), Stats.]

If the State Superintendent determines that a school district has been in need of improvement for four consecutive years, the State Superintendent *may direct* the school board to do one or more of the following in the school district after consulting with the school board, school superintendent, and collective bargaining units in the school district:

1. Implement or modify activities enumerated for low-performing school districts in the section above.
2. Implement a new or modified instructional design which may include expanded school hours or additional pupil support and services.
3. Implement professional development programs that focus on improving pupil academic achievement.
4. Implement changes in administrative and personnel structures.
5. Adopt accountability measures to monitor the school district's finances or to monitor other interventions directed by the State Superintendent.

[s. 118.42 (3) (a), Stats.]

#### ***Public School Considered to be Among Lowest Performing***

A public school is considered to be among the lowest performing 5% of public schools in the state in the previous school year if it meets the definition of persistently lowest-achieving school.

If the State Superintendent determines that a particular public school was in the lowest performing 5% of all public schools in the state in the previous school year *and* is located in the school district that has been in need of improvement for four consecutive years, the school board *shall* do all of the following in the school:

1. Use vigorous and equitable performance evaluation systems for teachers and principals that include annual performance evaluations; multiple rating categories; multiple rating criteria, including improvement in pupil academic achievement as a significant factor; observation-based performance assessments; and an up-to-date collection of professional practice materials. School boards must ensure that improvement in academic achievement is based on at least two measures. A school board must include a method of identifying mitigating factors that may affect a teacher's or principal's performance such as a high rate of pupil mobility; large class size; and insufficient preparation time, paraprofessional support, and resources or support.
2. Adopt a policy establishing criteria for evaluating whether the distribution of teachers and principals within the affected schools relative to the distribution of teachers and principals throughout the school district, based on their qualifications and effectiveness, is equitable. Using this criteria, the school board must determine whether the distribution of principals and teachers is equitable and if the board determines that distribution is inequitable, the school board must do the following:
  - a. Perform a comprehensive review of current policies and constraints that prevent low-performing schools from recruiting, placing, and retaining effective teachers and principals, and implement strategies to eliminate those policies and constraints.
  - b. Provide additional support to teachers and principals, which may include professional development that is incorporated into their work and tuition reimbursement for courses related to their professional duties.
3. Establish teacher and principal improvement programs that include: (a) supplemental mentoring for those with emergency licenses or permits; (b) opportunities to pursue other professional certifications; (c) at least 60 hours of professional development, annually, that is incorporated into their work; and (d) a joint labor-management program designed to objectively identify teachers and principals who demonstrate serious performance deficiencies and provide them with opportunities for improvement. The school board must offer career counseling and other career transition benefits to those teachers and principals who continue to demonstrate performance deficiencies.
4. Adopt placement criteria for principals that include performance evaluations and measures of pupil academic achievement.

[s. 118.42 (2), Stats.]

### ***Public School Considered in Need of Improvement***

A public school is considered in need of improvement if the school does not meet AYP.

If the State Superintendent determines that a public school is located in the school district that has been in need of improvement for four consecutive years, and if the school has been in need of improvement for five consecutive school years or was among the lowest performing 5% of all public schools in the state in the previous school year, the State Superintendent *may direct* the school board to

do one or more of the following in the school after consulting with the school board, the school district superintendent, and the collective bargaining units:

1. Implement a new or modified instructional design, which may include expanded school hours or additional pupil support and services.
2. Create a school improvement council consisting of the State Superintendent or his or her designee, school board president or his or her designee, school district administrator or his or her designee, school principal or his or her designee, and representatives of each labor organization representing school district employees, to make recommendations to the State Superintendent regarding improving the school.

If the State Superintendent issues a directive to a school or school district, he or she must notify the Legislature's education committees and each legislator whose district includes any portion of the school district. The State Superintendent must also provide a system of support and improvement, including technical assistance, to the school board. If a school district receives a directive from the State Superintendent under the legislation, the school board must seek input from school district staff, parents, and community leaders on implementing the directive. [s. 118.42 (3) (b), Stats.]

### **Federal Law**

NCLB provides sanctions for school districts and schools that do not meet AYP. The sanctions begin when a district or school has missed AYP for two consecutive years with the most severe sanctions being imposed when a district or school has missed AYP for six consecutive years.

### **Applicability to Choice and Charter Schools**

The provisions of state and federal law relating to underperforming schools do not apply to choice schools. The consequences for these schools if they are underperforming are governed by the statutes relating to these schools, as described above.

The extent to which state law relating to underperforming schools applies to charter schools is not clear because the statute does not specifically reference charter schools. Certainly, an underperforming district must consider any of its charter schools in improving performance. In addition, as discussed above, the authorizing authority has the option to revoke a charter with a school if the pupils have failed to make sufficient academic progress.

According to DOE, the provisions of NCLB that apply to schools apply to charter schools. Therefore, those schools may be subject to the same sanctions as public schools for missing AYP for two or more consecutive years.

## **REQUIREMENTS FOR WKCE TESTING**

### **Charter Schools**

Charter schools are required to administer testing to their pupils. The statutes specify that school boards must administer the WKCE<sup>1</sup> to all 4<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> grade students in the school district, including pupils enrolled in charter schools located in the district. Similarly, the statutes require other entities operating charter schools to administer the WKCE to 4<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> grade students. [s. 118.30 (1m) and (1r), Stats.]

Though the WKCE is generally required for charter students, the statutes allow for alternative testing to be administered to 4<sup>th</sup> and 8<sup>th</sup> grade students if certain criteria are met. Charters schools are not required to administer the WKCE to 4<sup>th</sup> and 8<sup>th</sup> grade students if: (1) the school board or other entity operating the charter school administers its own 4<sup>th</sup> and 8<sup>th</sup> grade examinations; (2) the school board or other entity provides the State Superintendent with statistical correlations of those examinations with the WKCE; and (3) the DOE approves. [s. 118.30 (6), Stats.] However, these criteria for alternative forms of testing impose a high hurdle. Indeed, DPI staff reports that no charter school has *ever* been exempted from the requirement to administer the WKCE based on meeting the statutory criteria for alternative testing.

The statutes permit pupils to be excused from taking the WKCE for particular reasons. The first reason relates to limited-English proficiency. A charter school operator may decide not to administer the WKCE to a limited-English speaking pupil, may permit the pupil to be tested in his or her native language, or may modify the format and administration of the exam for the pupil. The same exemption applies to limited-English speaking pupils in public schools and choice schools. [s. 118.30 (2) (b) 2., Stats.]

The second reason a student may be excused from testing relates to parental "opt-out." The parent of a charter school pupil may request that the pupil be excused from taking the WKCE. The school board or other operator of the charter school must then excuse the student from taking the exam. The same parental request exemption applies to public school students and choice students. [s. 118.30 (2) (b) 3. to 5., Stats.]

### **Choice Schools**

Choice schools are also required to administer testing to their pupils. The statutes specify that the governing body of each choice school must administer the WKCE<sup>2</sup> to all choice pupils attending 4<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> grade in the school. [s. 118.30 (1s) and (1t), Stats.]

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<sup>1</sup> The statutes require that school boards and other entities operating charter schools must administer the examination "adopted or approved by the state superintendent." [s. 118.30 (1m) and (1r), Stats.] This examination is currently the WKCE.

<sup>2</sup> The statutes require that schools participating in the school choice program must administer the examination "adopted or approved by the state superintendent." [s. 118.30 (1s) and (1t), Stats.] This examination is currently the WKCE.

The statutes provide for alternative testing other than the WKCE if the alternative testing was approved by the State Superintendent and notification was provided to the cochairpersons of the Joint Committee on Finance and the chairperson of the appropriate legislative standing committees before January 1, 2010. [s. 118.30 (1s) (b), Stats.] However, this notification never occurred and DPI never approved an alternative exam. Therefore, the WKCE is currently the only examination option to fulfill statutory requirements for testing.

The statutes permit pupils to be excused from taking the WKCE for particular reasons. The first reason relates to students who have limited English proficiency. The governing body of a choice school may decide not to administer the WKCE to a limited-English speaking pupil, may permit the pupil to be tested in his or her native language, or may modify the format and administration of the exam for the pupil. The same exemption applies to limited-English speaking pupils in public schools and to charter school students. [s. 118.30 (2) (b) 2., Stats.]

The second reason a student may be excused from testing relates to parental "opt-out." The parent or guardian of a choice school pupil may request that the pupil be excused from taking the WKCE. The governing body must then excuse the pupil from taking the exam. The same parental request exception applies to public school students and to charter school students. [s. 118.30 (2) (b) 3. to 5., Stats.]

### **DATA PROVIDED TO DPI BY CHOICE SCHOOLS**

Various provisions of state and federal law require public schools to report data to DPI. Further, the statutes provide the State Superintendent with general authority to supervise and inspect the public schools. [s. 115.28 (3), Stats.] In contrast, choice schools maintain their status as private schools and are not subject to the same requirements under state and federal law to report data to DPI.

Choice schools are only required to report data to DPI as specified in statute. The statutes explicitly require choice schools to report the number of pupils attending the private school under the choice program in the previous school year, the number of non-choice pupils attending the private school in the previous school year, as well as the following information for the previous five years in which the private school participated in the choice program:

- The number of choice pupils and non-choice pupils who attended the private school in the 12<sup>th</sup> grade and the number of those pupils who graduated from the private school.
- The number of choice pupils and non-choice pupils who attended the private school in the 8<sup>th</sup> grade and the number of those pupils who advanced from grade eight to grade nine.
- The number of choice pupils and non-choice pupils who attended the private school in the 4<sup>th</sup> grade and the number of those pupils who advanced from grade four to grade five.

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In addition to the WKCE, choice schools are required to administer all other examinations in reading, mathematics, and science that are required under the federal No Child Left Behind Act. [s. 118.30 (1s) (a) 4. and (1t) (d), Stats.]

In addition, as noted in the previous section, choice schools must administer the 4<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> grade WKCE to choice pupils enrolled in the private school and provide the results to DPI. The agency considers only the examinations for choice pupils who took the exam in determining the percentage of pupils who performed at designated proficiency levels on the WKCE.

## **REQUIREMENTS RELATING TO SPECIAL NEEDS STUDENTS**

### **Charter Schools**

Charter schools must comply with federal laws related to special education and discrimination, such as the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and Title II of the Americans with Disabilities Act (ADA). Charter schools must also comply with federal law requiring the provision of free appropriate academic and related services for every child. Additionally, charter schools must comply with state statutes prohibiting discrimination and requiring services for pupils with disabilities.

#### ***Admissions and Services***

State and federal law prohibit a charter school from turning away pupils based on disability. Specifically, the state statutes prohibit charter schools from discriminating in admission or denying participation in any program on the basis of a person's "physical, mental, emotional, or learning disability." [s. 118.40 (4) (b) 2., Stats.]

All charter schools are required to provide special education services to their charter school pupils as specified under federal law. The state statutes provide that a school district must serve children with disabilities "in the same manner" as the district serves children attending its public schools and must provide funding for special education on the same basis as it provides funds to district public schools, including proportional distribution based on enrollment of children with disabilities. [s. 115.77 (8), Stats.]

#### ***Special Education Personnel***

State law requires all charter school instructional staff to hold a license or permit to teach issued by DPI. Instructional staff means all professional employees who have direct contact with students or with the instructional program of the school as part of their responsibilities. [s. 121.02 (1) (a) 2., Stats.; PI 8.001 (6m), Adm. Rules.]

Special education teachers at charter schools must have special education licensing from DPI. This is because federal law requires special education teachers to be "highly qualified" in special education and in any core academic subjects they teach to students with disabilities. The IDEA requires all special education teachers to hold a bachelor's degree, to have full state teacher certification or licensure in special education, and not to have special education certification or licensure requirements waived on an emergency, temporary, or provisional basis. [20 U.S.C. § 1401 (10) (B).]

The state deems a special education teacher to be "highly qualified" if the teacher is specifically licensed by DPI for special education. As reported by DPI staff, a charter school may only receive federal special education funding for its special education teachers if those teachers are licensed for

special education. Similarly, a charter school may only receive state categorical aids for special education teachers if those teachers are licensed for special education.

### **Choice Schools**

Choice schools generally are not subject to federal law requiring special education services. Federal law requires that public schools provide every child with a disability with a free and appropriate education in the least restrictive environment possible. However, these requirements do not apply to private schools, including those that admit choice students.

#### ***Admissions and Services***

Choice schools are not permitted to deny pupils admission based upon disability. The only applicable criteria for admission are the statutory eligibility requirements for the choice program, which are family income and residency. [ss. 118.60 (2) (a) and 119.23 (2) (a), Stats.] A choice school must accept all eligible choice students and may only reject an applicant if the school has reached its maximum general capacity or seating capacity. If a choice school has more applicants than available slots, the school must select students on a random basis, but may give preference to siblings of pupils. [s. 118.60 (3) (a) and 119.23 (3) (a), Stats.]

Though choice schools cannot discriminate in admission based on disability, it should be noted that the U.S. Department of Justice is currently investigating a complaint filed by civil rights groups and parents alleging that the Milwaukee choice program discriminates against children with disabilities. The suit alleges that choice schools create policy barriers for students with disabilities that prevent these students from enrolling. The petitioners in the suit rely, in part, upon disparate numbers of students with disabilities that attend choice schools versus the number who attend the Milwaukee Public Schools.

Choice schools are not required to provide special education services to their students. This is because choice schools are private schools and are not subject to federal special education requirements.

#### ***Special Education Personnel***

State law does not require instructional staff at choice schools to be licensed or certified by DPI. Instead, teachers are required to have a bachelor's degree from an accredited institution of higher education. [ss. 118.60 (2) (a) 6. and 119.23 (2) (a) 6., Stats.]

Choice schools are not required to provide special education services and, therefore, are not required to employ teachers who hold degrees or certifications in special education. Because the schools are private, choice school teachers do not have to be licensed for special education by DPI, even if they are providing services to pupils with disabilities.

If you have any questions or need additional information, please do not hesitate to contact us at the Legislative Council staff offices.

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