



Brief 01-4

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# Wisconsin Briefs

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## MILWAUKEE SCHOOL CHOICE VOUCHER PROGRAM

The Milwaukee Parental Choice Program (Choice) provides state-paid tuition vouchers to enable low-income students to enroll in private schools in the City of Milwaukee. The program, which has survived legal challenges in the Wisconsin and U.S. Supreme Courts, began operation in 1990 with about 340 students. Following 1995 legislation which authorized the participation of religious schools and expanded the percentage of Milwaukee pupils allowed to enroll, Choice attendance has increased from about 1,500 to over 9,000 in the 2000 fall semester. 1999 Wisconsin Act 9 changed the funding mechanism so that the program's costs are now drawn from state aids that would have been distributed to both Milwaukee and the rest of the state's school districts, rather than just Milwaukee's aids. Act 9 also permitted payments for certain summer school classes.

### CURRENT PROGRAM PROVISIONS

In the 1990-91 school year, Wisconsin became the first state to implement a large-scale voucher program that uses tax money to pay for educating eligible low-income pupils at private nonsectarian schools. The program was expanded in 1995 to allow vouchers for children attending religious schools, but a school must excuse a student from participation in any religious instruction or activity at the request of the child's parent or guardian.

The Choice program (Section 119.23, Wisconsin Statutes) permits up to 15% of the children in the City of Milwaukee Public School District (MPS) – or approximately 15,000 pupils – to attend any participating private school located within the city. About 9,200 pupils are attending 103 private schools under the Choice option in the 2000-01 school year. Approximately 6,000 are enrolled in religious schools. Catholic schools account for the majority of enrollment, but other Christian, Jewish, and Islamic schools also participate. Over 60% of Choice participants are African-American, about the same proportion as the general enrollment in MPS.

A private school may enroll as many Choice students as it wants. If the school receives more applicants than available spaces, it must determine which ones to accept on a random basis, except that it may give preference to siblings of those already accepted.

In order for a child to be eligible, the total income of the pupil's family cannot exceed 175% of the poverty level established by the federal government. For the 2000-01 school year, the maximum allowable income for a family of three is \$24,970 and for a family of four, \$30,043. The Choice tuition checks, which are sent by the state to the designated private school, have to be endorsed by the pupil's parent or legal guardian for the use of the private school. Private schools must accept, as total payment for tuition, the lesser of 1) an amount (\$5,326 in 2000-01) determined by a formula based on the state aid payment MPS would have received for the pupil if the child were enrolled in public school in the 1998-99 school year, plus an annual adjustment for inflation, or 2) an amount determined by the Wisconsin Department of Public Instruction (DPI) to be equal to the sum of the school's per pupil operating costs and any debt service expenses related to educational programming. Private schools are required to submit the results of an independent financial audit to DPI annually. The program is funded by reducing general state aids to MPS to cover half the program's cost and reducing general school aids

to the remaining 425 districts in the state to cover the other half. Prior to 1999 legislation, Choice funding came entirely from MPS state aids. The total amount of state aid payments applied to the Choice program in the 2000-01 school year is about \$49 million.

Participating private schools must follow all health and safety laws or codes that apply to public schools and must meet at least one of the following standards: 1) at least 70% of the Choice pupils must advance one grade level each year; 2) the average attendance rate for Choice pupils at the school must be at least 90%; 3) at least 80% of the pupils in the program must demonstrate significant academic progress; or 4) at least 70% of the families of Choice pupils must meet the school's criteria for parental involvement in the child's schooling. DPI monitors enrollees' performance and evaluates school compliance with standards.

### KEY LEGISLATIVE AND JUDICIAL ACTIONS

The Choice program, as created by 1989 Wisconsin Act 336, originally permitted up to 1% of MPS membership (grades K to 12) to attend private nonsectarian schools, beginning in the 1990-91 school year, but no more than 49% of an individual private school's enrollment could consist of Choice pupils. The Wisconsin Supreme Court upheld the Choice program as constitutional by a 4-3 vote on March 3, 1992. In that decision, *Davis v. Grover*, 166 Wis. 2d 501, the court reversed the appeals court (which had reversed a circuit court decision supporting Choice) by ruling that the program was not a private or local law improperly enacted as part of the omnibus state budget bill and that the attempt to improve the educational opportunities of low-income Milwaukee students was an appropriate purpose for experimental legislation.

1993 Wisconsin Act 16 expanded the program, beginning in the 1994-95 school year, by permitting up to 1.5% of MPS membership to participate, and allowing up to 65% of an individual school's enrollment to consist of Choice students.

Inclusion of private sectarian or religious schools in the program was authorized by 1995 Wisconsin Act 27. Up to 7% of MPS students could participate in Choice in the 1995-96 school year and up to 15% in subsequent years. The 1995 legislation also removed enrollment restrictions for individual schools. 1999 Wisconsin Act 9 created the current funding formula and authorized payments for academically necessary summer classes.

On August 25, 1995, the Wisconsin Supreme Court responded to a constitutional challenge of the inclusion of religious schools in Choice by accepting original jurisdiction and issuing a preliminary injunction preventing implementation of the provisions expanding the program. A 3-3 tie vote on March 29, 1996, resulted in the case being returned to circuit court for consideration. Following further action in the lower courts, the Wisconsin Supreme Court ruled 4-2, in *Jackson v. Benson*, 218 Wis. 2d 835, that including religious schools in Choice was constitutional. The high court held that opening the program to religious schools does not violate the Wisconsin Constitution provision against spending state funds for religious purposes. It also concluded that Choice does not violate the U.S. Constitution's First Amendment guarantees of religious freedom and the separation of church and state because it meets the three-prong test set down by the U.S. Supreme Court in such cases that requires: 1) the expenditure must have a legitimate secular purpose; 2) it must not have the primary effect of advancing religion; and 3) it must not lead to excessive entanglement between the state and participating private, religious schools.

On November 9, 1998, the U.S. Supreme Court declined by an 8-to-1 vote without comment to hear an appeal of the Wisconsin Supreme Court decision, thus allowing it to stand.

**Further Information.** Contact the DPI Choice program administrator at (608) 266-2853.