

# Private School Choice Programs



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# Private School Choice Programs

Under the Milwaukee, Racine, and statewide Wisconsin private school choice programs, state funds are used to pay for the cost of children from eligible families in the City of Milwaukee, the Racine Unified School District (RUSD), or other Wisconsin school districts to attend private schools participating in the program. Pupils began attending private schools under the Milwaukee program in 1990-91, the Racine program in 2011-12, and the statewide program in 2013-14.

This paper provides information on the following aspects of the choice program: (1) a brief historical overview of the program; (2) the major statutory provisions governing the program; (3) pupil participation; (4) program funding; and (5) the results of evaluations of the program that were authorized by statute. Appendix I to this paper describes the legal challenges to the program during its early history.

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## Historical Overview

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As enacted in 1989 Act 336, there were relatively few requirements placed on schools in the Milwaukee program, which was more limited in scope at that time. The program was open to pupils in the City of Milwaukee with a family income less than 175% of the federal poverty level. Private schools in the choice program were required to be nonsectarian and located in the City of Milwaukee. Choice schools had to comply with federal nondiscrimination laws, meet the health and safety codes applicable to public schools, meet one of the four standards related to pupil achievement or parental involvement to continue to be eligible to participate in the program, and meet certain administrative deadlines.

No more than 1% of the enrollment in the Milwaukee Public Schools (MPS) could participate in the program, and no more than 49% of a choice school's enrollment could consist of choice pupils. These thresholds were increased to 1.5% and 65%, respectively, under 1993 Act 16.

The Milwaukee program expanded in 1995 Act 27, which allowed sectarian schools to participate in the program, increased the participation limit to 15% of MPS enrollment, deleted the percentage limit on the share of choice pupils in a choice school, and required that choice schools be subject to uniform financial accounting standards and provide for an annual independent financial audit.

Additional requirements on choice schools related to financial operations were enacted under 2003 Act 155. That act also created penalty provisions under which the State Superintendent could immediately terminate schools from the program, bar schools from participating in the program in the current year, or withhold payment from parents of pupils in choice schools. Under 2005 Act 125, choice schools were required to achieve accreditation and administer a nationally-normed standardized test in certain subjects to pupils in certain grades. That act also increased the enrollment limit for the program to 22,500 pupils. Act 125 also specified that continuing pupils and siblings of pupils would be eligible for the program if their family income was under 220% of the federal poverty level.

Numerous accountability requirements were placed on schools in the Milwaukee program under 2009 Act 28. That act required choice schools to administer the same assessments to choice pupils as required of public school pupils under state and federal law, adopt a policy regarding

pupil promotion to certain grades, and adopt pupil academic standards. The act also raised the academic credentials needed by staff in a choice school and the hours of instruction that a choice school needed to provide.

The Milwaukee program was expanded under 2011 Act 32, which deleted the enrollment limit on the program, raised the income threshold to 300% of the federal poverty level, and deleted the geographic requirement for schools in the program.

Act 32 also created a process under which a private school choice program could be created in eligible school districts other than MPS. Under the act, pupils in a district would be eligible to participate in a choice program substantially similar to the Milwaukee program if the district met the following criteria:

- a. in the most recent October 15 equalization aid run, the district's equalized value per member was no more than 80% of the statewide average;
- b. in the most recent October 15 equalization aid run, the district's shared cost per member was no more than 91% of the statewide average;
- c. the district was eligible for high poverty aid in the most recent determination of eligibility for that program (meaning that at least 50% of the district's enrollment is eligible for the free or reduced-price lunch program); and
- d. the district is located, in whole or in part, in a city of the second class.

Within 10 days of the effective date of the act, the Department of Public Instruction (DPI) was required to make a determination as to which districts met the criteria described above. Pupils in a district that met all of the criteria could participate in the choice program for other eligible districts beginning in 2011-12. RUSD was the only

district to meet these criteria.

Under Act 32, by November 15 of the second year of each fiscal biennium, DPI was required to compile a list of districts that meet all of the criteria. Pupils in eligible districts would be eligible to participate in the choice program for other eligible districts beginning in the following school year. Once a district had been determined to meet the above criteria, pupils in that district would remain eligible to participate in the choice program for other eligible districts in future years. However, under 2011 Act 215, the process under which additional school districts would become eligible for a choice program was closed on April 20, 2012, so that RUSD was the only district in which a choice program was created under the provisions of Act 32.

The private school choice program was further expanded under 2013 Act 20, which created a statewide private school choice program. Any pupil residing in a Wisconsin school district is eligible to participate in a program substantially similar to the Milwaukee and Racine programs, if the pupil's family income does not exceed 185% of the federal poverty level. Act 20 limited pupil enrollment to 500 pupils in the 2013-14 school year and 1,000 pupils in the 2014-15 school year and each year thereafter. In any school year, no more than 1% of any one district's total enrollment may attend private schools under the statewide program. Additionally, the number of private schools that could participate in the program was limited to the 25 schools that received the greatest number of applications in 2013-14. In 2014-15, the schools that participated in 2013-14 were allocated the same number of pupils as they had in 2013-14. The remaining pupils under the 1,000 pupil limit applicable to 2014-15 were allocated to the 25 schools that received the greatest number of applications in 2014-15. Under this procedure, 31 schools are participating in the statewide program in 2014-15.

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## Program Requirements

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The following section describes the major statutory provisions governing the Milwaukee, Racine, and statewide private school choice programs. Separate statutory sections govern the Milwaukee program [s. 119.23] and the Racine and statewide programs [s. 118.60], but those sections are substantially similar. In the following section of this paper, the provisions described apply to both programs, unless otherwise noted in the text.

**Limits on Pupil Eligibility.** Participation is limited to pupils in grades kindergarten through twelve. To be eligible to attend a choice school for the first time, the total family income of a pupil in the Milwaukee or Racine programs must not exceed 300% of the federal poverty level. For new pupils in 2014-15, 300% of the federal poverty level is \$47,181 for a family of two; \$59,409 for a family of three; \$71,637 for a family of four; and \$12,228 for each additional family member above four. For pupils in the statewide program, total family income must not exceed 185% of the federal poverty level. For new pupils in 2014-15, 185% of the federal poverty level is \$29,095 for a family of two; \$36,636 for a family of three; \$44,177 for a family of four; and \$7,541 for each additional family member above four. A pupil attending a choice school whose family income increases may continue to attend a choice school.

Family income is defined as the federal adjusted gross income of the parents or legal guardians residing in the same household as the pupil for the tax year preceding the school year for which family income is being verified or, if not available, for the tax year preceding the tax year preceding the school year for which family income is being verified. Family income for a family in which the pupil's parents or guardians are married is reduced by \$7,000 before the veri-

fication is made. With the \$7,000 reduction, a married couple with two children could have family income up to \$78,637 and be eligible for the Milwaukee or Racine programs, or family income up to \$51,177 and be eligible for the statewide program.

To verify income eligibility for the choice program, a choice school must submit to DPI the names, addresses, social security numbers, and tax identification numbers, if any, of the pupil's parents or guardians that reside in the same household as the pupil, whether and to whom the parents or legal guardians are married, the names of all the other members of the pupil's family residing in the same household as the pupil, and the school year for which family income is being verified. The Department of Revenue (DOR) must review the information submitted and verify the eligibility or ineligibility of a pupil to participate based on family income.

DOR may take no other action on the basis of the information submitted by DPI. DOR must notify DPI if it is unable to verify family income or to verify whether the pupil is eligible or ineligible to participate in the program based on family income. DPI must then use an alternative process, as established by DPI, to determine whether the pupil is eligible to participate in the program based on family income. DPI may not request any additional verification of income from the family of a pupil once DOR has verified that the pupil is eligible to participate in the program based on family income. DPI must establish a procedure for determining family income eligibility for those pupils for whom no social security number or tax identification number has been provided.

Prior year attendance criteria also apply to pupils in the Racine program. To be eligible to participate in the Racine program, a pupil must satisfy one or more of the following: (a) have been enrolled in RUSD in the prior year; (b) not have been enrolled in school in the prior year; (c)

have been enrolled in the Racine program in the prior year; or (d) be enrolling in kindergarten, first grade, or ninth grade in a school participating in the Racine program in the current year.

**Admission and Selection Procedures.** The State Superintendent of Public Instruction is required to annually inform families of the private schools participating in the programs. Applications must be submitted to the private schools on a form provided by the State Superintendent. If more than one pupil from the same family applies to attend the same school, a single application may be used. Within 60 days after receipt of the application, the school must notify an applicant, in writing, whether the pupil has been accepted.

A choice school may reject an applicant only if it has reached its maximum general capacity or seating capacity. If a school rejects an application, the notice must include the reason why it cannot admit the applicant. If a private school rejects an applicant due to a lack of space, the pupil may transfer his or her application to another participating private school that has space available.

An applicant who has been rejected by a choice school may be admitted to a choice school for the following school year, provided that the applicant still meets the residency requirement for the program. In that following school year, DPI may not require the school to submit financial information regarding the applicant or to verify the eligibility of the applicant to participate in the program on the basis of family income.

The State Superintendent must ensure that private schools accept pupils on a random basis, except that a school may give preference to pupils who attended the school in the previous school year, siblings of pupils who attended the school in the previous year or who were accepted on a random basis, or pupils who attended another private school as part of a choice program in the previous school year.

A pupil assignment council composed of one representative from each participating private school makes annual recommendations on how to achieve balanced pupil representation in the program.

**Enrollment Limit.** Prior to 2011 Act 32, no more than 22,500 full-time equivalent (FTE) pupils could participate in the Milwaukee program. That act eliminated the enrollment limit for the Milwaukee program.

Under 2011 Act 32, participation in the Racine program was limited to no more than 250 FTE pupils in 2011-12 and 500 FTE pupils in 2012-13. There is no limit on pupil participation in the Racine program beginning in the 2013-14 school year.

As noted previously, 2013 Act 20 limited participation in the statewide program to no more than 500 FTE pupils in the 2013-14 school year, and no more than 1,000 FTE pupils in the 2014-15 school year and annually thereafter. In any school year, no more than 1% of any one district's total enrollment may attend private schools participating in the program. In 2013-14 and 2014-15, only private schools in operation on May 1, 2013, could participate.

Under Act 20, private schools accepted applications from choice pupils during a specified application period, beginning on August 1, 2013, for the 2013-14 school year and from February 1 to April 20, 2014, for the 2014-15 school year. After the close of the application period, schools were required to report to DPI the name of each pupil who applied to attend the school as part of the choice program, the total number of choice applicants, the names of those applicants whose siblings also applied to attend the school under the choice program, and the total number of sibling applicants. Based on this information, DPI determined whether the total number of applicants exceeded the enrollment limit and, if so, identified the 25 private schools that received the

greatest number of applicants. For this purpose, different campuses of the same private school were considered different schools to be counted separately in the list of 25 schools.

Act 20 required that in the 2013-14 school year, each of the 25 schools with the greatest number of applicants was allocated 10 slots to be filled by random drawing, with the remaining 250 spaces filled by random drawing from all applications to those 25 schools. In the 2014-15 school year, each of the schools that participated in the choice program in the previous year was allocated the same number of slots held by choice pupils in the previous year, with the remaining slots allocated to the 25 private schools that received the greatest number of applications for the 2014-15 year. Priority was given to pupils who attended the private school under the choice program in the previous school year, pupils who attended another choice school in the previous school year, or siblings of pupils already attending the school through the choice program or already selected through the random drawing. If there were more applicants than available slots, DPI was required to establish a waiting list for those applicants that were not selected. Schools that participated in the Racine or Milwaukee choice programs could not be designated as one of the 25 participating schools in 2013-14 or 2014-15.

**Requirements of the Private Schools.** A number of legal requirements are placed on schools that participate in the choice program.

DPI is required to notify each choice school of any proposed changes to the choice program or to administrative rules governing the program prior to the beginning of the school year in which the changes take effect. By law, this includes changes to application or filing deadlines, but does not include changes to provisions governing health or safety.

*General Compliance.* The participating schools

must meet all state health and safety laws or codes applicable to public schools and a number of federal laws and regulations which apply to both public and private schools. At the time the private school files a notice of intent to participate in the program, the school must agree to comply with federal law that prohibits discrimination on the basis of race, color, or national origin.

*Intent to Participate and Auditor Fee.* Choice schools must notify the State Superintendent of their intent to participate in the program and the number of pupils for which the school has space by February 1 of the prior school year. A choice school must pay an annual fee to DPI with its notice of intent to participate in the program. DPI is required to set the fee in administrative rule at an amount such that the total fee revenue covers the costs of employing one full-time auditor to evaluate the financial information submitted to the Department by schools participating in the choice program. For the 2014-15 school year, the fee was \$750. Fee revenue is deposited in a program revenue appropriation, which was budgeted at \$132,100 in 2014-15. DPI was required to refund the fee to any school that applied to participate in the statewide choice program in 2013-14 or 2014-15 but was not one of the 25 selected for inclusion based on the number of applicants.

*New Private Schools.* The law defines a new private school as one which has been open in Wisconsin for less than 12 consecutive months, or one with fewer than 40 pupils enrolled in two or fewer grades. New private schools must submit required documents by August 1 of the school year immediately preceding the school year in which the school intends to participate in the program, including: (a) a notice of intent to participate in the program and an agreement to comply with procedural requirements; (b) a complete anticipated budget for the first fiscal period of the school's participation in the choice program demonstrating that the school will have a positive cash flow in each month of the fiscal period and no operating deficit, including anticipat-

ed total enrollments and enrollments of choice pupils, estimated revenues and costs, a schedule of anticipated beginning and ending net choice program assets, a schedule of monthly cash flow requirements, and contingent funding sources to be used if enrollments are lower than expected; (c) the mailing address for the school, or, if no building has been secured, the mailing address of an administrator of the school; (d) the pupil achievement standard the school intends to meet to maintain eligibility for the choice program; (e) the nonrefundable fee established by DPI; and (f) information related to the school's policies and governing board. The school must also obtain preaccreditation from an approved preaccrediting entity by December 15 of that year. By December 31 of the school year immediately preceding the school year in which the new private school intends to participate in the program, DPI must notify the school in writing whether it has met the above requirements. If not, the school may not participate in the choice program in the following year, but may reapply using the same process.

Additionally, a new private school must demonstrate by August 1 of the first school year in which it is participating in the choice program that it has contracted with a third-party payroll service that will remit state and federal payroll taxes for all school employees. By November 1 of the school's first year of participation in the choice program, the school must submit an updated budget reflecting enrollments in the school on the third Friday of September of that year, and any changes in revenues, costs, and cash flow requirements. New private schools must also meet the additional requirements for schools participating in the choice program for the first time.

*Tuition and Fees.* A choice school may not charge or receive any additional tuition payment for a choice pupil other than the state choice payment if the pupil is in grades K-8 or if the pupil is in grades 9-12 and the family income of the pupil does not exceed 220% of the federal

poverty level.

A choice school may charge a pupil tuition in an amount determined by the school, in addition to the state choice payment, if the pupil is in grades 9-12 and the family income of the pupil is greater than 220% of the federal poverty level. A choice school is responsible for determining whether tuition may be charged to a pupil on the basis of family income. Each choice school must establish an appeals process to the governing body of the school relating to determination of family income.

For tuition purposes, in 2014-15, 220% of the federal poverty level is \$34,599 for a family of two; \$43,566 for a family of three; \$52,533 for a family of four; and \$8,967 for each additional family member above four. As with the eligibility determination, family income for a family in which the pupil's parents or guardians are married is reduced by \$7,000 before the verification is made.

A choice school may recover the cost of providing the following to a choice pupil through reasonable fees in an amount determined by the school and charged to the pupil: (a) personal use items, such as uniforms, gym clothes, and towels; (b) social and extracurricular activities if not necessary to the school's curriculum; (c) musical instruments; (d) meals consumed by pupils of the school; (e) high school classes that are not required for graduation and for which no credits toward graduation are given; (f) transportation; and (g) before-school and after-school child care. A school may not prohibit an eligible pupil from attending the school, expel or otherwise discipline a pupil, or withhold or reduce a pupil's grades because the pupil or the pupil's parent or guardian cannot pay or has not paid any such fees charged.

*Pupil Achievement Standards.* Each private school is required to meet at least one of the following standards in order to continue to be eligible to participate in the program in the following school year:

1. At least 70% of the pupils in the program advance one grade level each year.
2. The school's average attendance rate for pupils in the program is at least 90%.
3. At least 80% of the pupils in the program demonstrate significant academic progress.
4. At least 70% of the families of pupils in the program meet parent involvement criteria established by the school.

The determination of whether a school meets at least one of the standards is made by the State Superintendent.

*Religious Activity.* A school participating in the choice program cannot require a choice pupil to participate in any religious activity in the school if the pupil's parent or guardian submits a written request to the pupil's teacher or the school's principal that the pupil be exempt from such activities.

*Financial Requirements.* Each private school is subject to uniform accounting standards established by DPI.

By August 1 before the first school year a new school participates in the program, or by May 1 if the school begins participating in the program during summer school, each school participating in the program must submit to DPI:

1. A copy of the school's current certificate of occupancy issued by the municipality within which the school is located. If the school moves to a new location, the school must submit a copy of the new certificate of occupancy issued by the municipality within which the school is located to DPI before pupils attend school at the new location and before the next membership count date (either the third Friday in September or the second Friday in January). If the municipality within which the school is located does not issue

certificates of occupancy, the school may submit a certificate issued by the local or regional governmental unit with the authority to issue certificates or a letter or form from the municipality that explains that the municipality does not issue certificates of occupancy. By law, a temporary certificate of occupancy does not meet this requirement.

2. Evidence of financial viability, as prescribed by DPI in administrative rule. Under rules promulgated by DPI, financial viability is defined as the ability of a school to pay for goods and services, make debt payments, and pay other obligations as they come due.

3. Proof that the school's administrator has participated in a fiscal management training program approved by DPI.

Annually, by September 1 following a school year in which a school participated in the choice program, the school must submit to DPI:

1. An independent financial audit of the school conducted by an independent certified public accountant, accompanied by the auditor's statement that the report is free of material misstatements and fairly presents the school's operating and debt service cost per pupil related to educational programming. The audit is statutorily limited in scope to those records that are necessary for DPI to make payments to choice schools. The auditor must conduct his or her audit, including determining sample sizes and evaluating financial viability, in accordance with the auditing standards established by the American Institute of Certified Public Accountants (AICPA). DPI may not promulgate rules that establish standards exceeding the standards established by AICPA or require an auditor to comply with standards that exceed the scope of the standards established by AICPA.

2. Evidence of sound fiscal and internal control practices, as prescribed by DPI by rule.

Under DPI rules, this can include such actions as preparing a budget for the ensuing fiscal year, making payments within a specified time frame, making payments to employees based on written agreements specifying compensation and payment dates, and maintaining an adequate system of internal financial controls. An auditor engaged to evaluate the school's fiscal and internal control practices must conduct his or her evaluation, including determining sample sizes, in accordance with attestation standards established by AICPA.

*Staff Credentials.* With certain exceptions, all teachers and administrators in a school participating in the choice program are required to have a bachelor's degree or an educational credential higher than a bachelor's degree, including a masters or doctorate, from an accredited institution of higher education. For the purposes of this requirement, a teacher is defined as a person who has primary responsibility for the academic instruction of pupils. An administrator is defined as the superintendent, supervising principal, executive director, or other person who acts as the administrative head of the school.

If a teacher employed by a school in the Milwaukee program on July 1, 2010, in the Racine program on July 1, 2011, or in the statewide program on July 1, 2013, had been teaching for at least the five consecutive years prior to the applicable date, he or she can apply to DPI for a temporary, nonrenewable waiver from the bachelor's degree requirement. On the waiver application, the teacher must submit a plan for satisfying the degree requirement, indicating the name of the accredited institution of higher education at which the teacher will pursue a bachelor's degree and the anticipated date on which the teacher expects to complete the degree. Waivers are not valid after July 31, 2015, for the Milwaukee program, July 31, 2016, for the Racine program, or July 31, 2018, for the statewide program. DPI is required to promulgate rules to implement the waiver provisions, including the form of the waiver application and the process by which the

applications will be reviewed.

Neither a teacher in a choice school who teaches only courses in rabbinical studies, nor an administrator of a choice school that prepares and trains pupils in rabbinical studies, is required to have a bachelor's degree.

Any teacher's aide employed by a choice school is required to have graduated from high school, been granted a declaration of equivalency of high school graduation, or been issued a general education development certificate of high school equivalency.

*School Accreditation.* A choice school must achieve accreditation by December 31 of the third school year following the first school year in which it participates in the choice program. The statutorily-recognized accrediting agencies are Wisconsin North Central Association, Wisconsin Religious and Independent Schools Accreditation, Independent Schools Association of the Central States, Wisconsin Evangelical Lutheran Synod School Accreditation, National Lutheran School Accreditation, Wisconsin Association of Christian Schools, the diocese or archdiocese within which the school is located, or any other organization recognized by the National Council for Private School Accreditation.

Prior to 2011 Act 47, a school that had been approved for scholarship funding in the 2005-06 school year by Partners Advancing Values in Education (PAVE) did not have to meet the general accreditation requirement. (PAVE is a nonprofit foundation that works to provide educational opportunities in Milwaukee by providing scholarship funding to pupils and capital improvement funding and program development for schools.) Under Act 47, if such a school was participating in the program on November 19, 2011 (the effective date of Act 47), it must achieve accreditation by one of the accrediting entities listed above by December 31, 2015.

If a school did not participate in the choice program during the 2005-06 school year, or if a school participated in the program in 2005-06 but did not participate in 2006-07, and the school is not accredited by one of the organizations or approved by PAVE, that school must apply for accreditation by December 31 of the school year in which it enters or re-enters the choice program.

If, during the accrediting process, an accrediting agency determines that a school does not meet all of the current law requirements for a private school, the accrediting agency must report that failure to DPI. Under current law, an institution is considered a private school if its education program meets the following criteria: (a) the primary purpose of the program is to provide private or religious-based education; (b) the program is privately controlled; (c) the program provides at least 875 hours of instruction each school year, although more hours are required under the choice program as described later; (d) the program provides a sequentially progressive curriculum of fundamental instruction in reading, language arts, mathematics, social studies, science, and health; (e) the program is not operated or instituted for the purpose of avoiding or circumventing the compulsory school attendance requirement; and (f) the pupils in the institution's educational program, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation, or the institution is licensed as a child welfare agency.

A private school that is a first-time participant in the choice program and that is not accredited must obtain preaccreditation by August 1 before the first school term of participation in the program, or by May 1 if the school begins participating in the program during summer school. Preaccreditation is defined as the review and approval of an educational plan. This review includes consideration of whether the school submitting the plan meets the statutory requirements of a private

school.

Schools may seek preaccreditation from the following entities: the Institute for the Transformation of Learning (ITL) at Marquette University, Wisconsin North Central Association, Wisconsin Religious and Independent Schools Accreditation, Independent Schools Association of the Central States, Wisconsin Evangelical Lutheran Synod School Accreditation, National Lutheran School Accreditation, Wisconsin Association of Christian Schools, or the diocese or archdiocese within which the school is located. In any school year, a private school may apply for and seek to obtain preaccreditation from only one of the above-listed entities. A school that fails to obtain preaccreditation in a school year may apply for and seek to obtain preaccreditation from one of the above-listed entities in the following school year.

By law, the fact that a school has obtained preaccreditation does not require an accreditation organization to accredit the private school. If, during the preaccreditation process, an entity determines that a school does not meet the statutory requirements of a private school, it must report that information to DPI. An accredited school is not required to obtain preaccreditation as a prerequisite to providing instruction to additional grades or in an additional or new school.

Prior to 2009 Act 28, ITL was included in the list of statutory accrediting agencies. Act 28 specified that a school cannot apply for accreditation from ITL after June 30, 2009, but that any school that applied for accreditation from ITL before that date can complete the process with ITL and seek renewal of accreditation from ITL.

After achieving accreditation, a school must maintain its accreditation from an approved accrediting entity for as long as the private school continues to participate in the choice program. If a school learns that its accrediting entity has been disqualified, the school must immediately notify

DPI in writing and must obtain accreditation from an approved organization no more than three years from the date on which it learned its accrediting organization was disqualified. Beginning in the 2013-14 school year, schools are required to provide evidence of accreditation to DPI annually by January 15 in the form of a letter prepared by an accrediting entity confirming the school's accreditation.

*Pupil Testing.* Choice schools must administer the examinations adopted or approved by the State Superintendent to all pupils in grades 4, 8, 9, 10, and 11 who are attending the school through the choice program. Choice schools are also required to administer the 3<sup>rd</sup> grade standardized reading test developed by DPI to all choice pupils in that grade.

Choice schools must also administer all tests in reading, mathematics, and science that are required for public school pupils under the federal No Child Left Behind Act (NCLB) to all choice pupils in the relevant grades. NCLB currently requires that all pupils be tested in reading and math each year in 3<sup>rd</sup> through 8<sup>th</sup> grades and once in high school, and in science once each in elementary, middle, and high school. Beginning in the 2014-15 school year, Wisconsin pupils in 3<sup>rd</sup> through 8<sup>th</sup> grades take English language arts and math assessments designed by the Smarter Balanced Assessment Consortium to align with the new Common Core State Standards. The science requirement is met through the Wisconsin Knowledge and Concept Examination (WKCE) science tests, which are administered to pupils in grades 4, 8, and 10. Pupils in grades 9 through 11 participate in assessments developed by ACT, which test skills including reading and math. Choice schools are also authorized to administer additional standardized tests to choice pupils.

A choice school must excuse a pupil from taking standardized examinations if the pupil's parent or guardian requests it. Choice schools must include special education pupils in these assess-

ments and provide appropriate accommodations and alternate assessments where necessary and as indicated in a pupil's individualized education program. A choice school, in accordance with criteria established by the State Superintendent, may determine not to administer an examination to a limited-English speaking pupil, may permit the pupil to be examined in his or her native language, or may modify the format and administration of an examination for such pupils.

When calculating the percentage of choice pupils at each proficiency level, DPI is required to use the number of pupils to whom the examinations were administered at each grade level in the school, excluding pupils whose parents requested that they be excused from the examinations, rather than the total number of pupils enrolled at each grade level. Public schools report results including pupils whose parents requested that they be excused from testing in the total of "not tested" pupils. DPI publishes testing results from private choice schools on its website (<http://oea.dpi.wi.gov/assessment/data/parentalchoiceprogramresults>).

*Academic Standards.* Choice schools must adopt pupil academic standards in mathematics, science, reading and writing, geography, and history. Academic standards include content, performance, and proficiency standards that specify what pupils should know and be able to do, how pupils will demonstrate they are meeting a standard, and how well pupils must perform in a given subject area.

*Pupil Promotion.* A choice school must adopt a written policy specifying criteria for promoting choice pupils from 4<sup>th</sup> to 5<sup>th</sup> grade and from 8<sup>th</sup> to 9<sup>th</sup> grade. The criteria must include: (a) the pupil's scores on standardized assessments, unless the pupil has been excused from taking examinations; (b) the pupil's academic performance; (c) teacher recommendations, which must be based solely on the pupil's academic performance; and (d) any other academic criteria specified by the

school. A choice school is prohibited from promoting a choice pupil from the 4<sup>th</sup> to 5<sup>th</sup> grade and 8<sup>th</sup> to 9<sup>th</sup> grade unless the pupil satisfies the criteria specified in the school's policy.

A choice school must also develop a policy specifying the criteria for granting a high school diploma to a choice pupil. The criteria must include the pupil's academic performance and teacher recommendations. A choice school is prohibited from granting a high school diploma to a choice pupil unless the pupil has satisfied the criteria specified in the school's policy. A choice school must issue a diploma to a choice pupil who satisfactorily completes the course of instruction and any other requirements necessary for high school graduation.

*Hours of Pupil Instruction.* A school participating in the choice program must annually provide at least 1,050 hours of direct pupil instruction in grades 1 to 6 and at least 1,137 hours of direct pupil instruction in grades 7 to 12. These requirements currently apply to public school districts. Under current law, private schools not participating in the choice program are required to provide at least 875 hours of instruction each school year for each grade.

*Required Meetings.* Choice schools are required to annually schedule two meetings at which members of the governing body of the school will be present and at which pupils and the parents or guardians of pupils applying to attend the school or attending the school may meet and communicate with the members of the governing body. Within 30 days after the start of the school term, schools must notify DPI in writing of the scheduled meeting dates and, at least 30 days before the scheduled meeting date, must notify in writing each pupil or the parent or guardian of each minor pupil applying to attend the school or attending the school of the meeting date, time, and place.

*Visitor Policy.* Choice schools must develop a

written policy governing visitors and visits to the school.

*Pupil Records.* Choice schools are required to maintain progress records for each pupil attending the school under the choice program while the pupil attends the school and for at least five years after the pupil ceases to attend the school.

If a choice school ceases operating, it must immediately transfer all of the progress records of choice pupils to the school board of the district within which the pupil resides and send written notice of this transfer to each pupil, or to the parent or guardian of a minor pupil. If the school that ceases operation is affiliated with an organization that will maintain the progress records of each choice pupil who attended the school for at least five years after the school ceases operation, the school may instead transfer a pupil's records to that organization, rather than to the school district, if the pupil or the parent or guardian of a minor pupil consents in writing to the release of the progress records to the affiliated organization. The school must send a signed written notice from each pupil or the parent or guardian of each minor pupil who consents to the transfer of progress records under this provision to DPI. The written notice must include the name, phone number, mailing address, and other relevant contact information of the organization that will maintain the progress records, and a declaration by the affiliated organization that the organization agrees to maintain the progress records for at least five years after the school ceases operation.

Choice schools are required to provide a choice pupil or the parent or guardian of a choice pupil with a copy of the pupil's progress records upon request.

If a choice school receives written notice that a pupil intends to enroll or has enrolled in another school or school district, the school must transfer all pupil records for that pupil to that school or school district within five days.

*Provision of Information.* Each school participating in the choice program must provide to each pupil, or the parent or guardian of each minor pupil, who applies to attend the school all of the following information:

a. the name, address, and telephone number of the school and the name of one or more contact persons at the school;

b. a list of the names of the members of the school's governing body and of the school's shareholders, if any;

c. a notice stating whether the school is an organization operated for profit or not for profit, and, if the school is a nonprofit organization, a copy of the certificate issued under section 501(c)(3) of the Internal Revenue Code verifying the school's status;

d. a copy of the appeals process used if the school rejects the applicant;

e. a copy of the policy developed by the school specifying the criteria for granting a high school diploma;

f. a copy of the non-harassment policy used by the school and the procedures for reporting and obtaining relief from harassment;

g. a copy of the suspension and expulsion policies and procedures used by the school and the procedures for appealing a suspension or expulsion;

h. a copy of the policy used by the school for accepting or denying the transfer of credits earned by a choice pupil for the satisfactory completion of coursework at another school; and

i. a copy of the written policy developed by the school governing visitors and visits to the school.

A choice school must also provide the materi-

al specified above and the following information to DPI by August 1 of each year:

a. the number of pupils enrolled in the school through the choice program in the previous school year;

b. the number of pupils enrolled in the school but not participating in the choice program in the previous school year;

c. for each of the previous five school years in which the school has participated in the choice program, all of the following information:

(1) the number of pupils who were enrolled in the school under the choice program and not under the choice program in the 12<sup>th</sup> grade and the number of those pupils who graduated from the school;

(2) the number of pupils who were enrolled in the school under the choice program and not under the choice program in the 8<sup>th</sup> grade and the number of those pupils who advanced from 8<sup>th</sup> to 9<sup>th</sup> grade;

(3) the number of pupils who were enrolled in the school under the choice program and not under the choice program in the 4<sup>th</sup> grade and the number of those pupils who advanced from 4<sup>th</sup> to 5<sup>th</sup> grade;

(4) pupil scores on required standardized tests administered in the previous school year, to the extent permitted under the federal Family Educational Rights and Privacy Act; and

d. a copy of the academic standards adopted by the school.

Choice schools must provide all of the above information upon request to any pupil, or to the parent or guardian of any minor pupil, who is attending or who applies to attend the school.

Choice schools must also provide to DPI a

signed statement from each individual who is a member of the school's governing body verifying their role in the school.

*Indoor Environmental Quality.* Under 2009 Act 96, schools participating in the choice program are required to develop and implement a plan for maintaining environmental quality in the school. Under Act 96, a task force was created and charged with making recommendations to DPI for development of a model management plan, training requirements, and model specifications for indoor environmental quality in schools. The task force submitted its recommendations in February of 2011, and DPI developed a model management plan and practices in February of 2012.

Choice schools were required to develop a plan for maintaining indoor environmental quality in the school by May 1, 2012, or by October 1 of a school's first year in the choice program, whichever is later. Schools were required to implement the plan by February 1, 2013, or by the beginning of a school's second year in the choice program, whichever is later. Choice schools are required to provide a copy of the plan to any person upon request.

**Removal of Schools from the Program.** The State Superintendent can issue an order immediately terminating a school's participation in the choice program if he or she determines that conditions at the school present an imminent threat to the health or safety of pupils.

The State Superintendent may issue an order barring a school from participating in the program in the current school year if he or she determines that the school has done any of the following:

1. Failed to meet at least one of the four standards mentioned above by the date specified by DPI rule (currently June 30 of each year).
2. Failed to provide the notice of intent to

participate and pay the auditor fee by February 1.

3. Misrepresented information relating to the certificate of occupancy, evidence of financial viability, accreditation, or proof of attendance at the fiscal management training required of new schools, or failure to provide that information by the date required.

4. Failed to provide the independent financial audit or evidence of sound fiscal practices.

5. Failed to refund to the state any overpayment made by the date specified by DPI rule (generally within 45 or 60 days of notification).

6. Failed to comply with the provision regarding pupil participation in religious activities.

7. Failed to adopt pupil academic standards.

8. Failed to schedule and provide notice for two required meetings.

9. Failed to develop a written visitor policy.

10. Failed to ensure that teacher's aides have the required educational credentials.

11. Failed to provide any of the information listed above to a pupil or a parent or guardian of a minor pupil who is attending or who applies to attend the school, or as required to DPI.

12. Failed to administer the 3<sup>rd</sup> grade reading test to choice pupils.

13. Failed to issue a diploma to a choice pupil who satisfactorily completes the requirements necessary for high school graduation.

14. Failed to comply with the various provisions regarding pupil records (excluding the five-day records transfer provision for choice pupils enrolling in another school or school district).

15. Retained a disqualified person. A dis-

qualified person means a person who, when a school was barred or terminated from the program, satisfied at least one of the following criteria: (a) had a controlling ownership interest in, or was the administrator or an officer, director, or trustee, of the school; (b) was a person designated by the administrator of the school to assist in processing pupil applications; or (c) was responsible for an action or circumstance that led to the school being barred or terminated from the program. Such a person is disqualified for a seven-year period beginning on the date of the order issued by the State Superintendent. A school may be barred if it retains a disqualified person, for compensation or as a volunteer, as an owner, officer, director, trustee, administrator, person designated by the administrator to assist in processing pupil applications, or person responsible for administrative, financial, or pupil health and safety matters.

If the State Superintendent determines that any of the following have occurred, he or she may issue an order barring a choice school from participating in the program in the subsequent school year:

1. A school has not provided required evidence of accreditation or notified DPI if its accreditation status has changed.
2. A school's application for accreditation had been denied by an accrediting organization.
3. A school has not achieved accreditation within the statutorily required timeframe.

The State Superintendent is required to bar a school from participating in the program at the end of the current school year if the State Superintendent determines that: (a) a school has failed to continuously maintain accreditation; (b) the governing body of the school has withdrawn the school from the accreditation process; or (c) that the school's accreditation has been revoked, denied, or terminated.

Whenever the State Superintendent issues an order barring a school from participating in the program, he or she must immediately notify the parent or guardian of each pupil attending the school. In addition, the State Superintendent may withhold payment from a school if it violates the section of law [s. 118.60 or s. 119.23] governing the program.

In 2013-14, three schools were removed from the Milwaukee program and five were unable to enter the Milwaukee program due to the various accountability provisions. No schools were terminated from the Racine or statewide programs in 2013-14, and all the schools that applied to the Racine or statewide programs were eligible to participate. Since 2003-04, 53 schools have been removed from the Milwaukee program. One school has been removed from the Racine program since its inception.

#### **Responsibilities of Public School Districts.**

The only statutory requirement imposed on MPS, RUSD, and other districts is to provide transportation to program participants, but only to the extent transportation is required to be provided for other private school pupils under current law. The districts are eligible to receive state categorical aids for pupils who are transported at the districts' expense.

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### **Program Participation**

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Table 1 provides historical information on participation in the choice programs. A listing of the private schools participating in the Milwaukee program in 2014-15 and the September pupil headcount and FTE data for each school is shown in Appendix II. Similar information is shown for the Racine program in Appendix III and the statewide program in Appendix IV. The headcount and FTE data is unaudited and is therefore subject to revision. The aid membership on

**Table 1: Participation in the Choice Programs**

Fiscal Year	Milwaukee		Racine		Statewide	
	Private Schools	Aid Membership	Private Schools	Aid Membership	Private Schools	Aid Membership
1990-91	7	300				
1991-92	6	512				
1992-93	11	594				
1993-94	12	704				
1994-95	12	771				
1995-96	17	1,288				
1996-97	20	1,616				
1997-98	23	1,497				
1998-99	83	5,761				
1999-00	90	7,575				
2000-01	100	9,238				
2001-02	102	10,497				
2002-03	102	11,304				
2003-04	106	12,882				
2004-05	117	14,071				
2005-06	125	14,604				
2006-07	124	17,088				
2007-08	122	18,558				
2008-09	127	19,428				
2009-10	111	20,372				
2010-11	102	20,256				
2011-12	106	22,220	8	219		
2012-13	112	23,812	11	488		
2013-14	110	24,811	13	1,169	25	499
2014-15*	113	26,000	15	1,700	31	1,000

\*Preliminary

which payments are made also includes the January, 2015, FTE count, which is not yet available, and therefore not shown in either appendix.

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### Program Funding

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The following section summarizes statutory provisions regarding payments made under the choice programs as well as the various funding mechanisms used in the history of the Milwaukee program.

**Choice Payments.** Under the choice programs, the State Superintendent is required to pay

the school in which a pupil is enrolled, on behalf of the pupil's parent or guardian, from two separate, general purpose revenue (GPR) sum sufficient appropriations. This payment is made in four equal installments in September, November, February, and May of each school year. Each installment may consist of a single check for all pupils attending the school under the choice program.

Act 20 established the maximum per pupil payment in 2014-15 as \$7,210 for a pupil enrolled in a grade from kindergarten to eight and \$7,856 for a pupil enrolled in a grade from nine to 12. Beginning in the 2015-16 school year, the maximum per pupil payment is set equal to the maximum payment in the previous school year

plus the revenue limit per pupil adjustment, if positive, provided to school districts in the current year plus the change in total categorical aid funding per pupil, if positive, from the prior year to the current year. Additionally, beginning in 2014-15, if a private school enrolls pupils under the choice programs in any grade between K-8 and also in any grade between 9-12, the maximum payment per pupil for that school is an amount determined by: (a) multiplying the number of choice pupils enrolled in the school in any grade between K-8 by the maximum payment amount for those grades; (b) multiplying the number of choice pupils enrolled in the school in any grade between 9-12 by the maximum payment amount for those grades; (c) adding those two amounts together; and (d) dividing that sum by the total number of choice pupils enrolled in the school.

In determining a school's operating and debt service costs for educational programming, DPI is required to subtract only the following items, up to the actual cost of the service or material related to each item: (a) fees charged to pupils for books and supplies used in classes and programs; (b) rentals for school buildings; (c) food service revenues; (d) governmental financial assistance; and (e) interest and other income resulting from the investment of debt proceeds.

In the cost determination, DPI is also required to include an amount equal to 10.5% of the fair market value of the school and its premises if: (a) legal title to the school's buildings and premises is held in the name of the school's parent organization or other related party; and (b) the school requests that the Department do so. Any request made by a school remains effective in subsequent school years and may not be withdrawn by the school. If, immediately prior to July 1, 2011 (the effective date of 2011 Act 32), a school's operating and debt service costs, as determined by DPI, included the amount described above, that amount would continue to be included in subsequent school years.

Additionally, under 2013 Act 20, a choice school is allowed to accumulate up to 15% of its annual operating and debt service costs related to educational programming in a reserve account beginning in the 2013-14 school year. Any increase to that reserved amount must be included in DPI's determination of the school's operating and debt service costs related to programming for that school year.

The State Superintendent is also required to pay each choice school, on behalf of the parent or guardian, for choice pupils enrolled in a choice school for summer classroom or laboratory periods for necessary academic purposes. Annually, by October 15, each choice school is required to file a report with DPI stating the FTE number of pupils enrolled in summer programs who were attending the school on the second Friday of January of the school term immediately preceding that summer or whose applications had been accepted for attendance at the private school in the school term immediately following that summer. Beginning in 2014-15, schools offering summer school receive an amount equal to 5% of the maximum per pupil choice payment that could have been paid at the end of the immediately preceding school term for the grade in which the pupil is attending summer school. A school is eligible to receive a summer school payment for a pupil if: (a) the school offers a minimum of 19 summer days of instruction; (b) each day of summer instruction is comprised of at least 270 minutes of instruction; and (c) the pupil attends at least 15 days of summer instruction. The State Superintendent must include the entire summer school payment with the November installment, but the summer payment must be made in a separate check.

If a choice school closes after the third Friday in September in a given school year, the school district in which the pupil resides receives a share of any choice payments for that school year that have not yet been paid to the choice school on behalf of that pupil if the pupil enrolls in the pub-

lic school district in that year. The payment equals the choice per pupil amount as defined above times 61.6% (the state's share that applied in 2012-13) times 25% for each of the remaining installment payments for that pupil. Payments are made from a sum sufficient appropriation from the general fund for this purpose. No funding was paid from this appropriation in 2013-14.

#### **Past Laws Governing Choice Payments.**

Prior to 1999 Act 9, payments were equal to the lesser of the school's per pupil cost or the average equalization aid per pupil received by MPS. In Act 9, the payment was modified to equal the lesser of the school's per pupil cost or the amount paid per pupil in the previous school year plus the per pupil revenue limit increase provided to school districts in that school year. Under 2003 Act 33, the maximum per pupil payment amount was adjusted by the percentage increase in the general schools aids appropriation. This mechanism was used until 2009-10, when the maximum payment amount was set in statute. The per pupil payment for the choice programs in 2011-12, 2012-13, and 2013-14 was equal to the lesser of \$6,442 or the private school's operating and debt service cost per pupil related to educational programming, as determined by DPI.

**Choice Funding.** The Milwaukee program has always been funded from a separate sum sufficient appropriation. During the time of state two-thirds funding from 1996-97 to 2002-03, that appropriation was statutorily excluded from the definitions of state school aids and partial school revenues for purposes of calculating the two-thirds funding goal.

Although changes were made to choice program funding prior to 1999 Act 9, the same basic mechanism for funding the program was in place from 1990-91 through 1998-99. Prior to Act 9, MPS was, with certain exceptions, generally able to count the number of pupils participating in the choice program in its membership for revenue limit and general school aids purposes. Equaliza-

tion aid for MPS was reduced by the average equalization aid per member received by MPS times the number of eligible pupils attending private schools participating under the choice program. In addition, the State Superintendent was required to ensure that equalization aid paid to other school districts was neither reduced nor increased as a result of the payments to choice schools or the MPS aid reduction. Further, the State Superintendent was required to ensure that the amount of the aid reduction to MPS lapse to the general fund, thus fully offsetting the cost of the program.

Under 1999 Act 9, the definition of membership was changed to completely exclude pupils enrolled in a choice school from being counted in MPS' membership. Also under Act 9, the incidence of the aid reduction was changed. Rather than the full reduction coming from MPS' aid, the reduction was made by reducing the general school aids for which MPS was eligible by one-half of the reduction, while the general school aids for which all the other school districts in the state were eligible to be paid was reduced proportionately by an amount totaling the other half. A school district's revenue limit calculation was not affected by the choice reduction. Thus, a district could increase its property tax levy to offset any aid reduction made related to the choice program. Because this property tax levy was included in partial school revenues under the two-thirds funding calculation, total funding for general school aids was increased by two-thirds of the amount of the choice lapse, which partially offset the statewide reduction amount.

While the choice program was funded from a separate appropriation that was excluded from the definition of state school aids and partial school revenues for the purpose of calculating two-thirds funding, the provisions requiring the general school aids reduction and allowing districts to levy to offset the aid reduction caused the estimated cost of the choice program to increase partial school revenues. This effective in-

clusion of the estimated costs of the choice program in partial school revenues resulted in a higher funding level for general school aids than there would otherwise have been in the absence of the aid reduction and levy offset provisions. For some districts, the additional aid received under the equalization aid formula was greater than the initial choice reduction. Other districts did not receive enough additional aid to offset the choice reduction.

Under 2001 Act 16, the general school aid reduction for non-MPS school districts was deleted. As a result, 1999-00 and 2000-01 were the only years that districts other than MPS had their general aid reduced for the choice program. Act 16 required that general aid for MPS in each year be reduced by an amount equal to 45% of the total cost of the choice program, which is comparable to the net reduction incurred by MPS under prior law. The amount levied by MPS to offset the choice reduction was not counted in partial school revenues, meaning no additional general school aid was generated by this choice levy for distribution to all districts under the equalization aid formula. This provision resulted in the general fund paying for 55% of the choice program and MPS for 45%. The elimination of the state's two-thirds funding commitment in 2003 Act 33 did not affect the 55% general fund / 45% MPS funding split for the program.

Under 2007 Act 20, a separate aid program was created to provide aid to districts with high poverty. A district qualifies for aid if more than 50% of its pupils were eligible for free or reduced price lunch in the year preceding each biennium. The aid distributed per pupil is calculated by dividing the appropriated amount by the prior year aid membership of all eligible districts. By law, any aid MPS receives from this program must be used to offset the choice levy attributable to the reduction in general school aid.

Choice funding was further modified in 2009 Act 28. Prior to 2013-14, the reduction to the

general aid for MPS was equal to 45% of the estimated cost of the choice program, with the total percentage split into two separate amounts. The reduction was equal to the sum of: (a) 41.6% of the cost of the choice program in 2009-10 and 38.4% of the cost of the program in 2010-11, 2011-12, and 2012-13; and (b) 3.4% of the cost of the program in 2009-10 and 6.6% of the cost of the program in the 2010-11, 2011-12, and 2012-13. DPI is required to annually inform the MPS Board in writing of the result of the calculation under (b), and to annually pay the City of Milwaukee the amount under (b) from the general school aids appropriation using the same payment schedule as for equalization aids. The City must use the amount under (b) to defray the choice program levy it raises on behalf of MPS. These funds are considered state aid for revenue limit purposes.

Thus, while aid to MPS was still initially reduced by an amount equal to 45% of the estimated cost of the choice program, the state general fund assumed a greater share of the program's cost than the remaining 55%. After consideration of the city choice levy aid, the MPS aid reduction was 38.4% of the program in 2012-13.

Under 2013 Act 20, the MPS aid reduction is further decreased. Beginning in the 2013-14 school year and annually thereafter, the aid reduction equals a percentage determined by subtracting 3.2 percentage points from the percentage in the previous school year. This establishes a 12-year phase-out of the MPS aid reduction, after which the program will be fully state funded. The MPS aid reduction was 35.2% in 2013-14 and 32.0% in 2014-15, and will further decline to 28.8% in 2015-16 and 25.6% in 2016-17. This program will be fully state funded in 2024-25.

In the October 15, 2014, general school aids distribution, DPI used an estimate of \$191.0 million for the total cost of the Milwaukee choice program in 2014-15. As a result, the general aid

that would otherwise be paid to MPS was reduced by 32% of that amount (\$61.1 million) to partially fund the Milwaukee program. In 2014-15, MPS will receive \$4.8 million in high poverty aid. After consideration of those aid payments, the net aid reduction for MPS related to the choice program is \$56.3 million, which represents 9.3% of the district's estimated 2014-15 gross aid eligibility, and 29.5% of the cost of the Milwaukee program. The state's general fund bears the remaining \$134.7 million cost of the Milwaukee program. As a result, the net funding split for the Milwaukee program in 2014-15 is 70.5% state general fund/29.5% MPS.

Table 2 summarizes state funding for the Milwaukee program since its inception. The per pupil amount and aid reductions shown in the table are those determined under the relevant statutory provisions that applied in the indicated year. The total state payment and aid reduction figures are based on the October general aid distributions prepared by DPI. The city choice program aid is included in the initial general aid reduction numbers. The final figures may have been adjusted based on final choice participation and aid eligibility data. Finally, it should be noted that the choice program funding data in Table 2 reflect only the amount and incidence of the aid reduction from the general school aids appropriation. The interactions of the choice program with the revenue limit and equalization aid formulas and the state's two-thirds funding of partial school revenues prior to 2003-04 described earlier are not addressed in Table 2.

For the Racine program, DPI was required under 2011 Act 32 to reduce the general aid for which RUSD was eligible by 38.4% of the estimated total cost of the Racine program. The October 15, 2011, general aid calculation used an estimate of nearly \$1.55 million for the cost of the Racine program in 2011-12, and RUSD's general aid was reduced by nearly \$594,000 in 2011-12. The October 15, 2012, general aid cal-

ulation used an estimate of \$3.2 million for the cost of the Racine program in 2012-13, and RUSD's general aid was reduced by \$1.2 million. Under revenue limits, RUSD was permitted to levy to make up for the aid reduction. Under 2013 Act 20, the 38.4% aid reduction to RUSD was deleted, meaning that beginning in the 2013-14 school year, the Racine program was fully state funded. Similarly, the statewide program has also been fully funded by the state since its inception.

Other than MPS, no other districts' aid payments or property tax levies are directly affected by the current choice program funding structure.

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### **Program Evaluation**

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Under 1989 Act 336, the State Superintendent was authorized to conduct evaluations of the choice program. This authority was repealed in 1995 Act 27. Five reports were prepared for DPI by Professor John Witte of UW-Madison evaluating the first five years (1990-91 through 1994-95) of the program. In general, the evaluations concluded that: (a) the program had accomplished the purpose of making alternative school choices available to low-income families whose children were not succeeding in school; (b) parents were very satisfied with the program and have been highly involved in their children's education with attendance rates comparable to the MPS average for elementary schools; (c) the attrition rate in the program declined during the first four years and leveled off in the fifth year, but in the last two years evaluated, was comparable to pupil mobility rates in MPS; and (d) when test scores were controlled for gender, race, income, grade, and prior achievement, there was no systematic evidence that choice pupils do either better or worse than MPS pupils on achievement tests.

**Table 2: State Funding of the Milwaukee Private School Choice Program**

	Aid Membership	Per Pupil Amount	Choice Program Aid Estimate (in Millions)	MPS			All Other Districts		
				General Aid Reduction (in Millions)	High Poverty Aid (in Millions)	Net Aid Reduction (in Millions)	Net Percent of Aid	Total Reduction (in Millions)	Percent of Each District's Aid
1990-91	300	\$2,446	\$0.7	\$0.7	\$ 0.7	0.3%			
1991-92	512	2,643	1.4	1.4	1.4	0.5			
1992-93	594	2,745	1.6	1.6	1.6	0.6			
1993-94	704	2,985	2.1	2.1	2.1	0.7			
1994-95	771	3,209	2.5	2.5	2.5	0.8			
1995-96	1,288	3,667	4.6	4.6	4.6	1.2			
1996-97	1,616	4,373	7.1	7.1	7.1	1.6			
1997-98	1,497	4,696	7.0	7.0	7.0	1.5			
1998-99	5,761	4,894	28.7	28.7	28.7	5.6			
1999-00	7,575	5,106	39.1	19.5	19.5	3.4	\$19.5	0.6%	
2000-01	9,238	5,326	49.0	24.5	24.5	4.1	24.5	0.7	
2001-02	10,497	5,553	59.4	26.7	26.7	4.4			
2002-03	11,304	5,783	65.6	29.5	29.5	4.7			
2003-04	12,882	5,882	76.2	34.3	34.3	5.3			
2004-05	14,071	5,943	87.4	39.3	39.3	6.0			
2005-06	14,604	6,351	93.7	42.2	42.2	6.2			
2006-07	17,088	6,501	110.5	49.7	49.7	7.2			
2007-08	18,558	6,501	120.3	54.1	\$7.4 46.7	7.0			
2008-09	19,428	6,607	128.8	58.0	9.9 48.1	7.4			
2009-10	20,372	6,442	130.1	54.1	9.7 44.4	6.9			
2010-11	20,256	6,442	130.8	50.2	9.7 40.5	6.3			
2011-12	22,220	6,442	144.3	55.4	5.8 49.6	8.3			
2012-13	23,812	6,442	154.6	59.4	5.8 53.6	9.0			
2013-14	24,811	6,442	161.1	56.7	4.8 51.9	8.7			
2014-15*	26,000	7,210 (K-8)							
		7,856 (9-12)	191.0	61.1	4.8 56.3	9.3			

\*Preliminary.

As required by 1989 Act 336, the Legislative Audit Bureau (LAB) released an evaluation of the choice program in February, 1995. LAB agreed with Professor Witte's conclusions regarding parental satisfaction with, and involvement in, the program, attendance rates for choice pupils, and attrition rates. However, the Audit Bureau found that his conclusions regarding comparative academic performance were stronger than could be supported by the limited data available due to factors such as pupil attrition and small sample sizes. The LAB concluded that no conclusions could be drawn. In the 1995 evaluation, the Audit Bureau indicated that the program had not had a substantial fiscal effect on MPS for two reasons. First, the program had not diverted a large number of pupils from MPS and had only reduced the increase in MPS enrollment since the program began. Second, the loss of revenue experienced by MPS did not appear to have impeded the district's ability to fund educational activities for other pupils during the period covered by the LAB evaluation. Choice payments never equaled more than 0.8% of the district's equalization aids during the period covered by the LAB evaluation.

As required by 1995 Act 27, the Audit Bureau released a second evaluation of the program in February, 2000. LAB surveyed participating families about the choice program, and found that most respondents heard about the program through informal sources such as friends or relatives, and that most selected choice schools based on perceived educational quality. Of the choice schools surveyed, LAB determined that nearly three-quarters could be classified as religious. While the Audit Bureau noted that the performance of pupils in MPS and choice schools could not easily be compared given that not all schools administer the same standardized testing, nearly 90% of the choice schools that responded to the Audit Bureau surveys submitted to at least one form of independent quality review or performance measurement and that all schools reported compliance with the statutory performance

standards that were selected.

With respect to the possible negative fiscal effects of the choice program on MPS, the Audit Bureau noted that a full cost-benefit analysis of the program would require making assumptions about the choice program. LAB noted, however, that while total revenue received by MPS was not significantly affected by the choice program, costs to MPS property taxpayers were higher than they would have been in the absence of the choice program, given that MPS could increase its property tax levy to offset lost equalization aid. The Audit Bureau also noted that, in the context of state funding of two-thirds of partial school revenues in place at the time of evaluation, total state aid to MPS had increased, while total property taxes had decreased since the start of the choice program.

Another framework for evaluation of the choice program was established in 2005 Act 125. Under that act, annually from 2006 through 2011, choice schools were required to provide the scores of all standardized tests that they administer to the School Choice Demonstration Project (SCDP), a national collaboration of researchers designing school choice program evaluations which is currently based at the University of Arkansas. The Audit Bureau was required to review and analyze the standardized test score data received from the SCDP. Based on its review, LAB was required to report to the Legislature annually from 2007 to 2011 on: (a) the results of standardized tests administered by choice schools; (b) the scores of a representative sample of choice pupils on the WKCE administered in the 4<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> grades and the Wisconsin reading comprehension test administered in the 3rd grade; and (c) the scores of a comparable group of MPS pupils on the WKCE and reading comprehension tests. As part of its evaluation, the SCDP also assessed other aspects of the choice program over the five years, such as the effects of the program on pupil attainment, K-12 finance, the demographics of the City, school integration, and

the characteristics of participating schools.

The SCDP released reports on choice testing in February of 2008, March of 2009, and April of 2010, March of 2011, and February of 2012. For its February, 2012, report on descriptive test score data, the SCDP analyzed information from 102 choice schools that administered the WKCE to choice pupils in 2010-11 in the 4<sup>th</sup>, 8<sup>th</sup>, and 10<sup>th</sup> grades. On the WKCE, 4<sup>th</sup> grade choice pupils scored lower than low-income 4<sup>th</sup> grade MPS pupils on reading, math, and science. In 8<sup>th</sup> and 10<sup>th</sup> grade, choice pupils scored higher than low-income MPS pupils in reading and science, but lower in math. Because these are only descriptive comparisons, researchers from the SCDP noted that the data could not be used to draw any conclusions about the effectiveness of the choice program compared to MPS, which requires data from the longitudinal study.

To conduct the longitudinal study, researchers from the SCDP reported on the methods that were used to generate comparable panels of pupils from choice schools and MPS schools for which to compare WKCE results. Researchers from the SCDP began the longitudinal study by constructing samples of 2,727 pupils each in grades 3 through 9 from the choice program and from MPS matched to the choice sample on achievement level and demographics. In the first year of the report, the SCDP reported on baseline descriptive statistics for both groups from the WKCE. The analyses from the second, third, and

fourth years generally concluded that there were few statistically significant differences in achievement growth in reading or math between the pupils the choice and the MPS samples. In the fifth year, the SCDP found that pupils in the choice sample exhibited larger growth in reading achievement than the MPS sample. They also found that some analyses indicated that pupils in the choice sample also exhibited larger growth in math achievement, but that the results were not conclusive. The researchers did note, however, that there was some evidence that the achievement growth by the choice sample in the fifth year was a result of the new requirement that year that choice schools administer the WKCE to all choice pupils in the relevant grades. The researchers also discussed issues relating to pupil mobility and attrition from the original samples.

The Audit Bureau issued its reports on the testing data in September of 2008 and in August of each year from 2009 through 2012. In the August, 2012, report, LAB indicated that it reviewed the data submitted by the SCDP and generally confirmed test score averages and related analyses reported by the SCDP, with some differences based on treatment of missing test score data and pupil transfers between MPS and choice schools. LAB also concurred with the SCDP that the extent to which the choice program affected pupil achievement could not be definitely determined because of the introduction of the testing requirement in the final year of the study.

## APPENDIX I

### Legal Challenges to the Choice Program

Once the choice program was enacted in 1990, its legality was immediately challenged. In May, 1990, the State Supreme Court was petitioned by several teacher, administrator, and parent groups and the Milwaukee branch of the NAACP to review the program. The petitioners argued that the program was unconstitutional because it violated: (1) the doctrine that public funds may be expended for only public purposes because the program "contains no educational controls, measures or standards of accountability;" (2) the state constitutional requirement that schools be as uniform as practicable; and (3) the state constitutional provision prohibiting the Legislature from passing a private or local provision as part of a multi-subject bill.

Although the State Supreme Court denied the request, six private schools in Milwaukee and several pupils and their parents wishing to participate in the program brought an action before the Circuit Court of Dane County (Davis v. Grover) seeking to compel the State Superintendent to immediately implement the program and to prohibit the State Superintendent from imposing any requirements on participating schools beyond those already specified in the private school choice law. The parties who previously requested the Supreme Court to review the program joined as intervenors in the Circuit Court action asking again that the law be declared unconstitutional.

In August, 1990, the Circuit Court ruled that the program was not unconstitutional. With regard to the public purpose challenge, the Court concluded that education is a public purpose and that the choice program is the Legislature's attempt "to improve the quality of education to the benefit of the entire state." Further, the Court held that the legislation "has sufficient accounta-

bility and control to maintain its public purpose." With regard to the uniformity clause challenge, the Court reasoned that the private schools participating in the program do not become public school districts even though they accept public school pupils and are, therefore, not required to meet the statutory standards required of public school districts. Finally, the Court dismissed the local/private bill challenge by concluding that the legislation is intended to have "a direct and immediate effect on a specific statewide concern or interest" and, therefore, is "neither a local nor a private law."

In addition, the Circuit Court ruled that while the State Superintendent has the authority to ensure that participating schools meet the requirements both of the private school choice law and of other state and federal provisions, "he may not insist on compliance in a manner more onerous or demanding than that insisted upon for other participating programs and public schools." The Circuit Court opinion also agreed with the U.S. Department of Education that the private schools in the program were not required to comply with federal and state laws regarding education for children with disabilities. While the private schools may not deny qualified pupils with disabilities access to their programs, the responsibility to offer them a free and appropriate education still rests with MPS.

In November, 1990, the Court of Appeals reversed the Circuit Court decision and declared the program unconstitutional by concluding that it was a local/private provision passed as part of a multi-subject bill. The Court of Appeals did not address the other two constitutional challenges previously dismissed by the Circuit Court. In March, 1992, the State Supreme Court, by a 4-3

vote, reversed the Court of Appeals decision and ruled that the choice program was not unconstitutional.

Initially, only nonsectarian private schools could participate in the program. In 1995 Act 27, the choice program was expanded to include sectarian schools and a number of other changes were made to the program. The Act 27 changes were challenged in court and a preliminary injunction prohibiting implementation of the Act 27 changes to the program was issued by the Dane County Circuit Court. An original action for removal of the case from the Circuit Court was brought before the Wisconsin Supreme Court and, on March 29, 1996, the Supreme Court issued a decision stating that it was evenly divided on the issues. As a result, the matter was returned to the Circuit Court and the preliminary injunction was continued.

On August 15, 1996, the Dane County Circuit Court made permanent the injunction relating to the expansion of the program to sectarian schools, but lifted the injunction as to nonsectarian schools, which allowed the provisions of Act 27 to take effect for nonsectarian schools in 1996-97.

On January 15, 1997, the Dane County Circuit Court issued a ruling that found that the Act 27 expansion of the program to sectarian schools violated Article I, Sec. 18 of the Wisconsin Constitution (prohibiting state support for religious societies) and the public purpose doctrine. The program, as it relates to nonsectarian schools, was determined to be constitutional. However, the Court found that the Act 27 provisions relating to the program were a local or private bill in violation of Article IV, Sec. 18 of the state Constitution. Under a stipulation before the Court, the program continued to operate, as modified by Act 27, for nonsectarian schools in 1996-97 and 1997-98.

On August 22, 1997, a majority of the Court of Appeals concluded that the Act 27 expansion of the choice program to sectarian schools was invalid under Article I, Sec. 18 of the Wisconsin Constitution because it directed payments of money from the state treasury for the benefit of religious societies. On June 10, 1998, the Wisconsin Supreme Court reversed the decision of the Court of Appeals and upheld the constitutionality of the amended choice program (Jackson v. Benson). In accordance with this ruling, the injunction barring the implementation of the amended choice program was dissolved and the program expansion to sectarian schools took effect in 1998-99. On November 9, 1998, the U.S. Supreme Court declined, without comment, to hear an appeal stemming from the Wisconsin Supreme Court decision.

While the U.S. Supreme Court declined to hear an appeal on the Wisconsin case, on June 27, 2002, the Court upheld the constitutionality of the Ohio Pilot Project Scholarship Program in Zelman v. Simmons-Harris. Under the Ohio program considered in the case, families in the Cleveland School District were provided tuition aid to attend participating public or private schools of the parent's choosing and tutorial aid for pupils who choose to remain enrolled in public school. Sectarian and nonsectarian schools in the Cleveland School District and public schools in adjacent districts were allowed to participate, and aid was distributed based on the financial need of the parents and the educational option chosen for the pupil. The Court held that the Ohio program did not violate the Establishment Clause of the First Amendment of the U.S. Constitution because it was enacted for a valid secular purpose, is neutral with respect to religion, permits participation of various types of schools, and provides assistance directly to a broad class of citizens who direct aid to sectarian schools as a result of their independent and private choice.

## APPENDIX II

### Milwaukee Private School Choice Program Headcount and FTE 2014-15 School Year

School Name	3 <sup>rd</sup> Friday in September	
	Headcount	FTE
A Promise Of Hope Academy	38	30.8
Academy Of Excellence	668	646.4
Acelero Learning Milwaukee County	36	18.0
Atlas Preparatory Academy	866	842.8
Atonement Lutheran School	284	274.0
Believers In Christ Christian Academy	207	201.0
Blessed Sacrament Grade School	178	170.0
Blessed Savior Catholic School	730	698.5
Calvary's Christian Academy	64	61.2
Carter's Christian Academy	263	245.0
Catholic East Elementary	193	185.0
Ceria M Travis Academy	437	426.2
Christian Faith Academy Of Higher	104	98.0
Christ-St Peter Lutheran School	204	194.5
Clara Mohammed School	208	199.0
Concordia University School	410	392.4
Cross Trainers Academy	175	170.6
Daughters Of The Father Christian Academy	154	146.0
Destiny High School	295	295.0
Divine Destiny School	115	111.4
Divine Mercy School	12	12.0
Divine Savior Holy Angels High	72	72.0
Dominican High School	86	86.0
Early View Academy Of Excellence	337	333.4
Eastbrook Academy	193	189.4
Elm Grove Lutheran School	16	15.5
First Immanuel Lutheran School	9	9.0
Garden Homes Lutheran School	248	240.4
Grace Christian Academy	110	106.0
Grace Lutheran School - Mpcp	11	11.0
Greater Holy Temple Christian Academy	701	675.8
Heritage Christian Schools	159	159.0
Hickman Academy Preparatory School	316	304.5
Hillel Academy	49	49.0
Holy Redeemer Christian Academy	498	487.6
Holy Wisdom Academy	249	240.2
Hope Christian High School	236	236.0
Hope Christian School: Caritas	142	142.0
Hope Christian School: Fortis	441	430.0
Hope Christian School: Prima	572	548.5

School Name	3 <sup>rd</sup> Friday in September	
	Headcount	FTE
Hope Christian School: Semper	229	216.5
Immanuel Lutheran School	109	104.2
Inst of Technology & Academics	249	236.0
Jared C Bruce Academy	163	157.4
Jo'S Learning Academy	50	30.0
Lutheran Special School	33	33.0
Malaika Early Learning Center	53	43.0
Marquette University High	94	94.0
Martin Luther High School - Mpcp	92	92.0
Mary Queen Of Saints Catholic Academy	27	27.0
Messmer Catholic Schools	1595	1,554.5
Milwaukee Lutheran High	444	444.0
Milwaukee Seventh Day Adventist School	152	152.0
Mother Of Good Counsel Grade School	210	200.0
Mount Calvary Lutheran Grade School	183	176.5
Mount Lebanon Lutheran School	211	200.5
Mount Olive Lutheran Grade School	120	116.5
Nativity Jesuit Middle School	95	87.4
New Testament Christian Academy	95	88.5
Northwest Catholic	259	245.5
Northwest Lutheran Grade School	258	252.0
Notre Dame Middle School	344	344.0
Our Lady Queen Of Peace Grade School	173	163.5
Pius Xi High School	398	398.0
Prince Of Peace School	489	474.2
Right Step Inc	213	213.0
Risen Savior Evangelical Lutheran School	233	224.2
Saint Adalbert Grade School	488	471.2
Saint Agnes Catholic Grade School	73	72.0
Saint Anthony School	1960	1,912.0
Saint Catherine School	140	132.8
Saint Charles Borromeo School	116	113.5
Saint Coletta Day School Of Milwaukee	18	18.0
Saint Gregory The Great Grade School	194	184.5
Saint Joan Antida High School	214	214.0
Saint John Kanty Grade School	199	191.4
Saint Johns Evangelical Lutheran School	109	103.5
Saint Josaphat Parish School	241	232.6
Saint Joseph Academy	310	284.8
Saint Lucas Evangelical Lutheran School	117	111.5
Saint Marcus Lutheran School	720	690.8
Saint Margaret Mary Grade School	291	279.0
Saint Martin Of Tours Parish School	20	19.5
Saint Martini Lutheran Grade School	262	250.4
Saint Peter Immanuel Lutheran School	211	203.5

School Name	3 <sup>rd</sup> Friday in September	
	Headcount	FTE
Saint Philips Lutheran School	126	121.5
Saint Rafael The Archangel	452	436.0
Saint Roman Grade School	259	245.5
Saint Sebastian Grade School	178	172.5
Saint Thomas Aquinas Academy	128	122.0
Saint Thomas More High	187	187.0
Saint Vincent Pallotti School	169	164.6
Salam School	630	607.0
Salem Lutheran School	116	109.2
Sharon Junior Academy	31	29.5
Sherman Park Lutheran School & Preschool	266	256.8
Shining Star Christian Schools, Inc.	92	92.0
Siloah Lutheran School	210	202.4
Starr Academy	0	0.0
Tamarack Waldorf School	213	203.8
Texas Bufkin Christian Academy	80	75.5
Torah Academy Of Milwaukee	29	29.0
Transcenter For Youth	106	106.0
Travis Technology High School	179	179.0
Trinity Lutheran Grade School	57	54.5
United To Serve Academy	221	211.0
Victory Christian Academy	156	152.0
Wells Street Academy	17	16.2
Wisconsin Academy	22	22.0
Wisconsin Lutheran High	384	384.0
Word Of Life Lutheran School	95	90.5
Yeshiva Elementary School	171	165.8
Zion Lutheran Grade School	<u>16</u>	<u>15.5</u>
Total (Unaudited Numbers)*	26,930	26,056.3

\*The aid membership on which choice program payments are made is equal to the average number of FTE pupils enrolled on the third Friday in September and the second Friday in January, plus the summer school FTE.

### APPENDIX III

#### Racine Private School Choice Program Headcount and FTE 2014-15 School Year

School Name	3 <sup>rd</sup> Friday in September	
	Headcount	FTE
Concordia Lutheran School	82	82.0
Evergreen Elementary	191	173.0
Friedens Lutheran School	1	1.0
John Paul II Academy	119	118.5
Lutheran High School Association of Racine	98	98.0
Our Lady of Grace Academy	153	147.4
Renaissance School	367	355.0
Saint Catherine's High School	245	245.0
Saint John's Lutheran School	78	62.0
Saint Joseph School	71	71.0
Saint Matthew Elementary School	10	8.5
Shoreland Lutheran High School	83	83.0
Trinity Lutheran School - Caledonia	27	27.0
Trinity Lutheran School - Missouri Synod	105	97.5
Wisconsin Lutheran School	<u>110</u>	<u>105.5</u>
Total (Unaudited Numbers)*	1,740	1,674.4

\*The aid membership on which choice program payments are made is equal to the average number of FTE pupils enrolled on the third Friday in September and the second Friday in January, plus summer school FTE.

## APPENDIX IV

### Wisconsin Private School Choice Program Headcount and FTE 2014-15 School Year

City	School Name	Headcount	FTE
Appleton	Saint Francis Xavier Catholic School System	92	89.0
	Fox Valley Lutheran High School	19	19.0
Beloit and Janesville	Rock County Christian School	50	50.0
Bonduel	Saint Paul Lutheran School	14	13.0
Chippewa Falls	McDonell Area Catholic School	44	44.0
Eau Claire and Altoona	Regis Catholic Schools	65	65.0
Fond du Lac	Saint Mary's Springs Academy	45	44.0
	Winnebago Lutheran Academy	12	12.0
Green Bay and De Pere	Green Bay Area Catholic Education - East	44	44.0
	Green Bay Area Catholic Education - South	14	14.0
	Green Bay Area Catholic Education - West	10	10.0
	Notre Dame da la Baie Academy	23	23.0
Kenosha	Friedens Lutheran School	31	30.0
	Saint Joseph Catholic Academy	31	30.0
La Crosse and Onalaska	Aquinas Catholic Schools	48	47.5
Madison	Lighthouse Christian School	10	10.0
Manitowoc	Roncalli High School	22	22.0
	Saint Francis of Assisi Schools	35	34.0
Marshfield	Columbus Catholic Schools	54	51.0
Menasha and Neenah	Twin City Catholic Educational System	28	28.0
Oshkosh	Lourdes Academy	43	43.0
	Valley Christian School	35	35.0
Plymouth	Saint John Lutheran School	10	10.0
Sheboygan	Sheboygan Area Lutheran High School	11	11.0
	Sheboygan Christian School	30	29.0
	Saint Paul Lutheran School	11	9.5
	Trinity Lutheran School	10	10.0
Stevens Point and Plover	Stevens Point Area Catholic Schools	43	43.0
Wausau and Rothschild	Newman Catholic Schools	48	48.0
Wisconsin Rapids	Assumption Catholic Schools	55	55.0
	Immanuel Lutheran School	<u>26</u>	<u>24.5</u>
Total (Unaudited Numbers)*		1,013	997.5

\*The aid membership on which choice program payments are made is equal to the average number of FTE pupils enrolled on the third Friday in September and the second Friday in January, plus summer school FTE.